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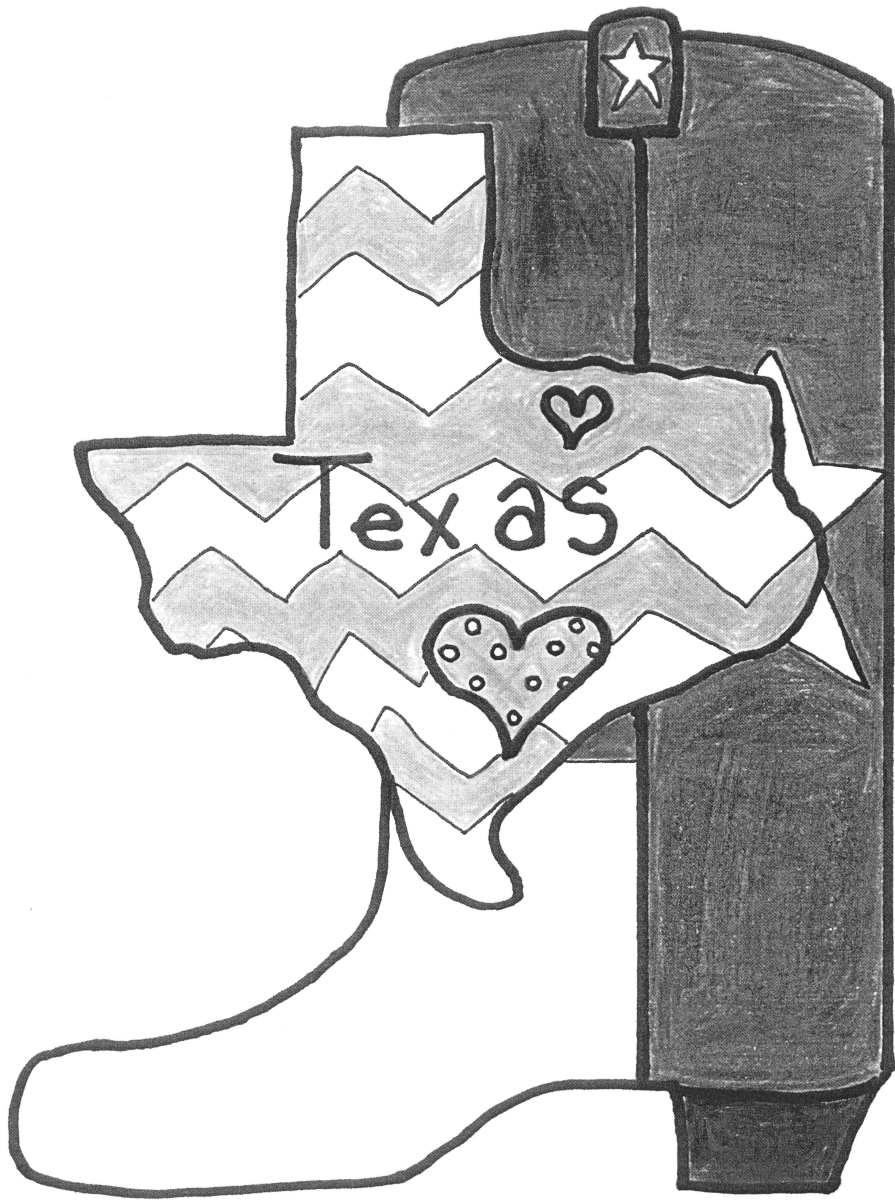
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THE GOVERNOR

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 March 9, 2021

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, for a term to expire February 1, 2027, Sanjay G. Adhia, M.D. of Missouri City, Texas (Dr. Adhia is being reappointed).

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, for a term to expire February 1, 2027, Denise Oncken of Houston, Texas (Ms. Oncken is being reappointed).

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, for a term to expire February 1, 2027, Rogelio C. "Roger" Rodriguez of El Paso, Texas (Mr. Rodriguez is being reappointed).

Appointed to the Texas Juvenile Justice Board, for a term to expire February 1, 2027, Edeska Barnes, Jr. of Jasper, Texas (Mr. Barnes is being reappointed).

Appointed to the Texas Juvenile Justice Board, for a term to expire February 1, 2027, Lisa K. Jarrett of San Antonio, Texas (Ms. Jarrett is being reappointed).

Appointed to the Texas Juvenile Justice Board, for a term to expire February 1, 2027, Victoria A. "Ann" Lattimore of Cedar Park, Texas (Ms. Lattimore is being reappointed).

Appointed to the Texas Juvenile Justice Board, for a term to expire February 1, 2027, Wesley C. "Wes" Ritchey of Dalhart, Texas (Mr. Ritchey is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Sarah E. Abrahams of Austin, Texas (Ms. Abrahams is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Catherine K. Carlton of Arlington, Texas (Ms. Carlton is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Cynthia A. "Cal" Lopez of Austin, Texas (Ms. Lopez is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Patricia K. Reedy of Texarkana, Texas (Ms. Reedy is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Patricia "Pattie" Rosenlund of Mission, Texas (Ms. Rosenlund is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Lizzeth Saldana of San Antonio, Texas (Ms. Saldana is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Jeremy Triplett of Austin, Texas (Mr. Triplett is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee, for a term to expire February 1, 2027, Ryan D. Van Ramshorst, M.D. of San Antonio, Texas (Dr. Van Ramshorst is being reappointed).

Appointments for March 10, 2021

Appointed to the Governing Board of the Texas Indigent Defense Commission, for a term to expire February 1, 2023, Alexander "Alex" Bunin of Houston, Texas (Mr. Bunin is being reappointed).

Appointed to the Governing Board of the Texas Indigent Defense Commission, for a term to expire February 1, 2023, Gonzalo P. Rio, Jr. of San Angelo, Texas (Mr. Rio is being reappointed).

Appointed to the Texas Water Development Board, for a term to expire February 1, 2027, Peter M. Lake of Austin, Texas (Chairman Lake is being reappointed).

Appointed to the State Soil and Water Conservation Board, for a term to expire February 1, 2023, Carl Ray Polk, Jr. of Lufkin, Texas (Mr. Polk is being reappointed).

Appointments for March 11, 2021

Appointed to the State Pension Review Board, for a term to expire January 31, 2027, Christopher E. "Chris" Gonzales of Cypress, Texas (replacing Ernest Richards of Irving, whose term expired).

Appointed to the State Pension Review Board, for a term to expire January 31, 2027, Stephanie V. Leibe of Austin, Texas (Ms. Leibe is being reappointed).

Appointed to the State Pension Review Board, for a term to expire January 31, 2027, Christopher A. Zook, Sr. of Houston, Texas (Mr. Zook is being reappointed).

Appointed to the State Affordable Housing Corporation Board of Directors, for a term to expire February 1, 2027, Courtney Johnson Rose of Missouri City, Texas (Ms. Rose is being reappointed).

Appointed to the State Affordable Housing Corporation Board of Directors, for a term to expire February 1, 2027, Lemuel C. Williams, Jr. of Austin, Texas (replacing Laura L. "Lali" Shipley of Austin, whose term expired).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2027, Bereket M. Derie, Ph.D. of Georgetown, Texas (Mr. Derie is being reappointed).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2027, Steven W. Fleming of Shavano Park, Texas (Mr. Fleming is being reappointed).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2027, LaFawn D. Thompson of New Braunfels, Texas (Ms. Thompson is being reappointed).

Appointments for March 15, 2021

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2027, Susan I. Adams of Colleyville, Texas (replacing Benjamin "Ben" Peña of Bayview, whose term expired).

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2027, Renee D. Foshee of San Marcos, Texas (replacing Alice Roselyn E. "Rosie" Morris, Ph.D. of San Marcos, whose term expired).

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2027, Ray R. Garcia of Houston, Texas (replacing Ross T. Johnson of Houston, whose term expired).

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2027, Olivia Espinoza Riley of Addison, Texas (replacing Timothy L. "Tim" LaFrey of Austin, whose term expired).

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2027, Sheila M. Valles-Pankratz of Mission, Texas (replacing Kimberly E. Wilkerson of Lubbock, whose term expired).

Appointed as Chief Executive and Public Counsel of the Office of Public Utility Counsel, for a term to expire February 1, 2023, Lori A. Cobos Austin, Texas (Ms. Cobos is being reappointed).

Designated as presiding officer of the Judicial Compensation Commission, for a term to expire at the pleasure of the Governor, Scott J. Salmans of McGregor, Texas (replacing William M. "Bill" Strawn of Austin).

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2023, Philip W. "Phil" Johnson of Lubbock, Texas (replacing Isaac M. Castro of Hamlin, who resigned).

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2027, Jingjing "JJ" Clemence of Sugar Land, Texas (replacing William M. "Bill" Strawn of Austin, whose term expired).

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2027, Scott J. Salmans of McGregor, Texas (Mr. Salmans is being reappointed).

Appointments for March 16, 2021

Designated as presiding officer of the Manufactured Housing Board, for a term to expire at the pleasure of the Governor, Ronald M. "Ronnie" Richards of Clear Lake Shores (replacing Sheila M. Valles-Pankratz of Mission).

Appointed to the Manufactured Housing Board, for a term to expire January 31, 2027, Jose B. "Joe" Gonzalez, Jr. of Round Rock, Texas (replacing Sheila M. Valle-Pankratz of Mission, whose term expired).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2027, Austin C. Dickson of Kerrville, Texas (Mr. Dickson is being reappointed).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2027, Diane L. McMahon of Kerrville, Texas (Ms. McMahon is being reappointed).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2027, Blake W. Smith of Hunt, Texas (Mr. Smith is being reappointed).

Appointments for March 17, 2021

Designated as presiding officer of the Motor Vehicle Crime Prevention Authority, for a term to expire at the pleasure of the Governor, Miguel A. "Mike" Rodriguez, Jr. of Laredo (Assistant Chief Rodriguez is replacing Thomas J. "Tommy" Hansen, Jr. of Hitchcock).

Appointed to the Motor Vehicle Crime Prevention Authority, for a term to expire February 1, 2027, Julio C. Gonzales of Dallas, Texas (replacing Thomas J. "Tommy" Hansen, Jr. of Hitchcock, whose term expired).

Appointed to the Motor Vehicle Crime Prevention Authority, for a term to expire February 1, 2027, Gilberto Salinas of Brownsville, Texas (replacing Armin R. Mizani of Keller, whose term expired).

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2025, John W. Burruss, M.D. of Dallas, Texas (Dr. Burruss is being reappointed).

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2025, Diego De la Mora, M.D. of Horizon City, Texas (replacing Frank P. "Parker" Hudson, III, M.D. of Austin, whose term expired).

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2025, Robert D. "Bobby" Greenberg, M.D. of Belton, Texas (Dr. Greenberg is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2027, Sheila L. Old of Seguin, Texas (replacing Ronald J. Hermes of Seguin, whose term expired).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2027, Dennis L. Patillo of Victoria, Texas (Mr. Patillo is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2027, Andra M. Wisian of Boerne, Texas (replacing Thomas O. "Tommy" Mathews, II of Boerne, whose term expired).

Appointments for March 18, 2021

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2027, Maria C. "Connie" Almeida, Ph.D. of Richmond, Texas (Ms. Almeida is being reappointed).

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2027, Omedi "Dee Dee" Cantu Arismendez of Alice, Texas (Ms. Arismendez is being reappointed).

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2027, Gregory "Greg" Hamilton of Hutto, Texas (Mr. Hamilton is being reappointed).

Appointed as presiding officer of the North East Texas Regional Mobility Authority, for a term to expire February 1, 2022, Linda Ryan Thomas of Longview, Texas (Ms. Thomas is being reappointed).

Appointments for March 19, 2021

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, Edwin S. Flores, Ph.D. of Dallas, Texas (Dr. Flores is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, James M. Mosley of Borger, Texas (replacing Daniel F. "Dan" Gilliam of Victoria, whose term expired).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, Lizeth Cuellar Olivarez of Laredo, Texas (Ms. Olivarez is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, Michael L. Slaughter, Ph.D. of Wylie, Texas (Dr. Slaughter is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, Jill M. Tate of Colleyville, Texas (Ms. Tate is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2023, Robert W. Wilson, Ed.D. of Silsbee, Texas (replacing Terry Deaver of Silsbee, whose term expired).

Greg Abbott, Governor

TRD-202101298



Proclamation 41-3810

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 12, 2021, certifying under Section 418.014 of the Texas Government Code that the severe winter weather poses an imminent threat of widespread and severe property damage, injury, and loss of life due to prolonged freezing temperatures, heavy snow, and freezing rain statewide; and

WHEREAS, due to the widespread and severe damage caused by the severe winter weather, a state of disaster continues to exist in all counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all 254 counties in Texas.

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

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

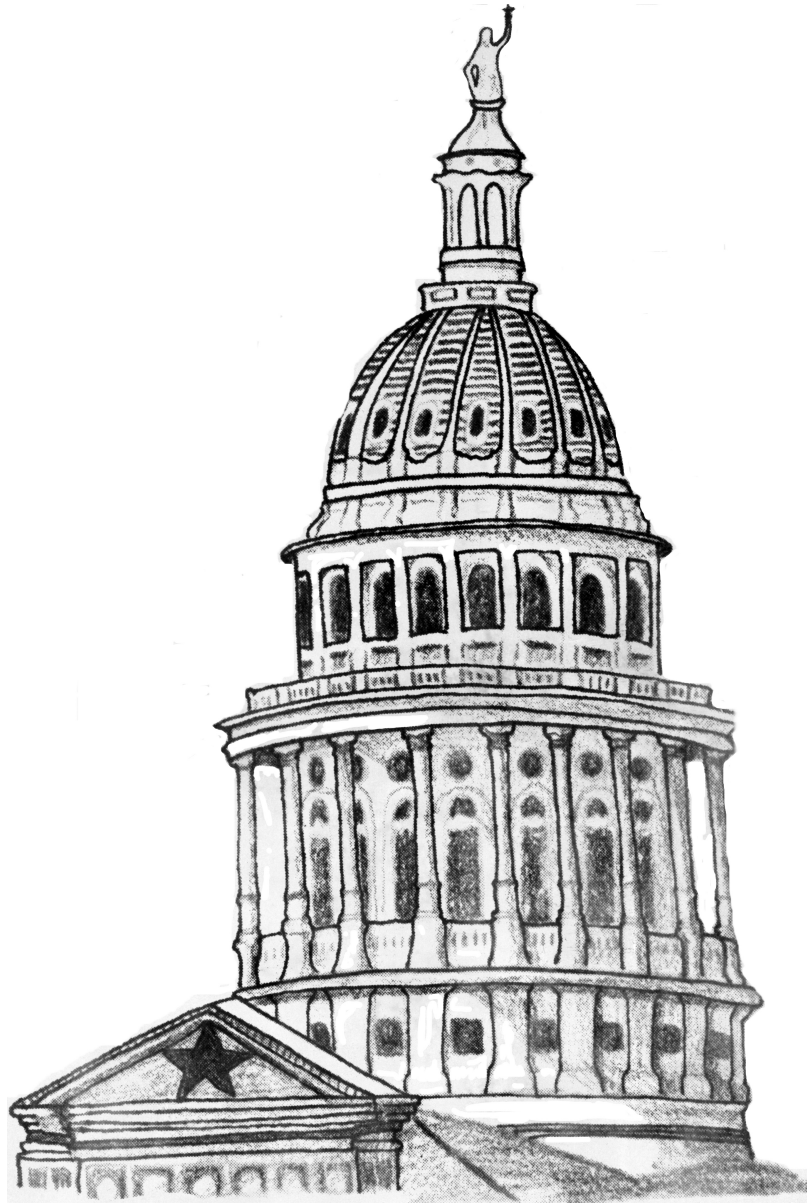
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of March, 2021.

Greg Abbott, Governor

TRD-202101299





THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0363

The Honorable Dan Patrick
Lieutenant Governor of Texas
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether under the Utilities Code the Public Utility Commission has the legal authority to issue orders affecting pricing for the wholesale electricity market and ancillary services (RQ-0401-KP)

SUMMARY

The Utilities Code gives "complete authority" to the Public Utility Commission to adopt and enforce rules relating to reliability and accounting for the production and delivery of electricity among market participants. Specifically, subsection 39.151(d) of the Utilities Code authorizes the Public Utility Commission to oversee and investigate the independent organization (ERCOT) as necessary to ensure ERCOT's accountability and to ensure that it adequately performs its functions and duties. Within the regulatory timelines, ERCOT can also revise pricing on the wholesale electricity market if certain events occur.

Under the plain language of subsection 39.151(d), the Public Utility Commission has complete authority to act to ensure that ERCOT has accurately accounted for electricity production and delivery among market participants in the region. Such authority likely could be interpreted to allow the Public Utility Commission to order ERCOT to correct prices for wholesale electricity and ancillary services during a specific timeframe.

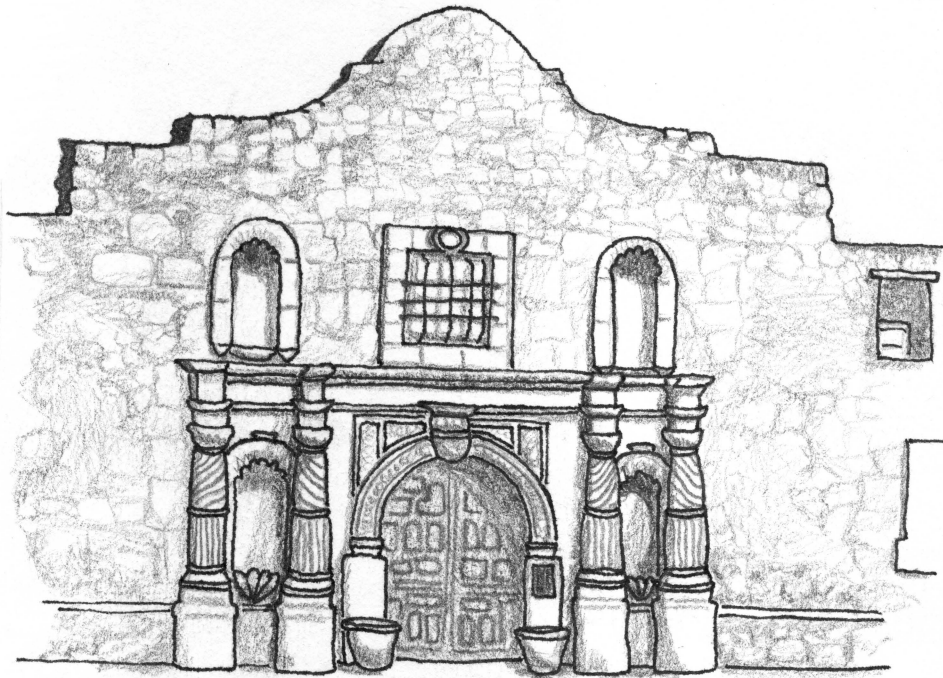
A court would likely find that such corrective action by the Public Utility Commission under subsection 39.151(d) does not raise constitutional concerns, namely under article 1, sections 16 and 17 of the Texas Constitution, provided that such regulatory action furthers a compelling public interest.

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

TRD-202101233

Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: March 23, 2021





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY

HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis new §500.1, Hospital Off-Site Facilities in Response to COVID-19, in Title 26, Texas Administrative Code, Chapter 500, concerning an emergency rule to allow hospitals to treat and house patients more effectively in response to COVID-19. As authorized by Texas Government Code §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility without obtaining a new license at: (1) another type of facility currently licensed or licensed within the past 36 months or a facility pending licensure that has passed its final architectural review inspection, such as an ambulatory surgical center, an assisted living facility, a freestanding emergency medical care facility, an inpatient hospice unit, a mental hospital, or a nursing facility; (2) an outpatient facility operated by the hospital; (3) a formerly licensed hospital that closed within the past 36 months or a hospital pending licensure that has passed its final archi-

tectural review inspection; (4) a hospital exempt from licensure; and (5) a mobile, transportable, or relocatable unit.

To allow operation of additional off-site facilities, this emergency rule also allows a waiver of the requirement for off-site facilities to be open or licensed within the past 36 months, at HHSC's discretion.

This emergency rule also temporarily permits a currently licensed hospital to designate a specific part of its hospital for use as an off-site facility by another hospital, and to allow another currently licensed hospital to apply to use the first hospital's designated hospital space as an off-site facility for inpatient care.

STATUTORY AUTHORITY

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

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §241.026.

§500.1. Hospital Off-Site Facilities in Response to COVID-19.

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

(b) A hospital licensed under Texas Health and Safety Code Chapter 241 that meets the requirements of this emergency rule may use an off-site facility for inpatient care under its existing license for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) an inpatient hospice unit licensed under Texas Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(2) a hospital no longer licensed under Texas Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(3) a hospital exempt from licensure under Texas Health and Safety Code Chapter 241;

(4) a mobile, transportable, or relocatable unit, as defined in Title 25 Texas Administrative Code (TAC) §133.166 (relating to Mobile, Transportable, and Relocatable Units), that otherwise complies with that section;

(5) a nursing facility or other institution licensed under Texas Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(6) an ambulatory surgical center licensed under Texas Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(7) an assisted living facility licensed under Texas Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(8) a freestanding emergency medical care facility licensed under Texas Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(9) a mental hospital licensed under Texas Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(10) an outpatient facility operated by the hospital, either currently or within the past 36 months;

(11) a building or structure of opportunity temporarily converted for health care use, including an alternate care site, that is created or maintained by the hospital in partnership with or under the supervision of the health authority, local health department, public health district, or public health consortium that has jurisdiction over the site location; or

(12) a specific portion of a second hospital currently licensed under Texas Health and Safety Code Chapter 241 that the second hospital has designated for use as an off-site facility by another hospital, using a form prescribed by the Texas Health and Human Services Commission (HHSC).

(A) The second hospital may withdraw its designation upon 10 days' notice to HHSC and to the hospital using the portion of the facility as an offsite facility.

(B) Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(C) A portion of the second hospital designated under this paragraph may not be used under the second hospital's license while the designation is effective.

(d) At its sole discretion, HHSC may waive the requirement that an off-site facility must have been licensed or open within the past 36 months under paragraph (c) of this section, if the hospital applying to use the off-site facility provides evidence satisfactory to HHSC that

such waiver will not detrimentally affect the health or safety of patients, hospital staff, or the public.

(e) A hospital that uses any off-site facility under this emergency rule for inpatient care, including a portion of a second hospital designated under subsection (c)(12) of this section, is responsible under its license for complying with all applicable federal and state statutes and rules.

(f) A hospital must submit an application to use an off-site facility for inpatient care to the Texas Health and Human Services Commission via email at infohflc@hhs.texas.gov and receive written approval from HHSC before using the off-site facility for inpatient care.

(g) HHSC has the discretion to approve or deny any application to use an off-site facility for inpatient care. HHSC may require an inspection or additional documentation of the off-site facility before considering an application.

(h) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for a hospital to use the off-site facility for inpatient care at any time. Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(i) The requirements of 25 TAC §133.21(c)(4)(B)-(C) (relating to the Scope of Hospital License) do not apply to an off-site facility applied for or used under this section.

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

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

Filed with the Office of the Secretary of State on March 19, 2021.

TRD-202101132

Karen Ray
Chief Counsel

Health and Human Services Commission

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Expiration date: July 17, 2021

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



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER CC. COVID-19 EMERGENCY RULE

26 TAC §554.2803

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new §554.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. 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. This emergency rulemaking reflects the continued reopening of the State of Texas as well as the new requirements for visitation of nursing facility residents provided by the Centers for Medicare & Medicaid Services (CMS) in Memorandum QSO-20-39-NH, as revised March 10, 2021. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Nursing Facility COVID-19 Response - Expansion of Reopening Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to allow limited indoor and outdoor visitation in a nursing facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for residents who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 242.

§554.2803. Nursing Facility COVID-19 Response - Expansion of Reopening Visitation.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(2) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Dis-

ease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(3) End-of-life visit--A personal visit between a visitor and a resident who is receiving hospice services; who is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all facilities and for all residents at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative.

(5) Essential caregiver visit--A personal visit between a resident and a designated essential caregiver as described in subsection (h) of this section. An essential caregiver visit is permitted in all facilities for all residents.

(6) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a nursing facility and was not present at the end of the 14-day quarantine period following admission or readmission.

(7) Fully-vaccinated--A person who received the second dose in a two-dose COVID-19 vaccination series or received one dose of a single-dose COVID-19 vaccination and it has been at least 14 days since receiving the vaccination.

(8) Indoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either paid or unpaid staff, or one or more laboratory confirmed facility-acquired cases of COVID-19 identified in a resident.

(10) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of residents at the end of life, and two designated essential caregivers as described in subsection (h) of this section.

(12) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(13) PPE--Personal protective equipment.

(14) Providers of essential services--Contract doctors, contract nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, and individuals operating under the authority of a local intellectual and developmental disability authority, local mental health authority, or local behavioral health authority, whose services are necessary to ensure resident health and safety.

(15) Salon services visit--A personal visit between a resident and a salon services visitor as described in subsection (p) of this section.

(16) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a resident.

(17) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the facility, has had known exposure or close contact with a

person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(b) All nursing facilities, including licensed-only facilities, must comply with the COVID-19 testing requirements specified by 42 CFR §483.80(h).

(c) A nursing facility must screen all visitors prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) Visitors who meet any of the following screening criteria must leave the nursing facility campus and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above;

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

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

(4) close contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of the visitor's vaccination status; or

(5) has tested positive for COVID-19 in the last 10 days.

(e) A nursing facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority, to enter the nursing facility if they pass the screening in subsection (d) of this section.

(f) A person providing critical assistance who has had contact with an individual with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the nursing facility unless the person providing critical assistance does not pass the screening criteria described in subsection (d)(1)-(3) and (5) of this section, or any other screening criteria based on CDC guidance.

(g) A nursing facility may not require a personal visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

(h) The following requirements apply to essential caregiver visits:

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Up to two essential caregivers may visit a resident at the same time.

(3) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(4) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing of at least six feet between themselves and all other residents and staff.

(5) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(6) The nursing facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each designated essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(D) expectations regarding using only designated entrances and exits as directed; and

(E) limiting visitation to the area designated by the facility in accordance with paragraph (3) of this subsection.

(7) A nursing facility must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask and other appropriate PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (6)(B) of this subsection;

(E) document the identity of each essential caregiver in the resident's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge; and

(F) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed.

(8) An essential caregiver must not participate in visits if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(9) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(i) A nursing facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this section. If a nursing facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter V of this chapter.

(j) To permit indoor visitation, a nursing facility must:

(1) have separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts; and

(2) ensure staff are designated to work with only one resident cohort and the designation does not change from one day to another.

(k) A nursing facility that meets the requirements of subsection (j) of this section to permit indoor visits and has at least one confirmed COVID-19 case in the last 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative, or at least one confirmed facility-acquired case in residents in the COVID-19 negative area, unit, wing, hall, or building may not permit indoor visitation, not including essential caregiver and end-of-life visits, until all of the following conditions are met:

(1) outbreak testing is conducted in accordance with 42 CFR §483.80(h);

(2) the first round of outbreak testing revealed no additional COVID-19 cases in other areas, units, wings, halls, or buildings that accommodate residents who are COVID-19 negative; and

(3) indoor visitation is suspended for the affected area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative until the facility meets the criteria to discontinue outbreak testing.

(l) A nursing facility shall use the COVID-19 county positivity rate as additional information to determine how to facilitate indoor visitation. The COVID-19 county positivity rate can be found at: <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg>. A nursing facility may use the county positivity rate provided by the county as long as the county positivity rate is updated at least weekly.

(1) A nursing facility located in a county with a positivity rate of 10 percent or lower must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(2) A nursing facility located in a county with a positivity rate greater than 10 percent and at least 70 percent of the residents in the facility are fully vaccinated, must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(3) A nursing facility located in a county with a positivity rate greater than 10 percent and fewer than 70 percent of the residents in the facility are fully vaccinated, must:

(A) limit indoor visits, not including essential caregiver and end-of-life visits, to fully-vaccinated residents with COVID-19 negative status; and

(B) permit outdoor visits, end-of-life visits, and essential caregiver visits in accordance with this section.

(m) A nursing facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19;

(2) infection control precautions; and

(3) other applicable facility practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, hand hygiene).

(n) The following limits apply to all visitation allowed under this section:

(1) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(2) Except as provided in subsection (l)(3)(A) of this section and in paragraph (3) of this subsection, indoor visits and outdoor visits are permitted only for residents who are COVID-19 negative.

(3) Essential caregiver visits and end-of-life visits are permitted for residents who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(4) A fully-vaccinated resident wearing a well-fitting face covering or facemask may choose to have close or personal contact with their visitor during an indoor or outdoor visit. A resident who is not fully-vaccinated and their personal visitor must maintain physical distance during an indoor visit and an outdoor visit. Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the resident they are visiting. A personal visitor, essential caregiver, and end-of-life visitor must maintain physical distancing of at least six feet between themselves and all other persons in the facility.

(5) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control practices, including the resident's room. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(6) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit and while in the nursing facility.

(7) A resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit. A resident may remove their facemask or face covering to eat or drink during the visit.

(8) A nursing facility must ensure equal access by all residents to visitors and essential caregivers.

(9) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(10) A nursing facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, considering outside air temperatures and ventilation.

(11) A nursing facility must provide hand-washing stations or hand sanitizer to the visitor and resident before and after visits.

(12) The visitor and the resident must practice hand hygiene before and after the visit.

(o) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (d) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located on website: <https://open.texas.gov/>; and

(3) the requirements of subsection (p) of this section are met.

(p) The following requirements apply to salon services visits:

(1) A salon services visit may be permitted for all residents with COVID-19 negative status.

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting but must maintain physical distancing of at least six feet between themselves and all other persons in the facility.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The nursing facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(D) expectations regarding using only designated entrances and exits as directed; and

(E) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection.

(6) The nursing facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the salon services visitor's training as required in paragraph (5)(B) of this subsection;

(E) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge; and

(F) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of each resident being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed.

(7) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(q) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum

standard relating to a nursing facility, the nursing facility must comply with the executive order or other direction.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.198, §9.199

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.198 and §9.199, concerning emergency rules in response to COVID-19. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect individuals receiving HCS and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to reduce the risk of spreading COVID-19 to individuals in the HCS program. These new rules describe the requirements HCS program providers must immediately put into place and the requirements they must follow for visitation, essential caregivers, and day habilitation.

STATUTORY AUTHORITY

The emergency rules are 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 provides HHSC with the authority to administer federal Medicaid 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 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections implement Texas Government Code §§531.0055 and 531.021, and Texas Human Resources Code §32.021.

§9.198. Program Provider Response to COVID-19 Emergency Rule.

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

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Individual--A person enrolled in the HCS program.

(2) Isolation--Practices that separate persons who are sick to protect those who are not sick.

(3) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and designated essential caregivers as described in §9.199(c) of this subchapter (relating to HCS Provider Response to COVID-19-Expansion of Reopening Visitation).

(4) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(5) Physical distancing--Maintaining six feet of separation between persons and avoiding physical contact.

(6) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(7) Provider of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardianship specialists, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority

(LMHA), whose services are necessary to ensure individual health and safety.

(8) Residence--A host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(c) Screening requirements.

(1) A program provider must screen all visitors and individuals outside of the residence prior to allowing them to enter, except emergency services personnel entering the property in an emergency. Visitor screenings must be documented in a log, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(2) Visitors who meet any of the following screening criteria must leave the residence and reschedule the visit:

(A) fever, defined as a temperature of 100.4 Fahrenheit or above;

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

(C) any other signs and symptoms identified by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated, unless the visitor is seeking entry to provide critical assistance, or

(E) has tested positive for COVID-19 in the last 10 days.

(3) A program provider must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter the residence if they pass the screening in paragraph (2) of this subsection.

(4) A program provider must not prohibit an individual who lives in the residence from entering the residence even if the individual meets any of the screening criteria.

(d) Communication.

(1) Program providers must contact their local health department, or the Department of State Health Services (DSHS) if there is no local health department, if the program provider knows an individual has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) A program provider must notify an individual's legally authorized representative (LAR) if the individual is confirmed to have

COVID-19, or if the presence of COVID-19 is confirmed in the residence.

(4) A program provider must notify any individual who lives in the residence, and his or her LAR, if the program provider is aware of probable or confirmed cases among program provider staff or individuals living in the same residence.

(5) A program provider must not release personally identifying information regarding confirmed or probable cases.

(e) Infection Control.

(1) A program provider must develop and implement an infection control policy that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or DSHS guidance; and

(C) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(4) A program provider must encourage physical distancing in the community whenever reasonably possible.

(5) Except in a host home/companion care home, a program provider must require staff to:

(A) wear a mask or cloth face covering over both the nose and mouth if not providing care to an individual with COVID-19;

(B) wear appropriate PPE as defined by CDC if providing care to an individual with COVID-19, and

(C) maintain physical distance as practicable.

(6) If an individual relies on lip reading or facial cues for communication needs, providers may:

(A) use face masks with a clear screen over the mouth;
or

(B) temporarily remove it during communication.

(7) Host home/companion care providers must wear appropriate PPE as defined by CDC and maintain physical distancing if providing care to an individual with COVID-19.

(8) Provider staff who have confirmed or probable COVID-19 may not provide services to individuals, except that:

(A) a host home/companion care provider may provide services to an individual who has also tested positive for COVID-19;
or

(B) live-in staff providing supervised living services may provide services to an individual who has also tested positive for COVID-19 in accordance with §9.174(a)(37) of this subchapter (relating to Certification Principles: Service Delivery).

(9) A program provider must monitor the health status of a staff person providing services under paragraph (8) of this subsection to verify that the staff person continues to be able to deliver services. If the

staff person's condition worsens, the program provider must activate the service back-up plan to ensure the individual receives services.

(10) A program provider must isolate individuals with confirmed or probable COVID-19 in accordance with CDC guidance. The program provider should isolate the individual within the residence, if possible. If individuals cannot be isolated within the residence, the program provider must convene the service planning team to identify alternative residential arrangements.

(11) A program provider must screen individuals for signs or symptoms of COVID-19 at least twice a day.

(f) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) plans for maintaining infection control procedures and supplies of PPE during evacuation;

(2) a list of locations and alternate locations for evacuation both for individuals with confirmed or probable COVID-19 and for individuals with negative or unknown status; and

(3) a list of supplies needed if required to shelter in place, including PPE.

(g) A program provider must develop and implement a staffing policy that addresses how the program provider plans to minimize the movement of staff between health care providers and encourage communication among providers regarding COVID-19 probable and confirmed cases. The policy must limit sharing of staff between residences, unless doing so will result in staff shortages.

(h) A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) the program provider must facilitate and document an individual's informed decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and physical distancing;

(2) except for individuals in host home and own home/family home settings, the program provider must ensure the availability of PPE required for the individual to safely attend day habilitation; and

(3) the program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(i) Regarding meals, the program provider must:

(1) plate food and serve it to individuals rather than using communal serving bowls and shared serving utensils;

(2) encourage physical distancing of at least six feet;

(3) sanitize the meal preparation and dining areas before and after meals; and

(4) encourage individuals to practice hand hygiene before and after meals.

(j) If a service provider at a host home, three-person or four-person home, or a staff member at a respite or Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) setting, has confirmed or probable COVID-19, the service provider or staff member must discontinue providing services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the back-up service plan.

(k) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) of this subchapter within 30 days of the expiration or repeal of the public health emergency.

(l) A program provider must develop a safety plan for a four-person residence if the annual fire marshal inspection required by §9.178(e)(3)(A) of this subchapter is expired and document attempts to obtain the fire marshal inspection. The safety plan should require:

(1) verification that fire extinguishers are fully charged;

(2) a schedule for fire watches and plan to increase fire drills if the residence does not have a sprinkler system installed or monitored fire panel;

(3) verification of staff training on the needs of the individual in the event of an emergency; and

(4) verification that emergency plans are updated to reflect needs as listed in paragraph (3) of this subsection.

(m) The program provider must train an individual on the risks of leaving the residence. The individual must be screened upon return in accordance with subsection (c) of this section.

(n) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid services during the COVID-19 pandemic, including waivers under the Social Security Act §1135, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(o) If this emergency rule is more restrictive than any minimum standard relating to the Home and Community-based Services program, this emergency rule will prevail so long as this emergency rule is in effect.

(p) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than any minimum standard relating to the Home and Community-based Services program or this emergency rule, the program provider must comply with the executive order or other direction.

§9.199. HCS Provider Response to COVID-19-Expansion of Reopen-
ing Visitation.

(a) Applicability. This rule does not apply to host home/companion care, unless otherwise specified.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Closed window visit--A personal visit between a personal visitor and an individual during which the individual and personal visitor are separated by a closed window and the personal visitor does not enter the residence.

(2) COVID-19 negative--The status of an individual who has either tested negative for COVID-19 or who exhibits no symptoms of COVID-19 and has had no known exposure to the virus in the last 14 days.

(3) COVID-19 positive--The status of an individual who has tested positive for COVID-19 or who is presumed positive for COVID-19 and who has not yet met the Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a personal visitor and an individual who is receiving hospice services or is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all individuals at or near the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court-appointed guardian, who is at least 18 years old, designated to provide regular care and support to an individual.

(6) Essential caregiver visit--A personal visit between an individual and an essential caregiver as described in subsections (c)(1) and (d)(2) of this section. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

(7) Individual--A person enrolled in the HCS program.

(8) Indoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Open window visit--A personal visit between an individual and a personal visitor during which the individual and personal visitor are separated by an open window.

(10) Outbreak--One or more confirmed or probable cases of COVID-19 identified in either an individual or paid or unpaid staff.

(11) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(12) Physical distancing--Maintaining a minimum of six feet between persons, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(13) Plexiglass indoor visit--A personal visit between an individual and one or more personal visitors, during which the individual and the personal visitor are both inside the residence but within a booth separated by a plexiglass barrier.

(14) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(15) Unknown COVID-19 status--The status of an individual who is a new admission or readmission, has spent one or more nights away from the residence, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(16) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual remains outdoors on the residence's property and a personal visitor drives past in a vehicle.

(c) If the program provider has offered a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and documented each individual's choice to vaccinate or not vaccinate, the program provider must allow essential caregiver visits, end-of-life visits,

indoor visits, and outdoor visits as required in this section. If a program provider fails to comply with the requirements of this section, HHSC may take action in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subchapter (relating to Administrative Penalties).

(1) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per individual.

(B) Up to two essential caregiver visitors may visit an individual at the same time.

(C) The visit may occur outdoors, in the individual's bedroom, or in another area in the home that limits the essential caregiver visitor's movement through the residence and interaction with other individuals and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals and staff.

(E) The individual must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(F) The program provider must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver visitor on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver visitor must wear a face mask and any other PPE in accordance with CDC guidance and the program provider's policy while in the residence;

(iv) an exception that if an individual relies on lip reading or facial cues for communication needs, the essential caregiver may:

(I) use face masks with a clear screen over the mouth; or

(II) temporarily remove it during communication; and

(v) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(G) The program provider must:

(i) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver visitor's face mask and any other PPE in accordance with CDC guidance and the program provider's policy, or provide an approved face mask and other PPE;

(iii) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver visitor's training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver visitor in the individual's records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the individual being visited; and

(IV) attestation that the identity of the essential caregiver visitor was verified; and

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection.

(H) The program provider may cancel the essential caregiver visit if the essential caregiver visitor fails to comply with the program provider's policy regarding essential caregiver visits or applicable requirements in this section.

(2) A program provider may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

(3) To permit indoor visitation, the program provider must have had no confirmed COVID-19 infections or suspected COVID-19 cases for at least 14 consecutive days among staff.

(4) The following limits apply to all visitation allowed under this section:

(A) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for individuals who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for individuals who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) An individual may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing of at least six feet between themselves and all other persons in the residence.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the individual's room. The program provider must limit the movement of the visitor through the residence to ensure interaction with other persons in the residence is minimized.

(F) The visitor must wear a face mask or face covering over both the mouth and nose throughout the visit. For individuals who rely on lip reading or facial cues for communication needs, the visitor may use face masks with a clear screen over the mouth.

(G) The program provider must encourage the individual to wear a face mask or face covering over the both the mouth or nose, if tolerated, throughout the visit. The individual may remove their face mask or face covering to eat or drink during the visit.

(H) A program provider must ensure equal access by all individuals to visitors and essential caregivers.

(I) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(J) A program provider must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A program provider must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(L) The visitor and the individual must practice hand hygiene before and after the visit.

(d) If the program provider has not offered a complete series of a one- or two-dose COVID-19 vaccine the program provider may allow limited personal visitation as described in this subsection upon meeting the qualifications described in paragraph (3) of this subsection. These criteria are not required for a closed window visit, an end-of-life visit, or an essential caregiver visit as defined in subsection (b)(1), (b)(4), and (b)(6) of this section. If a program provider fails to comply with the requirements of this subsection, HHSC may take action in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subsection (relating to Administrative Penalties).

(1) A program provider may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per individual.

(B) Only one essential caregiver visitor at a time may visit an individual.

(C) The visit may occur outdoors, in the individual's bedroom, or in another area in the home that limits the essential caregiver visitor's movement through the residence and interaction with other individuals and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals and staff.

(E) The individual must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(F) The program provider must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver visitor on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver visitor must wear a face mask and any other PPE in accordance with CDC guidance and the program provider's policy while in the residence;

(iv) an exception that if an individual relies on lip reading or facial cues for communication needs, providers may:

(I) use face masks with a clear screen over the mouth; or

(II) temporarily remove it during communication; and

(v) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(G) The program provider must:

(i) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver visitor's face mask and any other PPE in accordance with CDC guidance and the program provider's policy, or provide an approved face mask and other PPE;

(iii) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver visitor's training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver visitor in the individual's records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the individual being visited; and

(IV) attestation that the identity of the essential caregiver visitor was verified; and

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection.

(H) The program provider may cancel the essential caregiver visit if the essential caregiver visitor fails to comply with the program provider's policy regarding essential caregiver visits or applicable requirements in this section.

(3) To allow limited personal visitation, in accordance with paragraph (4) of this subsection, a program provider must complete and maintain in the residence Texas Health and Human Services Commission (HHSC) attestation form that HHSC may request for verification, stating that:

(A) there have been no confirmed or probable cases of COVID-19 for at least 14 consecutive days among staff or individuals;

(B) the residence has access to sufficient staff and PPE to provide essential care and services to the individuals living in the residence;

(C) the service back-up plan for host home services has been evaluated and determined to be viable at the time of review;

(D) the program provider has a plan to respond to new confirmed or probable cases of COVID-19 in the residence; and

(E) the emergency preparedness plan required by §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) has been updated to address COVID-19.

(4) An attestation form is not required for a residence to conduct closed window visits, end-of-life visits, or essential caregiver visits, as defined in subsection (b)(1), (b)(4) and (b)(6) of this section.

(5) If, at any time after the attestation form is completed, the residence experiences an outbreak of COVID-19 as defined in subsection (b)(10) of this section, the attestation is no longer in effect, and all visitation allowed by paragraph (6) of this subsection must be cancelled. When the residence again meets the criteria described in paragraph (4) of this subsection, the program provider completes a new HHSC attestation form.

(6) A program provider with an attestation form in effect may allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving individuals and personal visitors. The following limits apply to all visitation allowed under this subsection.

(A) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the program provider only for individuals who are COVID-19 negative.

(B) Closed window visits, end-of-life visits, and essential caregiver visits are permitted for individuals who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the program provider.

(C) Physical contact between individuals and visitors is prohibited, except for essential caregiver visits and end-of-life visits.

(D) Visits are permitted only where adequate space is available that meets the criteria and when adequate staff are available to comply with this section. Essential caregiver visits and end-of-life visits can take place in the individual's room or other area of the residence separated from other individuals. The program provider must limit the movement of the visitor through the residence to ensure interaction with other individuals is minimized.

(E) The visitor must wear a face mask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit. For individuals who rely on lip reading or facial cues for communication needs, the visitor may use face masks with a clear screen over the mouth.

(F) The individual must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(G) The program provider must remind personal visitors and individuals about physical distancing of at least six feet and face mask or face covering requirements either verbally or with a notice posted visible to personal visitors or handed to them. The program provider must limit the number of visitors and individuals in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting, but they must maintain physical distancing between themselves and all other individuals, staff, and other visitors.

(H) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The program provider must schedule visits as necessary to allow time for sanitization between visits.

(I) The program provider must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures, weather conditions, and ventilation.

(J) For outdoor visits, the program provider must designate an outdoor area for visitation that is separated from individuals and limits the ability of the visitor to interact with individuals.

(K) A program provider must provide hand washing stations or hand sanitizer to the visitor and individual before and after visits, except visitors participating in a vehicle parade or closed window visit.

(L) The visitor and the individual must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(7) The following requirements apply to vehicle parades.

(A) Personal visitors must remain in their vehicles throughout the parade.

(B) The program provider must encourage physical distancing of at least six feet between individuals throughout the parade.

(C) The program provider must prohibit individuals from being closer than 10 feet to the vehicles for safety reasons.

(D) The program provider must encourage individuals to wear a cloth face covering or mask over both the mouth and nose, if tolerated, throughout the parade.

(8) The following requirements apply to plexiglass indoor visits.

(A) The plexiglass barrier must be installed in an area where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and minimizes access to the rest of the residence and contact between personal visitors and individuals.

(B) The program provider must require the personal visitor to use a face mask or face covering over both the mouth and nose throughout the visit and encourage the individual to do so if tolerated.

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

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

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Department of Aging and Disability Services

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



SUBCHAPTER N. TEXAS HOME LIVING
(TXHML) PROGRAM AND COMMUNITY
FIRST CHOICE (CFC)

40 TAC §9.597

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 9, Intellectual Disability Services - Medicaid State Operating Agency Responsibilities, new §9.597, concerning Program Provider Response to COVID-19 Emergency Rule. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect individuals receiving Texas Home Living services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce the risk of spreading COVID-19 to individuals in the Texas Home Living program. This new rule describes the requirements that Texas Home Living providers must immediately put into place.

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 provides HHSC with the authority to administer federal Medicaid 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 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§9.597. Program Provider Response to COVID-19 Emergency Rule.

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

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Individual--A person enrolled in the TxHmL program.

(2) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life.

(3) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(4) Probable case of COVID-19--A person who meets the clinical criteria and epidemiologic evidence as described and posted by the Council of State and Territorial Epidemiologists.

(5) Providers of essential services-- Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardianship specialists, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA), whose services are necessary to ensure individual health and safety.

(c) Screening requirements.

(1) A program provider must inform service providers of Centers for Disease Control and Prevention (CDC) and the Texas Department of State Health Services (DSHS) recommendations regarding screening protocols, which include the following screening criteria:

(A) fever, defined as a temperature of 100.4 Fahrenheit and above;

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

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

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated, unless the visitor is seeking entry to provide critical assistance, or

(E) has tested positive for COVID-19 in the last 10 days.

(2) A program provider must require service providers to notify the program provider of a fever, symptoms, or other criteria listed in paragraph (1) of this subsection prior to the start of the shift. Service providers must not provide services to an individual if they meet any of the criteria in paragraph (1) of this subsection.

(3) Service providers must screen individuals before providing service in accordance with paragraph (1) of this subsection. If the individual fails screening, the service provider must not provide services and must immediately notify the program provider.

(d) Communication.

(1) A program provider must contact the local health department, or DSHS if there is no local health department, if the program provider becomes aware that an individual served in the program or a staff member has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a se-

cure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) Upon becoming aware of an individual or staff member with confirmed or probable COVID-19, a program provider must notify the following of the actual or potential presence of COVID-19, without disclosing personally identifiable information:

(A) the individual; and

(B) the legally authorized representative of the individual.

(e) Infection control.

(1) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(2) A program provider must encourage physical distancing to the extent possible, defined as maintaining six feet of separation between persons and avoiding physical contact, and encourage the use of masks and gloves if more direct support is needed while in the community.

(3) A service provider with a confirmed or probable case of COVID-19 must not provide services until eligible to return to work in accordance with the CDC guidance document "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the service backup plan.

(f) Day habilitation. A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites.

(1) The program provider must facilitate and document informed decision making for an individual's decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and physical distancing.

(2) The program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(g) If this emergency rule is more restrictive than any certification principle relating to Texas Home Living, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any certification principle relating to Texas Home Living, the Texas Home Living program provider must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on March 22, 2021.

TRD-202101226

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: March 23, 2021

Expiration date: July 20, 2021

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



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

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

1 TAC §251.12

The Commission on State Emergency Communications (CSEC) proposes amendments to 1 TAC §251.12, concerning contracts for 9-1-1 service with a Regional Planning Commission (RPC).

BACKGROUND AND PURPOSE

CSEC proposes amendments to §251.12 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code) relating to contracts for 9-1-1 service with an RPC. The primary purpose of the amendments is to align the rule with CSEC Program Policy Statements (PPS), including with respect to PPS Regional Planning Commission Advance Quarterly Funding the permitted uses of such funding.

SECTION-BY-SECTION EXPLANATION

Section 251.12(a) is amended to change the reference to RPCs from plural to singular; and to change the term "provisioning" to "provide."

Section 251.12(b) is amended to change "contracts" to "a contract"--a complementary change to the change of RPCs from plural to singular.

Section 251.12(b)(1) is amended to delete the redundant reference to "by RPCs."

Section 251.12(b)(2) is amended to reflect the change to singular RPC and add "9-1-1" to clarify the subject service area. change "contracts" to "a contract"--a complementary change from the plural to singular change for RPC.

Section 251.12(b)(4) is amended to specify answering points refers to "public safety" answering points.

Section 251.12(b)(6) - (7) are amended to make a grammatical change from "a" to "an" RPC.

Section 251.12(c) is amended to reference the name of the PPS.

Section 251.12(d) is amended to reference the name of the PPS. Subsection (d) is also amended to replace "start-up" with "advance;" to specify that advance funding is provided at the beginning of each fiscal quarter (not just at the beginning of each year); and specify and limit the use of advance funding to funding operating costs attributable to 9-1-1 service.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §251.12 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to ensure the CSEC - RPC contracts for 9-1-1 service align with CSEC PPS; and provide clarity on payment and use of advance quarterly funding.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section 2001.0045(b) is not applicable as no costs are imposed on regulated persons as a result of the amendments. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affects only the relationship between CSEC and its RPC grantee stakeholders. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

CSEC 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 Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Health and Safety Code §§771.051, 771.0511, 771.055 - .057, and 771.078.

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

§251.12. *Commission and Regional Planning Commission Contracts for 9-1-1 Service.*

(a) Purpose. The purpose of this rule is to implement the requirement in Health and Safety Code §771.078 that the Commission adopt by rule the standard provisions for a contract [~~contracts~~] between the Commission and a Regional Planning Commission (RPC) to provide 9-1-1 service [~~Commissions (RPCs) for the provisioning of 9-1-1 service~~].

(b) Per Health and Safety Code §771.078(c), a contract [~~contracts~~] under this section must provide for:

(1) the reporting of financial information regarding administrative expenses [~~by RPCs~~] in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in an an [~~each~~] RPC's 9-1-1 service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of [~~answering points~~] and the creation of new public safety answering points;

(5) quarterly disbursements of money due under the contract, except as provided by paragraph (6) of this subsection;

(6) the Commission to withhold disbursement to an [~~a~~] RPC that does not follow a standard imposed by the contract, a Commission rule, or a statute; and

(7) a means for the Commission to give an advance on a quarterly distribution under the contract to an [~~a~~] RPC that has a financial emergency.

(c) Per [~~a~~] Commission Program Policy Statement (PPS) Contracts for 9-1-1 Service, the Commission provides a standard form for contracts under this section.

(d) Per [~~a~~] Commission PPS Regional Planning Commission Advance Quarterly Funding, the Commission provides advance [~~start-up~~] funding to an [~~each~~] RPC at the beginning of each fiscal quarter [~~year~~] to fund operating costs attributable to providing 9-1-1 service [~~avoid financial emergencies resulting from a lack of money to pay initial program expenses~~].

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 March 17, 2021.

TRD-202101124

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-6915



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §353.2, concerning Definitions; §353.702, concerning Member Participation; and §353.1203, concerning Member Participation.

BACKGROUND AND PURPOSE

The proposed amendments are in response to Texas Government Code §533.00531, concerning Medicaid benefits for certain children formerly in foster care, which was added by House Bill (H.B.) 72, 86th Legislature, Regular Session, 2019. Section 533.00531 requires HHSC to allow the adoptive parent or permanent managing conservator of a child who participates in the Adoption Assistance (AA) Program or Permanency Care Assistance (PCA) Program operated by the Texas Department of Family and Protective Services, and is receiving Supplemental Security Income (SSI) or was receiving SSI before enrolling in the AA program or PCA program, to choose for the child to receive Medicaid benefits through the STAR Health program or the STAR Kids program, instead of being required to receive benefits through STAR Kids.

The proposed amendments make changes to the eligibility criteria for the STAR Health and STAR Kids programs to implement the requirements of §533.00531. In addition, the proposed amendments allow children and young adults who participate in the AA Program or PCA Program and are enrolled in a Medicaid 1915(c) waiver or Medicare, to choose to receive benefits through the STAR Health program or the STAR Kids program,

unless they are in a category that is specifically excluded from the STAR Kids program.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.2 adds definitions of "Adoption Assistance Program" and "Permanency Care Assistance Program" because these terms are used in the proposed amendments to §353.702 and §353.1203. The proposed amendment also adds a definition of "DFPS." The agency is referenced in the new definitions of "Adoption Assistance Program" and "Permanency Care Assistance Program;" in the current definitions of "Former Foster Care Children Program," "Medicaid for transitioning foster care youth program," and "STAR Health;" and in §353.702(a)(1) and §353.1203(d)(5). The acronym improves the readability of those provisions.

The proposed amendment to §353.702 adds certain children and young adults, from birth through the month of their 21st birthday, who are enrolled in the AA program or the PCA program to the categories of persons eligible for the STAR Health program. Specifically, the proposed amendment makes such a child or young adult eligible for the STAR Health program if the child or young adult is receiving SSI; was receiving SSI before becoming eligible for the AA program or the PCA program; is enrolled in a Medicaid 1915(c) waiver; or is enrolled in Medicare. Subsection (c)(5), which currently excludes children and youth who are receiving Medicaid benefits through the AA program from the STAR Health program, has been deleted because the proposed amendment to this section makes some of those children and young adults eligible for STAR Health. The proposed amendment also makes minor changes to subsection (a)(2) and (3) to clarify the age ranges of children and young adults who are eligible for the STAR Health program. The proposed amendment changes "and" to "or" in subsection (b) to clarify that a young adult must only be described in subsection (a)(2) or (3), not both, to be able to choose to transfer from the STAR Health program to the STAR program or STAR Kids program.

The proposed amendment to §353.1203 adds the same categories of children and young adults to the eligibility categories for STAR Kids as the categories being added to §353.702 for STAR Health in new subsection (i). Subsection (h), which currently requires children and youth who are receiving Medicaid benefits through the AA program or the PCA program to enroll in STAR Kids if they meet the criteria described in subsections (a), (b), (c), or (e), has been deleted because the proposed new subsection (i) allows these children and young adults to have a choice of receiving benefits from the STAR Kids program or the STAR Health program. In addition, the proposed amendment changes the term "STAR Kids Medicaid client" to "STAR Kids member" in re-lettered subsection (h) because "member" refers to a person who is enrolled in a managed care program, which is appropriate in this context. The proposed amendment also makes minor changes to subsections (a), (b), (c), (f), and (g) to clarify the age ranges of children and young adults who are eligible for the STAR Kids program.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to the state as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated net cost of \$678,981 General Revenue (GR) (\$747,535 Federal Funds (FF), \$1,426,516 All Funds (AF)) for State Fiscal Year (SFY) 2021 and estimated net savings of \$272,278 GR (\$458,638 FF, \$730,916 AF) for SFY 2022; \$276,855 GR (\$471,306 FF, \$748,161 AF) for SFY 2023, \$291,143 GR (\$486,330 FF, \$777,473 AF) for SFY 2024; and \$300,391 GR (\$501,835 FF, \$802,226 AF) for SFY 2025.

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 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 require an increase in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand existing rules; and
- (7) the proposed rules will not change the number of individuals subject to the rules.
- (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 will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed 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

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved continuity of care for children and young adults formerly in foster care by allowing them to obtain services more efficiently.

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 proposed amendments do not impose any new costs or fees on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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 the last day to submit comments falls on a holiday comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R037" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.00531, which requires the Executive Commissioner to adopt rules necessary to implement requirements relating to Medicaid benefits for certain children formerly in foster care; §531.0055, which requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services agencies; §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program; §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c), which requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code §§531.021, 531.033, 531.0055, and 531.00531; and Texas Human Resources Code §32.021.

§§353.2. Definitions.

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

(1) Action--

(A) An action is defined as:

(i) the denial or limited authorization of a requested Medicaid service, including the type or level of service;

(ii) the reduction, suspension, or termination of a previously authorized service;

(iii) the failure to provide services in a timely manner;

(iv) the denial in whole or in part of payment for a service; or

(v) the failure of a managed care organization (MCO) to act within the timeframes set forth by the Texas Health and Human Services Commission (HHSC) and state and federal law.

(B) "Action" does not include expiration of a time-limited service.

(2) Acute care--Preventive care, primary care, and other medical or behavioral health care provided by the provider or under the direction of a provider for a condition having a relatively short duration.

(3) Acute care hospital--A hospital that provides acute care services.

(4) Adoption Assistance Program--The program administered by DFPS in accordance with 40 TAC Chapter 700, Subchapter H (relating to Adoption Assistance Program).

(5) [(4)] Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.

(6) [(5)] Allowable revenue--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(7) [(6)] Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action.

(8) [(7)] Applicant Provider--A physician or other health care provider applying for expedited credentialing as defined in Texas Government Code §533.0064.

(9) [(8)] Behavioral health service--A covered service for the treatment of mental, emotional, or substance use disorders.

(10) [(9)] Capitated service--A benefit available to members under the Texas Medicaid program for which an MCO is responsible for payment.

(11) [(10)] Capitation rate--A fixed predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(12) [(11)] CFR--Code of Federal Regulations.

(13) [(12)] Children's Medicaid Dental Services--The dental services provided through a dental MCO to a client birth through age 20.

(14) [(13)] Clean claim--A claim submitted by a physician or provider for health care services rendered to a member, with the data necessary for the MCO or subcontracted claims processor to adjudicate and accurately report the claim. A clean claim must meet all requirements for accurate and complete data as further defined under the terms of the contract executed between the MCO and HHSC.

(15) [(14)] Client--Any Medicaid-eligible recipient.

(16) [(15)] CMS--The Centers for Medicare & Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid.

(17) [(16)] Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(18) [(17)] Complaint--Any dissatisfaction expressed by a complainant, orally or in writing, to the MCO about any matter related to the MCO other than an action. Subjects for complaints may include:

(A) the quality of care of services provided;

(B) aspects of interpersonal relationships such as rudeness of a provider or employee; and

(C) failure to respect the member's rights.

(19) [(18)] Consumer Directed Services (CDS) option--A service delivery option (also known as self-directed model with service budget) in which an individual or legally authorized representative employs and retains service providers and directs the delivery of certain program services.

(20) [(19)] Covered services--Unless a service or item is specifically excluded under the terms of the state plan, a federal waiver, a managed care services contract, or an amendment to any of these, the phrase "covered services" means all health care, long term services and supports, or dental services or items that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC, including:

(A) all services or items comprising "medical assistance" as defined in §32.003 of the Human Resources Code; and

(B) all value-added services under such contract.

(21) [(20)] Credentialing--The process through which an MCO collects, assesses, and validates qualifications and other relevant information pertaining to a Medicaid enrolled health care provider to determine whether the provider may be contracted to deliver covered services as part of the network of the managed care organization.

(22) [(21)] Cultural competency--The ability of individuals and systems to provide services effectively to people of various disabilities, cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(23) [(22)] Day--A calendar day, unless specified otherwise.

(24) [(23)] Default enrollment--The process established by HHSC to assign a Medicaid managed care enrollee to an MCO when the enrollee has not selected an MCO.

(25) [(24)] Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

(26) [(25)] Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or pediatric dentists.

(27) [(26)] Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

(28) [(27)] Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving dental trauma. These types of services are treated as health care services in this chapter.

(29) DFPS--The Texas Department of Family and Protective Services.

(30) [(28)] Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

(31) [(29)] Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(32) [(30)] Dual eligible--A Medicaid recipient who is also eligible for Medicare.

(33) [(31)] Elective enrollment--Selection of a primary care provider (PCP) and MCO by a client during the enrollment period established by HHSC.

(34) [(32)] Emergency behavioral health condition--Any condition, without regard to the nature or cause of the condition, that in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the client would present an immediate danger to themselves or others; or

(B) renders the client incapable of controlling, knowing, or understanding the consequences of his or her actions.

(35) [(33)] Emergency medical condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of a pregnant woman or her unborn child.

(36) [(34)] Emergency service--A covered inpatient and outpatient service, furnished by a network provider or out-of-network provider that is qualified to furnish such service, that is needed to evaluate or stabilize an emergency medical condition and/or an emergency behavioral health condition. For health care MCOs, the term "emergency service" includes post-stabilization care services.

(37) [(35)] Encounter--A covered service or group of covered services delivered by a provider to a member during a visit between the member and provider. This also includes value-added services.

(38) [(36)] Enrollment--The process by which an individual determined to be eligible for Medicaid is enrolled in a Medicaid MCO serving the service area in which the individual resides.

(39) [(37)] EPSDT--The federally mandated Early and Periodic Screening, Diagnosis, and Treatment program defined in 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment). The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(40) [(38)] EPSDT-CCP--The Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program de-

scribed in Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program).

(41) [(39)] Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for EPBPs, and contracts with HHSC to provide Medicaid coverage.

(42) [(40)] Expedited Credentialing--The process under Texas Government Code §533.0064 in which an MCO allows an applicant provider to provide Medicaid services to members on a provisional basis pending completion of the credentialing process.

(43) [(41)] Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

(44) [(42)] Fair hearing--The process adopted and implemented by HHSC in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules) in compliance with federal regulations and state rules relating to Medicaid fair hearings.

(45) [(43)] Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and as in effect for the applicable budget period determined in accordance with 42 C.F.R. §435.603(h). HHSC uses the FPL to determine an individual's eligibility for Medicaid.

(46) [(44)] Federal waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(47) [(45)] Federally Qualified Health Center (FQHC)--An entity that is certified by CMS to meet the requirements of 42 U.S.C. §1395x(aa)(3) as a Federally Qualified Health Center and is enrolled as a provider in the Texas Medicaid program.

(48) [(46)] Former Foster Care Children (FFCC) program--The Medicaid program for young adults who aged out of the conservatorship of DFPS [Texas Department of Family and Protective Services (DFPS)], administered in accordance with Chapter 366, Subchapter J of this title (relating to Former Foster Care Children's Program).

(49) [(47)] Functional necessity--A member's need for services and supports with activities of daily living or instrumental activities of daily living to be healthy and safe in the most integrated setting possible. This determination is based on the results of a functional assessment.

(50) [(48)] Habilitation--Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks based on the individual's person-centered service plan.

(51) [(49)] Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the Texas Medicaid program or its designee.

(52) [(50)] Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

(53) [(51)] Health care provider group--A legal entity, such as a partnership, corporation, limited liability company, or professional association, enrolled in Medicaid, under which certified or licensed individual health care providers provide health care items or services.

(54) [(52)] Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(55) [(53)] Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code.

(56) [(54)] Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

(57) [(55)] Intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID)--A facility providing care and services to individuals with intellectual disabilities or related conditions as defined in §1905(d) of the Social Security Act (42 U.S.C. 1396(d)).

(58) [(56)] Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may, depending on the circumstances, include a parent, guardian, or managing conservator of a minor, or the guardian of an adult, or a representative designated pursuant to 42 C.F.R. 435.923.

(59) [(57)] Long term service and support (LTSS)--A service provided to a qualified member in his or her home or other community-based setting necessary to allow the member to remain in the most integrated setting possible. LTSS includes services provided under the Texas State Plan as well as services available to persons who qualify for STAR+PLUS Home and Community-Based Program services or Medicaid 1915(c) waiver services. LTSS available through an MCO in STAR+PLUS, STAR Health, and STAR Kids varies by program model.

(60) [(58)] Main dental home provider--See definition of "dental home" in this section.

(61) [(59)] Main dentist--See definition of "dental home" in this section.

(62) [(60)] Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(63) [(61)] Managed care organization (MCO)--A dental MCO or a health care MCO.

(64) [(62)] Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(65) [(63)] Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis, or treatment of a medical or dental condition are not marketing materials.

(66) [(64)] MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to assist Medicaid beneficiaries under age 21 to live in the community and avoid institutionalization.

(67) [(65)] Medicaid--The medical assistance program authorized and funded pursuant to Title XIX of the Social Security Act (42 U.S.C. § 1396 *et seq.*) and administered by HHSC.

(68) [(66)] Medicaid for transitioning foster care youth (MTFCY) program--The Medicaid program for young adults who aged out of the conservatorship of DFPS [Texas Department of Family and Protective Services (DFPS)], administered in accordance with Chapter 366, Subchapter F of this title (relating to Medicaid for Transitioning Foster Care Youth).

(69) [(67)] Medical Assistance Only (MAO)--A person who qualifies financially and functionally for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits, as defined in Chapters 358, 360, and 361, of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities, Medicaid Buy-In Program and Medicaid Buy-In for Children Program).

(70) [(68)] Medical home--A PCP or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(71) [(69)] Medically necessary--

(A) For Medicaid members birth through age 20, the following Texas Health Steps services:

(i) screening, vision, dental, and hearing services; and

(ii) other health care services or dental services that are necessary to correct or ameliorate a defect or physical or mental illness or condition. A determination of whether a service is necessary to correct or ameliorate a defect or physical or mental illness or condition:

(I) must comply with the requirements of a final court order that applies to the Texas Medicaid program or the Texas Medicaid managed care program as a whole; and

(II) may include consideration of other relevant factors, such as the criteria described in subparagraphs (B)(ii) - (vii) and (C)(ii) - (vii) of this paragraph.

(B) For Medicaid members over age 20, non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's medical need;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(vi) not experimental or investigative; and

(vii) not primarily for the convenience of the member or provider.

(C) For Medicaid members over age 20, behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or substance use disorder, or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level or supply of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(72) [(70)] Member--A person who is eligible for benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care program, and is enrolled in a Medicaid MCO.

(73) [(71)] Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(74) [(72)] Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(75) [(73)] Non-capitated service--A benefit available to members under the Texas Medicaid program for which an MCO is not responsible for payment.

(76) [(74)] Outside regular business hours--As applied to FQHCs and rural health clinics (RHCs), means before 8 a.m. and after 5 p.m. Monday through Friday, weekends, and federal holidays.

(77) [(75)] Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(78) Permanency Care Assistance Program--The program administered by DFPS in accordance with 40 TAC Chapter 700, Subchapter J, Division 2 (relating to Permanency Care Assistance Program).

(79) [(76)] Person-centered care--An approach to care that focuses on members as individuals and supports caregivers working most closely with them. It involves a continual process of listening, testing new approaches, and changing routines and organizational approaches in an effort to individualize and de-institutionalize the care environment.

(80) [(77)] Person-centered planning--A documented service planning process that includes people chosen by the individual, is directed by the individual to the maximum extent possible, enables the individual to make choices and decisions, is timely and occurs at times

and locations convenient to the individual, reflects cultural considerations of the individual, includes strategies for solving conflict or disagreement within the process, offers choices to the individual regarding the services and supports they receive and from whom, includes a method for the individual to require updates to the plan, and records alternative settings that were considered by the individual.

(81) [(78)] Post-stabilization care service--A covered service, related to an emergency medical condition, that is provided after a Medicaid member is stabilized in order to maintain the stabilized condition, or, under the circumstances described in 42 C.F.R. §438.114(b) and (c) and 42 C.F.R. §422.113(c)(iii) to improve or resolve the Medicaid member's condition.

(82) [(79)] Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(83) [(80)] Provider--A credentialed and licensed individual, facility, agency, institution, organization, or other entity, and its employees and subcontractors, that has a contract with the MCO for the delivery of covered services to the MCO's members.

(84) [(81)] Provider education program--Program of education about the Medicaid managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(85) [(82)] Provider network or Network--All providers that have contracted with the MCO for the applicable managed care program.

(86) [(83)] Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(87) [(84)] Rural Health Clinic (RHC)--An entity that meets all of the requirements for designation as a rural health clinic under §1861(aa)(1) of the Social Security Act (42 U.S.C. §1395x(aa)(1)) and is approved for participation in the Texas Medicaid program.

(88) [(85)] Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(89) [(86)] Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population, including a DSH.

(90) [(87)] STAR--The State of Texas Access Reform (STAR) managed care program that operates under a federal waiver and primarily provides, arranges for, and coordinates preventive, primary, acute care, and pharmacy services for low-income families, children, and pregnant women.

(91) [(88)] STAR Health--The managed care program that operates under the Medicaid state plan and primarily serves:

(A) children and youth in DFPS [Texas Department of Family and Protective Services (DFPS)] conservatorship;

(B) young adults who voluntarily agree to continue in a foster care placement (if the state as conservator elects to place the child in managed care); and

(C) young adults who are eligible for Medicaid as a result of their former foster care status through the month of their 21st birthday.

(92) [(89)] STAR Kids--The program that operates under a federal waiver and primarily provides, arranges, and coordinates pre-

ventative, primary, acute care, and long-term services and supports to persons with disabilities under the age of 21 who qualify for Medicaid.

(93) [(90)] STAR+PLUS--The managed care program that operates under a federal waiver and primarily provides, arranges, and coordinates preventive, primary, acute care, and long-term services and supports to persons with disabilities and elderly persons age 65 and over who qualify for Medicaid by virtue of their SSI or MAO status.

(94) [(91)] STAR+PLUS Home and Community-Based Services Program--The program that provides person-centered care services that are delivered in the home or in a community setting, as authorized through a federal waiver under §1115 of the Social Security Act, to qualified Medicaid-eligible clients who are age 21 or older, as cost-effective alternatives to institutional care in nursing facilities.

(95) [(92)] State plan--The agreement between the CMS and HHSC regarding the operation of the Texas Medicaid program, in accordance with the requirements of Title XIX of the Social Security Act.

(96) [(93)] Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to people who are 65 years of age or older, are blind, or have a disability administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(97) [(94)] Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services, described at 42 U.S.C. §1396d(r) and 42 CFR §440.40 and §§441.40 - 441.62.

(98) [(95)] Value-added service--A service provided by an MCO that is not "medical assistance," as defined by §32.003 of the Texas Human Resources Code.

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

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For further information, please call: (512) 438-3360



SUBCHAPTER H. STAR HEALTH

1 TAC §353.702

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.00531, which requires the Executive Commissioner to adopt rules necessary to implement requirements relating to Medicaid benefits for certain children formerly in foster care; §531.0055, which requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services agencies; §531.021(a), which authorizes HHSC to administer the federal medical assistance

(Medicaid) program; §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c), which requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code §§531.021, 531.033, 531.0055, and 531.00531; and Texas Human Resources Code §32.021.

§353.702. *Member Participation.*

(a) Children and young adults in the following categories are eligible to participate in the STAR Health program:

(1) a child in the conservatorship of DFPS [~~the Texas Department of Family and Protective Services (DFPS)~~], if the state as conservator elects to place the child in the STAR Health program;

(2) a young adult, from [age] 18 years of age through the month of his or her 22nd birthday, who voluntarily agrees to continue in foster care placement, if the state as conservator elects to place the child in the STAR Health program; [and]

(3) a young adult, from [age] 18 years of age through the month of his or her 21st birthday, who is an FFCC member or participating in the MTFCY Program; and [-]

(4) a child or young adult, from birth through the month of his or her 21st birthday, who is enrolled in the Adoption Assistance Program or the Permanency Care Assistance Program and who:

(A) receives Social Security Income (SSI);

(B) received SSI before becoming eligible for the Adoption Assistance Program or the Permanency Care Assistance Program;

(C) is enrolled in a Medicaid 1915(c) waiver; or

(D) is enrolled in Medicare.

(b) A young adult described in subsection (a)(2) or [and] (3) of this section may choose to transfer from the STAR Health program to the STAR program or STAR Kids program, if the young adult meets [they meet] the member participation requirements in §353.802 of this chapter (relating to Member Participation) or §353.1203 of this chapter (relating to Member Participation).

(c) The following Medicaid recipients cannot participate in the STAR Health program:

(1) Children and youth who have been adjudicated and placed with the Texas Juvenile Justice Department (TJJD);

(2) Children and youth from other states who are placed in Texas through the Interstate Compact Placement Commission (ICPC) as defined by DFPS in 40 TAC Chapter 700, Subchapter S (relating to Interstate Placement of Children);

(3) Children and youth in Medicaid-paid facilities such as nursing facilities or state supported living centers;

(4) Children and youth who are in the conservatorship of DFPS who are placed outside of Texas; and

{(5) Children and youth who are receiving adoption assistance Medicaid as defined by DFPS in 40 TAC Chapter 700, Subchapter H (relating to Adoption Assistance Program); and}

(5) [(6)] Children who are declared manifestly dangerous as defined by the Texas Department of Health Services in accordance

with 25 TAC Chapter 415, Subchapter G (relating to Determination of Manifest Dangerousness).

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

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SUBCHAPTER N. STAR KIDS

1 TAC §353.1203

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.00531, which requires the Executive Commissioner to adopt rules necessary to implement requirements relating to Medicaid benefits for certain children formerly in foster care; §531.0055, which requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services agencies; §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program; §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c), which requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code §§531.021, 531.033, 531.0055, and 531.00531; and Texas Human Resources Code §32.021.

§353.1203. *Member Participation.*

(a) Except as provided in subsection (b) of this section, enrollment in the STAR Kids program is *mandatory* for a Medicaid client who is younger than [under the age of] 21 years of age and meets one or both of the following criteria:

(1) has a physical or mental disability and qualifies for Supplemental Security Income (SSI) or SSI-related Medicaid; or

(2) is enrolled in the Medically Dependent Children Program (MDCP) waiver.

(b) Clients younger than 21 years of age [birth through age 20] residing in a community-based ICF-IID or nursing facility or receiving services under the following Medicaid 1915(c) waivers must enroll in STAR Kids to receive acute care services and non-facility based state plan services:

(1) Home and Community-based Services (HCS);

(2) Community Living Assistance and Support Services (CLASS);

(3) Texas Home Living (TxHmL); or

(4) Deaf Blind with Multiple Disabilities (DBMD).

(c) Clients younger than 21 years of age [birth through age 20] receiving services under the Youth Empowerment Services (YES)

Medicaid 1915(c) waiver must enroll in STAR Kids to receive acute care services and non-facility based state plan services other than Community First Choice state plan services.

(d) The following Medicaid clients cannot participate in the STAR Kids program:

- (1) clients residing in the Truman W. Smith Children's Care Center;
- (2) residents of state supported living centers;
- (3) residents of state veterans' homes;
- (4) persons not eligible for full Medicaid benefits; and
- (5) children in the conservatorship of DFPS [the Texas Department of Family and Protective Services].

(e) Dual eligible clients.

(1) Enrollment in Medicare does not affect eligibility for the STAR Kids program.

(2) Dual eligible clients who participate in the STAR Kids program receive most acute care services through their Medicare provider, and long term services and supports through the STAR Kids MCO. Participation in the STAR Kids program does not change the way dual eligible clients receive Medicare services.

(f) Individuals younger than 21 years of age [birth through 20] who participate in the Medicaid Buy-In for Children Program or the Medicaid Buy-In Program must enroll in STAR Kids.

(g) FFCC members at least [ages] 18 years of age but younger than 21 years of age [through 20] may choose to transfer from STAR Health to STAR Kids if they meet the criteria in subsections (b), (c), (e), or (f) of this section.

[(h) Except as provided in subsection (d), children receiving medical assistance through the Texas Department of Family and Protective Services Adoption Assistance Program, as described under Title 40 of the Texas Administrative Code, Chapter 700, Subchapter H (relating to Adoption Assistance Program); or Permanency Care Assistance Program, as described under Title 40 of the Texas Administrative Code, Chapter 700, Subchapter J, Division 2 (relating to Permanency Care Assistance Program) must enroll in STAR Kids if they meet one or more of the criteria in subsections (a), (b), (c), or (e) of this section.]

(h) [(+) A STAR Kids member has [Medicaid clients have] a choice among at least two MCOs.

(i) Except as provided in subsection (d) of this section, a child or young adult, from birth through the month of his or her 21st birthday, who is enrolled in the Adoption Assistance Program or the Permanency Care Assistance Program and who meets one or more of the following criteria is eligible to participate in the STAR Kids program:

- (1) receives Social Security Income (SSI);
- (2) received SSI before becoming eligible for the Adoption Assistance Program or the Permanency Care Assistance Program;
- (3) is enrolled in a Medicaid 1915(c) waiver; or
- (4) is enrolled in Medicare.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1054

The Texas Education Agency (TEA) proposes the repeal of §102.1054, concerning the intensive summer pilot program. The proposed repeal would remove the rule because its authorizing statute no longer exists.

BACKGROUND INFORMATION AND JUSTIFICATION: The 80th Texas Legislature, 2007, added Texas Education Code (TEC), §29.098, to establish a pilot program for students identified as being at risk of dropping out of school. The statute required the commissioner of education to adopt rules for awarding grants to participating campuses to provide intensive academic instruction during the summer.

Section 102.1054, adopted effective July 31, 2008, implemented the statute by establishing eligibility criteria, application requirements, and provisions for funding and operation of the intensive summer pilot program.

House Bill 3, 86th Texas Legislature, 2019, removed TEC, §29.098. The proposed repeal of §102.1054 is necessary since the authorizing statute no longer exists.

FISCAL IMPACT: Megan Aghazadian, deputy commissioner for operations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would repeal an existing regulation by removing a rule for which statutory authority no longer exists.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Aghazadian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing a rule for which statutory authority no longer exists. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 2, 2021, and ends May 3, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 2, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The repeal is proposed under House Bill 3, §4.001, which repealed Texas Education Code, §29.098, which required the commissioner to establish by rule procedures for awarding grants for intensive summer programs.

CROSS REFERENCE TO STATUTE. The repeal implements House Bill 3, §4.001, 86th Texas Legislature, 2019.

§102.1054. Intensive Summer Pilot 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.

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Cristina De La Fuente-Valadez

Director, Rulemakings

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SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

19 TAC §102.1071

The Texas Education Agency (TEA) proposes the repeal of §102.1071, concerning the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. The proposed repeal would remove the rule because its authorizing statute no longer exists.

BACKGROUND INFORMATION AND JUSTIFICATION: The 79th Texas Legislature, 2005, added Texas Education Code (TEC), Chapter 21, Subchapter N, to establish a program whereby classroom teachers and other campus personnel could receive an incentive award from an eligible campus through a student achievement program. The statute required that the commissioner establish a grant award program and adopt rules for developing a campus incentive plan and the awarding of funds.

Section 102.1071, adopted effective January 9, 2007, implemented TEC, Chapter 21, Subchapter N, by establishing the Governor's Educator Excellence Award Program--Texas Educator Excellence Grant.

House Bill 3646, 81st Texas Legislature, 2009, removed TEC, Chapter 21, Subchapter N. The proposed repeal of §102.1071 is necessary since the authorizing statute no longer exists.

FISCAL IMPACT: Megan Aghazadian, deputy commissioner for operations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation by removing a rule for which statutory authority no longer exists.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Aghazadian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing a rule for which statutory authority no longer exists. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 2, 2021, and ends May 3, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 2, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The repeal is proposed under House Bill (HB) 3646, §105, 81st Texas Legislature, 2009, which repealed Texas Education Code (TEC), §21.652, which required the commissioner by rule to establish a student achievement award program under which an eligible campus may receive a grant from the agency in the manner provided by TEC, Chapter 21, Subchapter N, and adopt program guidelines for a campus to follow in developing a campus incentive plan. HB 3646 also repealed TEC, §21.658, which required the commissioner to adopt rules necessary to administer TEC, Chapter 21, Subchapter N.

CROSS REFERENCE TO STATUTE. The repeal implements House Bill 3646, §105, 81st Texas Legislature, 2009.

§102.1071. *Governor's Educator Excellence Award Program--Texas Educator Excellence Grant.*

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

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**CHAPTER 109. BUDGETING, ACCOUNTING,
AND AUDITING
SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING FEDERAL FISCAL
COMPLIANCE AND REPORTING**

19 TAC §109.3001, §109.3003

The Texas Education Agency (TEA) proposes amendments to §109.3001 and §109.3003, concerning federal fiscal compliance and reporting. The proposed amendments would modify the existing rules to reflect changes to federal statutes, regulations, non-regulatory guidance, and delegation agreements.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.3001, Local Maintenance of Effort, outlines TEA's responsibility to monitor compliance by local educational agencies (LEAs) with Individuals with Disabilities Education Act, Part B (IDEA-B) LEA maintenance of effort (MOE) and Every Student Succeeds Act (ESSA) LEA MOE. The proposed amendment to §109.3001 would update the statutory and regulatory citations and remove the handbooks adopted as Figure: 19 TAC §109.3001(c)(1) and Figure: 19 TAC §109.3001(c)(2). TEA has determined that the handbooks do not need to be included in rule since they do not create new regulations or rules and instead provide guidance on how TEA applies existing federal statutes and regulations to determine LEA compliance.

Section 109.3003, Indirect Cost Rates, outlines TEA's responsibility to calculate and issue indirect cost rates to LEAs and education service centers. The proposed amendment would update both the rule and Figure: 19 TAC §109.3003(d) to reflect revised statutory citations and a new delegation agreement from the United States Department of Education. In addition, Figure: 19 TAC §109.3003(d) would only include information on how organizations would request and apply for an indirect cost rate. Information on how subrecipients use their indirect cost rates would be removed since that information is already outlined in existing federal regulations and nonregulatory guidance.

FISCAL IMPACT: Mike Meyer, deputy commissioner for finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by removing requirements and information addressed by federal law and nonregulatory guidance.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or

decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 2, 2021, and ends May 3, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 2, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.021(b)(1), which requires the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding; and TEC, §7.031(a), which establishes that TEA may seek, accept, and distribute grants awarded by the federal government, subject to the limitations or conditions imposed by the terms of the grants or by other law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.021(b)(1) and §7.031(a).

§109.3001. Local Maintenance of Effort.

(a) In accordance with the Texas Education Code, §7.021, the Texas Education Agency [(TEA)] shall administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs.

(b) The following terms have the following meanings when used in this subchapter.

(1) Maintenance of Effort (MOE) for a grant under the Individuals with Disabilities Education Act, Part B (IDEA-B)--This term has the meaning assigned by 34 Code of Federal Regulations (CFR), §300.203(a).

(2) MOE for a grant under the Every Student Succeeds Act (ESSA) [No Child Left Behind Act (NCLB)] --This term is generally defined by Public Law 114-95, Title VIII, Part F, Subpart 2, §8521 [107-110; Title IX, Part E, Subpart 2, §9521].

(c) Each local educational [education] agency (LEA) that expends federal IDEA-B or ESSA [NCLB] funds must comply with established MOE requirements developed in conjunction with federal statutes, regulations, and guidance from the United States Department of Education [(USDE)]. The methods of determining compliance, the consequences of noncompliance, and allowable exceptions to the MOE

requirements are outlined in the statutes specified in subsection (b)(1) and (2) of this section [described in the figures provided in paragraphs (1) and (2) of this subsection].

[(1) The specific MOE requirements for a grant under the IDEA-B are described in the *IDEA-B LEA MOE Guidance Handbook* provided in this paragraph.]
[Figure: 19 TAC §109.3001(e)(1)]

[(2) The specific MOE requirements for a grant under the NCLB are described in the *NCLB LEA MOE Guidance Handbook* provided in this paragraph.]
[Figure: 19 TAC §109.3001(e)(2)]

(d) If an LEA provides a Medicaid-eligible student with a Medicaid service that is specified in the student's individualized education program, the LEA may request reimbursement for that service through Medicaid's School Health and Related Services (SHARS) program. The LEA is reimbursed the federal portion of the amount it expended on the service based on the Federal Medicaid Assistance Percentage rate Medicaid has defined. In accordance with 34 CFR, §300.154(g)(2), if the reimbursement is expended on special education services, that expenditure must be excluded from the calculation of state/local expenditures for purposes of calculating IDEA-B LEA MOE compliance (34 CFR, §300.154(g)(2)).

[(d) Guidance provided in the handbooks described in subsection (e)(1) and (2) of this section will be updated annually as necessary by the commissioner of education to align with subsequent updates, modifications, and amendments to the statutory authority and USDE guidance.]

[(e) For determining compliance with MOE requirements, the TEA will use the handbooks provided in subsection (e)(1) and (2) of this section instead of:]

[(1) the software in PEIMS EDIT+ containing a formula to allocate costs recorded in Program Intent Code 99, Undistributed, according to instructional FTEs (as reported in PEIMS) assigned to Basic and Enhanced Program Intent Codes; or]

[(2) the software in EDIT+ containing a formula to allocate costs recorded in Organization Code 999, Undistributed.]

[(f) If the LEA receives School Health and Related Services (SHARS) reimbursements, funds received represent reimbursements to the LEA for school-based health services, which are provided to special education students enrolled in the Medicaid Program. Additional guidance concerning the treatment of SHARS direct and indirect cost reimbursements is documented in the *IDEA-B LEA MOE Guidance Handbook* provided in subsection (e)(1) of this section.]

(c) [(g)] To the extent that this section conflicts with any other commissioner or State Board of Education rule, including the Financial Accountability System Resource Guide, the provisions of this section control.

§109.3003. Indirect Cost Rates.

(a) Pursuant to authorization in 34 Code of Federal Regulations (CFR), §75.561(b) and §76.561(b), the Texas Education Agency (TEA) has been delegated the authority by the United States Department of Education (USDE) to issue indirect cost rates to local educational agencies (LEAs) and education service centers (ESCs) [review indirect cost applications and to approve indirect cost rates].

(b) Pursuant to 34 CFR, §75.561(b) and §76.561(b), to [To] recover any indirect costs for the administration of federal grants, an entity must have an approved indirect cost rate. Indirect cost rates will be issued for a one-year period from July 1 to June 30. A new indirect cost rate must be requested each [obtained for every fiscal] year.

(c) For the one-year period [fiscal year] an entity has been issued an indirect cost rate, it can claim indirect cost revenue on applicable grants during that period [in that fiscal year]. As indirect cost revenues are earned in the Special Revenue Fund on federally funded grants, these revenues can be transferred from the Special Revenue Fund to the General Fund. After the indirect cost revenue has been recorded in the General Fund, the revenues can be used for any legal purpose.

(d) Guidance concerning the process for requesting an indirect cost rate for entities where TEA is the cognizant agency, including LEAs and ESCs, [rates] has been developed by [the] TEA in conjunction with federal statutes and guidance from [the] USDE [~~to be used for various entities for which the TEA is the cognizant agency~~]. The definitions, standards, and procedures to request an [used to govern] indirect cost rate are outlined [~~rates are described~~] in the *Indirect Cost Rate Guidance Handbook* provided in this subsection.

~~Figure: 19 TAC §109.3003(d)~~
~~[Figure: 49 TAC §109.3003(d)]~~

(e) Guidance provided in the handbook described in subsection (d) of this section will be updated [~~annually~~] as necessary by the commissioner of education to align with subsequent updates, modifications, and amendments to the statutory authority and USDE guidance.

(f) To the extent that this section conflicts with any other commissioner or State Board of Education rule, including the Financial Accountability System Resource Guide, the provisions of this section control.

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 March 22, 2021.

TRD-202101197

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 2, 2021

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



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.11

The Texas State Board of Pharmacy proposes amendments to §291.11, concerning Operation of a Pharmacy. The amendments, if adopted, correct citation references and a short title reference.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit

anticipated as a result of enforcing the amendments will be correct and clear regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.11. Operation of a Pharmacy.

(a) For the purposes of ~~§565.002(a)(7)~~ [§565.002(7)] of the Texas Pharmacy Act, the following words and terms shall be defined as follows.

(1) "Failure to engage in the business described in the application for a license" means the holder of a pharmacy license has not commenced operating the pharmacy within six months of the date of issuance of the license.

(2) "Ceased to engage in the business described in the application for a license" means the holder of a pharmacy license, once it has been in operation, discontinues operating the pharmacy for a period of 30 days or longer unless the pharmacy experiences a fire or disaster, in which case the pharmacy must comply with §291.3(g) [§291.3(f)] of this title (relating to Required Notifications).

(b) For the purposes of this section, the term "operating the pharmacy" means the pharmacy shall demonstrate observable pharmacy business activity on a regular, routine basis, including a suffi-

cient number of transactions of receiving, processing, or dispensing prescription drug orders or medication drug orders.

(c) No person may operate a pharmacy in a personal residence.

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 March 15, 2021.

TRD-202101088

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34 concerning Records. The amendments, if adopted, clarify that a pharmacist may electronically sign the data entry attestation statement and update references to DEA 222 form requirements to be consistent with federal regulations.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language and to ensure consistency between Board rules and federal regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or

authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists)..

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense prescription drug orders for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered

nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Oral prescription drug orders.

(A) An oral prescription drug order for a controlled substance from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions orally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an oral prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a

Schedule II, III, IV, or V controlled substance in compliance with federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given [to the pharmacist] by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient; provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic;

or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 40 TAC §19.1506.

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (I) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title (relating to Operational Standards) [of this title]; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or man-made [manmade] disasters. If a natural or man-made [manmade] disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor of Texas has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program:

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances. Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign or electronically sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile:

(A) directly by a pharmacist or pharmacist-intern to another pharmacist or pharmacist-intern for prescription drug order information for controlled substances; or

(B) directly by a pharmacist, pharmacist-intern, or pharmacy technician to another pharmacist, pharmacist-intern, or pharmacy technician for prescription drug order information for dangerous drugs.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section [~~(relating to Prescriptions)~~], and the following:

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section [~~(relating to Prescriptions)~~], and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:

(i) The original prescription is voided and the pharmacies' data processing systems store all the information as specified in paragraphs (5) and (6) of this subsection;

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the

compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance. [If the distribution is for a Schedule II controlled substance, the following is applicable:]

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process, in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

~~[(2) copy 3 of DEA order forms (DEA 222) that have been properly dated, initialed, and filed; all copies of each unaccepted or defective order form and any attached statements or other documents; and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS); the original signed order and all linked records for that order;]~~

~~[(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);]~~

(2) ~~[(4)]~~ suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled substances listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(3) ~~[(5)]~~ suppliers' credit memos for controlled substances and dangerous drugs;

(4) ~~[(6)]~~ a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(5) ~~[(7)]~~ reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(6) ~~[(8)]~~ records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(7) ~~[(9)]~~ a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy;

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location;

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist, pharmacist-intern, or pharmacy technician consults a prescriber as described in this section, the individual shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription and shall include the following information:

- (1) date the prescriber was consulted;
- (2) name of the person communicating the prescriber's instructions;
- (3) any applicable information pertaining to the consultation; and
- (4) initials or identification code of the pharmacist, pharmacist-intern, or pharmacy technician performing the consultation clearly recorded for the purpose of identifying the individual who performed the consultation if the information is recorded on the hard copy prescription.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy proposes amendments to §291.75, concerning Records. The amendments, if adopted, will update references to DEA 222 form requirements to be consistent with federal regulations.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure consistency between Board rules and federal regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.75. *Records.*

- (a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.71 of this title (relating to Purpose), §291.72 of this title (relating to Definitions), §291.73 of this title (relating to Personnel), §291.74 of this title (relating to Operational Standards), and this section contained in Institutional Pharmacy (Class C) shall be:

(A) kept by the institutional pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, provided:

(A) the records in the alternative data retention system contain all of the information required on the manual record; and

(B) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Outpatient records.

(1) Outpatient records shall be maintained as provided in §291.34 (relating to Records), and §291.35 (relating to Official Prescription Requirements), in chapter 291, subchapter B of this title.

(2) Outpatient prescriptions, including, but not limited to, furlough and discharge prescriptions, that are written by a practitioner must be written on a form which meets the requirements of §291.34(b)(7)(A) of this title. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(3) Controlled substances listed in Schedule II must be written on an official prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by chapter 315 of this title (relating to Controlled Substances). Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(c) Patient records.

(1) Original medication orders.

(A) Each original medication order shall bear the following information:

- (i) patient name and room number or identification number;
- (ii) drug name, strength, and dosage form;
- (iii) directions for use;
- (iv) date; and
- (v) signature or electronic signature of the practitioner or that of his or her authorized agent.

(B) Original medication orders shall be maintained with the medication administration records of the patients.

(2) Patient medication records (PMR). A patient medication record shall be maintained for each patient of the facility. The PMR shall contain at a minimum the following information:

(A) Patient information:

- (i) patient name and room number or identification number;
- (ii) gender, and date of birth or age;
- (iii) weight and height;
- (iv) known drug sensitivities and allergies to drugs and/or food;
- (v) primary diagnoses and chronic conditions;
- (vi) primary physician; and
- (vii) other drugs the patient is receiving; and

(B) Medication order information:

- (i) date of distribution;
- (ii) drug name, strength, and dosage form; and
- (iii) directions for use.

(3) Controlled substances records. Controlled substances records shall be maintained as follows:

(A) All records for controlled substances shall be maintained in a readily retrievable manner; and

(B) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(4) Schedule II controlled substances records. Records of controlled substances listed in Schedule II shall be maintained as follows:

(A) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records;

(B) An institutional pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II; and

(C) Distribution records for controlled substances listed in Schedule II shall bear the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;
- (iii) name of drug, dosage form, and strength;
- (iv) time and date of administration to patient and quantity administered;
- (v) name, initials, or electronic signature of the individual administering the controlled substance;
- (vi) returns to the pharmacy; and
- (vii) waste (waste is required to be witnessed and cosigned, electronically or manually, by another individual).

(5) Floor stock records.

(A) Distribution records for Schedules II - V controlled substances floor stock shall include the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;
- (iii) name of controlled substance, dosage form, and strength;
- (iv) time and date of administration to patient;
- (v) quantity administered;
- (vi) name, initials, or electronic signature of the individual administering drug;
- (vii) returns to the pharmacy; and
- (viii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(B) The record required by subparagraph (A) of this paragraph shall be maintained separately from patient records.

(C) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(6) General requirements for records maintained in a data processing system.

(A) Noncompliance with data processing requirements. If a hospital pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) Requirements for backup systems. The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(C) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains the same information as required on the audit trail printout as specified in paragraph (7)(B) of this subsection. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(D) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(7) Data processing system maintenance of records for the distribution and return of all controlled substances to the pharmacy.

(A) Each time a controlled substance is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(C) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility unless the pharmacy complies with subparagraph (D) of this paragraph. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(D) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this paragraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board, or other authorized local, state, or federal law enforcement or regulatory agencies.

(8) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(9) Data processing system downtime. In the event that a hospital pharmacy that uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(10) Ongoing clinical pharmacy program records. If a pharmacy has an ongoing clinical pharmacy program and allows pharmacy technicians to verify the accuracy of work performed by other pharmacy technicians, the pharmacy must have a record of the pharmacy technicians and the duties performed.

(d) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions:

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance; and

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed or distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance.

~~[(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable:]~~

~~[(A) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and]~~

~~[(B) The distributing pharmacy shall:]~~

~~[(i) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;]~~

~~[(ii) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and]~~

~~[(iii) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration.]~~

(e) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes which identifies pharmacy personnel by name. The initials or identification code shall be unique to ensure that each person can be identified, i.e., identical initials or identification codes cannot be used. Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

~~[(2) copy 3 of DEA order forms (DEA 222) which have been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;]~~

~~[(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);]~~

(2) [(4)] suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(3) [(5)] suppliers' credit memos for controlled substances and dangerous drugs;

(4) [(6)] a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(5) [(7)] hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(6) [(8)] a hard copy Schedule V nonprescription register book;

(7) [(9)] records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(8) [(10)] a hard copy of any notification required by the Texas Pharmacy Act or these sections including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in diagnosis or treatment of injury, illness, and disease.

(f) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

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Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



22 TAC §291.76

The Texas State Board of Pharmacy proposes amendments to §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. The amendments, if adopted, update references to DEA 222 form requirements to be consistent with federal regulations.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure consistency between Board rules and federal regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board inter-

prets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.76. *Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.*

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding ambulatory surgical center that is licensed by the Texas Department of State Health Services. Class C pharmacies located in a freestanding ambulatory surgical center shall comply with this section, in lieu of §§291.71 - 291.75 of this title (relating to Purpose; Definitions; Personnel; Operational Standards; and Records).

(b) Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Ambulatory surgical center (ASC)--A freestanding facility that is licensed by the Texas Department of State Health Services that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours shall be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(4) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(5) Board--The Texas State Board of Pharmacy.

(6) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(7) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(8) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(9) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime--Period of time during which a data processing system is not operable.

(11) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information

into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(12) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary--List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each ambulatory surgical center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the ASC, subject to approval of the appropriate committee of the ASC;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the ASC;

(vi) maintaining records of all transactions of the ASC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the ASC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the ASC;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the ASC;

(x) providing effective and efficient messenger and delivery service to connect the ASC pharmacy with appropriate areas of the ASC on a regular basis throughout the normal workday of the ASC;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy

and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection;

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (institutional) pharmacy located in a free-standing ASC; and

(xiv) ensuring that a pharmacist visits the ASC at least once each calendar week that the facility is open.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the ASC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the ASC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) repacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(D) and (E) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an ASC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the ASC pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) An ASC pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) An ASC pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) An ASC pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) An ASC pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) An ASC pharmacy, licensed under the Act, §560.051(a)(3), concerning institutional pharmacy (Class C), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), or the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(J) ASC pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy license.

(K) An ASC pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(L) An ASC pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The ASC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The ASC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas,

including provisions for adequate safeguards against theft or diversion of dangerous drugs and controlled substances, and to security of records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) ASC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ASC.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the ASC to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the ASC;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes a pharmacist in the ASC to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for distribution to other Class C pharmacies under common ownership or for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date;

(-d-) quantity of the drug, if quantity is greater than one; and

(-e-) if the drug is distributed to another Class C pharmacy, name of the facility responsible for prepackaging the drug.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the packager;

(-j-) signature or electronic signature of the responsible pharmacist; and

(-k-) if the drug is distributed to another Class C pharmacy, name of the facility receiving the prepackaged drug.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems

may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the practitioner's medication order.

(C) ASC pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In ASCs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the ASC pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

- (I) name of the patient;
- (II) name of device or drug, strength, and dosage form;
- (III) dose prescribed;
- (IV) quantity taken;
- (V) time and date; and
- (VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(E) In ASCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the ASC when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the ASC pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices; and

(iii) The pharmacist shall conduct an audit of the patient's medical record according to the schedule set out in the policy and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

- (i) name of the drug, strength, and dosage form;
- (ii) quantity removed;
- (iii) location of floor stock;
- (iv) date and time; and
- (v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;

- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated medication supply systems;
- (T) use of data processing systems; and
- (U) drug regimen review.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ASC.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including name, address, and phone number of the facility, and necessary auxiliary labels) by the pharmacy provided, however, that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;
- (iv) directions for use;
- (v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;

- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;
- (x) proper utilization, including overutilization or underutilization; and

(xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subparagraph, "readily retrievable" means that the controlled substances shall be asterisked, redlined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An ASC pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedules II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedules II - V, shall include the following information:

(i) patient's name;

(ii) practitioner's name who ordered the drug;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) signature or electronic signature of individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

(i) patient name;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as an employee or consultant/full or part-time pharmacist of the ASC.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system.

(A) If an ASC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) A pharmacy that changes or discontinues use of a data processing system must:

(i) transfer the records to the new data processing system; or

(ii) purge the records to a printout which contains:

(I) all of the information required on the original document; or

(II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(F) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(G) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the

facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(I) In the event that an ASC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for online data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

- (i) the actual date of distribution;
- (ii) the name, strength, and quantity of controlled substances distributed;
- (iii) the name, address, and DEA registration number of the distributing pharmacy; and
- (iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance. [If the distribution is for a Schedule II controlled substance, the following is applicable.]

~~{(i) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.}~~

~~{(ii) The distributing pharmacy shall:}~~

~~{(I) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";}~~

~~{(II) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and}~~

~~{(III) forward Copy 2 of the DEA order form (DEA 222) to the divisional office of DEA.}~~

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a log of the initials or identification codes which identifies each pharmacist by name. The initials or identification code

shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used. Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

~~{(B) Copy 3 of DEA order forms (DEA 222), which have been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;}~~

~~{(C) a copy of the power of attorney to sign DEA 222 order forms (if applicable);}~~

(B) ~~{(D)}~~ suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving the drugs; a pharmacist shall verify that the controlled drugs listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory;

(C) ~~{(E)}~~ supplier's credit memos for controlled substances and dangerous drugs;

(D) ~~{(F)}~~ a copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a copy of the perpetual inventory on-site;

(E) ~~{(G)}~~ reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(F) ~~{(H)}~~ records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(G) ~~{(I)}~~ a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

- (i) reports of theft or significant loss of controlled substances to DEA and the board;
- (ii) notification of a change in pharmacist-in-charge of a pharmacy; and
- (iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(ii) The pharmacy maintains a copy of the notification required in this subparagraph; and

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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 March 15, 2021.

TRD-202101091

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy proposes amendments to §315.3 concerning Prescriptions. The amendments, if adopted, extend the time period for Schedule II prescriptions to be valid to no longer than 30 days to be consistent with federal law.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between Board rules and federal law. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with federal law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701 FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.3. Prescriptions.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in §481.002(39)(A) of the TCSA, must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form.

(3) Except as provided by subsection (f) of this section, a practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription if the practitioner intends for that prescription to be filled immediately, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(4) A schedule II prescription must be dispensed no later than 30 [24] days after the date of issuance or, if the prescription is part of a multiple set of prescriptions, issued on the same day, no later than 30 [24] days after the earliest date on which a pharmacy may dispense the prescription as indicated on each prescription.

(5) A person dispensing a Schedule II controlled substance prescription shall provide written notice on the safe disposal of controlled substance prescription drugs that includes information on loca-

tions at which Schedule II controlled substance prescription drugs are accepted for safe disposal. In lieu of listing those locations, the notice may alternatively provide the address of an Internet website specified by the board that provides a searchable database of locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. The written notice may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the notice in an electronic format and the request is documented. Such written notice is not required if:

(A) the Schedule II controlled substance prescription drug is dispensed at a pharmacy or other location that:

(i) is authorized to take back those drugs for safe disposal; and

(ii) regularly accepts those drugs for safe disposal; or

(B) the dispenser provides to the person to whom the Schedule II controlled substance prescription drug is dispensed, at the time of dispensation and at no cost to the person:

(i) a mail-in pouch for surrendering unused controlled substance prescription drugs; or

(ii) chemicals to render any unused drugs unusable or non-retrievable.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in §§481.002(39)(A), (C), (D) of the TCSA, may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Except as provided in subsection (f) of this section, Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescribing.

(1) A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(2) Effective January 1, 2021, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued:

(A) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure;

(B) by a practitioner to be dispensed by a pharmacy located outside this state; or

(C) in any other circumstance described in §481.0755(a) of the TCSA.

(3) A prescriber may apply for a waiver from the electronic prescribing requirement by:

(A) submitting a waiver request form to the agency that issued the license, certification, or registration to the prescriber, including any information requested on the form; and

(B) demonstrating circumstances necessitating a waiver from the requirement, including:

(i) economic hardship, as determined by the agency that issued the license, registration, or certification to the prescriber on a prescriber/by prescriber basis, taking into account factors including:

(I) any special situational factors affecting either the cost of compliance or ability to comply;

(II) the likely impact of compliance on profitability or viability; and

(III) the availability of measures that would mitigate the economic impact of compliance;

(ii) technological limitations not reasonably within the control of the prescriber; or

(iii) other exceptional circumstances demonstrated by the prescriber.

(C) A waiver may be issued to a prescriber for a period of one year as specified in Chapter 481 of the Texas Controlled Substances Act. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

(d) Controlled substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number.

(f) Opioids for the treatment of acute pain.

(1) For the treatment of acute pain, as defined in §481.07636 of the TCSA, a practitioner may not:

(A) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(B) provide for a refill of the opioid prescription.

(2) Paragraph (1) of this subsection does not apply to a prescription for an opioid approved by the U.S. Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(3) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceed the limits provided by paragraph (1) 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 March 15, 2021.

TRD-202101092

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



22 TAC §315.5

The Texas State Board of Pharmacy proposes amendments to §315.5, concerning Pharmacy Responsibility - Generally - Effective September 1, 2016. The amendments, if adopted, remove the effective date from the short title and extend the time period

for Schedule II prescriptions to be valid to no longer than 30 days to be consistent with federal law.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language and consistency between Board rules and federal law. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with federal law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.5. *Pharmacy Responsibility - Generally* [- *Effective September 1, 2016*].

(a) Upon receipt of a properly completed prescription form, a dispensing pharmacist must:

- (1) if the prescription is for a Schedule II controlled substance, ensure the date the prescription is presented is not later than 30 [24] days after the date of issuance;

(2) if multiple prescriptions are issued by the prescribing practitioner allowing up to a 90-day supply of Schedule II controlled substances, ensure each prescription is neither dispensed prior to the earliest date intended by the practitioner nor dispensed beyond 30 [24] days from the earliest date the prescription may be dispensed;

(3) record the date dispensed and the pharmacy prescription number;

(4) indicate whether the pharmacy dispensed to the patient a quantity less than the quantity prescribed; and

(5) if issued on an official prescription form, record the following information, if different from the prescribing practitioner's information:

(A) the brand name or, if none, the generic name of the controlled substance dispensed; or

(B) the strength, quantity, and dosage form of the Schedule II controlled substance used to prepare the mixture or compound.

(b) The prescription presented for dispensing is void, and a new prescription is required, if:

(1) the prescription is for a Schedule II controlled substance, 30 [24] days after issuance, or 30 [24] days after any earliest dispense date; or

(2) the prescription is for a Schedule III, IV, or V controlled substance, more than six months after issuance or has been dispensed five times during the six months after issuance.

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 March 15, 2021.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 305-8010



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 228. RETAIL FOOD

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§228.1, 228.2, 228.31 - 228.45, 228.61 - 228.83, 228.101 - 228.125, 228.141 - 228.154, 228.171 - 228.186, 228.201 - 228.213, 228.221 - 228.225, 228.241 - 228.257, and 228.271 - 228.278, and new §§228.1, 228.2, 228.31, 228.32, 228.61 - 228.64, 228.141 - 228.143, 228.171, 228.172, 228.211, 228.221 - 228.225, and 228.241 - 228.246, concerning Retail Food Establishments.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to update the requirements for retail food establishments. Texas Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors, §437.0056 authorizes the Executive Commissioner of HHSC to adopt rules and minimum standards for food safety and the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors.

The proposed rules address the requirements in Senate Bill (S.B.) 476, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 437, by adding §437.025, Requirements for Dogs in Outdoor Dining Areas; Municipal Preemption.

S.B. 476 allows, but does not require, a food service establishment to permit a customer to be accompanied by a dog in an outdoor dining area. S.B. 476 also establishes requirements for the food establishment to allow pet dogs in outdoor dining areas, such as the establishment posting a sign in a conspicuous location stating that dogs are permitted; the customer and dog access from the exterior of the establishment; and the dog not entering the interior of the establishment. S.B. 476 requires the customer to keep the dog on a leash and control the dog. It also requires that the dog not be allowed on a seat, table, countertop, or similar surface. S.B. 476 requires that in the area, the establishment does not prepare food or permit open food other than food that is being served to a customer.

The proposed rules include adoption by reference of the current U.S. Food and Drug Administration (FDA) 2017 Food Code. The proposed rules include requiring the person in charge to be a Certified Food Protection Manager (CFM), and the emergency operational plans for continued operation. The proposed rules update cooking time/temperature parameters for intact and non-intact meat and poultry. Further, the proposed rules add employee health signage, and edit and correct rule language identified by DSHS staff and stakeholders.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Chapter 228, Subchapters A-J, removes the rules from Chapter 228, concerning Retail Food, and replaces Chapter 228 with new rules with a new title of Retail Food Establishments.

Proposed new Subchapter A creates rules related to General Provisions by implementing §228.1 Purpose and Regulations and §228.2 Definitions. Section 228.1 defines the purpose of the chapter and adopts by reference the Food Code. Texas law and rules in this chapter prevail over the adopted Food Code in event of conflict. Section 228.2 updates and revises definitions applicable to the chapter.

Proposed new Subchapter B creates rules related to Management and Personnel by implementing §228.31 Certified Food Protection Manager and Food Handler Requirements and §228.32 Reporting Symptoms and Diagnosis Signage. Section 228.31 addresses requirements for the employment of at least one certified food protection manager in the establishment and changes the time frame for successful completion of a food handler course from within 60 to within 30 days of employment. Section 228.32 requires that a sign, notifying employees of a need to report symptoms of foodborne illness to management, be placed next to each handwash sink.

Proposed new Subchapter C creates rules related to Food by implementing §228.61 Approved Sources for Exotic Game Ani-

mals; §228.62 Specifications for Receiving; §228.63 Buffet Notification; and §228.64 Donation of Foods. Section 228.61 lays out source, processing, and cooking requirements for the meat of exotic game animals to be served in food establishments. Section 228.62 sets forth receiving requirements for Grade A pasteurized milk, molluscan shellfish, chicken eggs, frozen milk products, and shell stock. Section 228.63 requires notification that clean tableware be used for each trip through a self-service area. Section 228.64 allows certain foods to be donated by food establishments and outlines safe-handling requirements for donated foods.

Proposed new Subchapter E creates rules related to Water, Plumbing, and Waste by implementing §228.141 Source; §228.142 Water Quality Standards; and §228.143 Water Distribution, Delivery, and Retention Systems. Section 228.141 requires that, in the absence of a community water system, a food establishment use a food establishment drinking water from a transient noncommunity water system that complies with the Texas Commission for Environmental Quality source requirements. Section 228.142 outlines standards and sampling requirements for public and nonpublic water systems utilized by food establishments. Section 228.143 sets standards for nonpublic water fixtures used to provide drinking water to food establishments.

Proposed new Subchapter F creates rules related to Physical Facilities by implementing §228.171 Wall and Ceiling Coverings and Coatings and §228.172 Dogs in Outdoor Dining Areas of a Food Establishment. Section 228.171 suggests that food establishment walls be light in color but allows for darker colors with sufficient lighting for proper cleaning. Section 228.172, in compliance with S.B. 476, provides requirements for establishment owners who wish to allow pet dogs in outdoor dining areas.

Proposed new Subchapter G creates a rule related to Poisonous or Toxic Materials by implementing §228.211 First Aid Supplies, Availability. Section 228.211 requires that each food establishment have available a first aid kit.

Proposed new Subchapter H creates rules related to Requirements Applicable to Certain Establishments by implementing §228.221 Mobile Food Units; §228.222 Temporary Food Establishments; §228.223 Bed and Breakfast; §228.224 Outfitter Operations; and §228.225 Self-Service Food Market. Section 228.221 outlines requirements for mobile food units, to include equipment, mobility, water and wastewater, and central preparation facility requirements. Section 228.222 outlines requirements for temporary food establishments, including water and wastewater, food temperatures, equipment and warewashing, and food handler certification for at least one person. Section 228.223 lists requirements for bed and breakfast extended, bed and breakfast food establishments, and bed and breakfast limited operations. Section 228.224 sets forth requirements for outfitter operations, to include requirements for a central preparation facility and a certified food protection manager. Section 228.225 contains requirements for self-service food markets, including automatic shut-off capabilities for refrigerated units holding time and temperature control for safety food (TCS food).

Proposed new Subchapter I create rules related to Compliance by implementing §228.241 Facility and Operating Plans; §228.242 Confidentiality, Trade Secrets; §228.243 Construction Inspection and Approval, Preoperational Inspections; §228.244 Performance and Risk-Based Inspection; §228.245 Competency of Inspectors and Access; and §228.246 Investigation and

Control. Section 228.241 contains conditions for plan review for those jurisdictions that require it. Section 228.242 requires the regulatory authority to treat as confidential trade secrets encountered in permitted food establishments. Section 228.243 allows for the possibility of preoperational inspections in those jurisdictions that require them. Section 228.244 requires the regulatory authority to conduct inspections of food establishments based on performance in past inspections and risks and hazards associated with foods served and processes used. Section 228.245 sets forth competency requirements for inspectors, allowing the option either to be a Registered Sanitarian in Texas or to demonstrate competency through knowledge and training. It also sets a time frame for correction of deficiencies cited during the inspection of temporary food establishments. Section 228.246 sets conditions for the release of employees from restriction or exclusion following recovery from illness.

FISCAL NOTE

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

Ms. Sheppard has also determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules may have foreseeable implications relating to costs or revenues of local and county governments and public health districts. The costs may arise due to updates to local rules for newly referenced citations to the Food Code, update of software for digital inspection programs, and printing of new rules and inspection forms.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will repeal existing rules; and
- (7) the proposed rules may change the number of individuals subject to the rules due to the requirement for more CFMs.

DSHS has insufficient information to determine the effect of the proposed rules.

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

Donna Sheppard has also determined that there will be an adverse economic effect on small and micro-businesses. Food Code Subpart 2-102.12 requires that the person in charge always be on duty in a food establishment and be a CFM. This is a change from the current §228.33(a), which only requires the establishment to employ a single CFM. The change will require retail food establishments with extended hours potentially to employ more than one CFM in order to cover all hours of operation. While some larger jurisdictions with local health departments have already made this change (pursuant to Texas Health

and Safety Code, §437.0075), this will be a change for food establishments under DSHS jurisdiction. DSHS regulates food establishments in towns and counties without local health departments, typically in rural areas.

DSHS estimates that the number of small and micro-businesses under DSHS jurisdiction subject to the change in the rules for a CFM is 7,870, although not every establishment included in that number would require more than one CFM. DSHS estimates that 60% of 7,870 small and micro-businesses might require more than one CFM to cover all hours of operation. The cost for CFM training and testing, which can be taken online with multiple options ranges from \$80.00 - \$152.00. The projected economic impact for a small and micro-business (food establishment) under DSHS jurisdiction is \$80 - 152.00, with an average cost of \$106.12, for each extra CFM required to cover all hours of operation.

DSHS determined that alternative methods to achieve the purpose of the proposed rules for small and micro-businesses would not be consistent with ensuring the health and safety of diners consuming food prepared in establishments regulated by DSHS.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be enhanced food safety due to having a CFM on duty during all hours of operation and enhanced business opportunities due to the allowance of pet dogs in outdoor dining areas.

Donna Sheppard has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because of the change in the CFM requirement noted in the "SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS" in this preamble. Some regulated businesses may now be required to train more than one CFM in order to cover all hours of operation.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Joe Williams or Jason Guzman, DSHS Public Sanitation and Retail Food Safety Unit, at (512) 834-6753.

Written comments on the proposal may be submitted to Joe Williams or Jason Guzman, DSHS Public Sanitation and Retail Food Safety Unit, P.O. Box 149347, Austin, Texas 78714-9347 or by email to foodestablishments@dshs.texas.gov.

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 at 8407 Wall Street, Austin, Texas 78754 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 20R023" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §228.1, §228.2

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.1. *Purpose.*

§228.2. *Definitions.*

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

Filed with the Office of the Secretary of State on March 19, 2021.

TRD-202101134

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 834-6753



25 TAC §228.1, §228.2

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and

provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.1. *Purpose and Regulations.*

(a) The purpose of this chapter is to implement Texas Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors.

(b) The department adopts by reference the U.S. Food and Drug Administration (FDA) Food Code 2017 (Food Code) and the Supplement to the 2017 Food Code.

(c) The department does not adopt by reference the following sections, paragraphs, and subparagraph of the FDA Food Code, 3-202.13, 3-202.14(C), 3-202.18(A), 5-102.11, 5-102.13, 5-102.14, 5-104.11(B)(1), 6-101.11(B), 6-202.18, 8-201.11, 8-202.10, 8-203.10, 8-302.11-14, 8-303.10-30, 8-304.10, 8-304.20, 8-401.10, 8-401.20, 8-402.10, 8-402.20-40, 8-403.40, and 8-501.10-40, and the definitions for "accredited program," "drinking water," "food establishment," "game animal," "general use pesticide," "public water system," "regulatory authority," "safe material," "service animal," and "vending machine location."

(d) In the event of a conflict, Texas law and rules in this chapter prevail over the adopted Food Code.

§228.2. *Definitions.*

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

(1) Accredited program--Food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department in §229.172 of this title (relating to Accreditation of Certified Food Management Programs).

(2) Adulterated food--A food deemed to be adulterated as specified in the Texas Health and Safety Code, §431.081.

(3) Bed and breakfast extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(4) Bed and breakfast food establishment--A bed and breakfast that provides food service to customers in addition to its overnight guests.

(5) Bed and breakfast limited--An establishment that has seven or fewer rooms for rent, serves breakfast to overnight guests, and is not a retail food establishment.

(6) Central preparation facility--An approved and permitted facility or space where food is prepared, stored, and packaged.

(7) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(8) Common carrier--An individual or business that advertises to the public that it is available for hire to transport people or property, including food, in exchange for a fee.

(9) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in §229.661(b)(13) of this title (relating to Cottage Food Production Operations);

- (ii) candy;
- (iii) coated and uncoated nuts;
- (iv) unroasted nut butters;
- (v) fruit butters;
- (vi) a canned jam or jelly;
- (vii) a fruit pie;
- (viii) dehydrated fruit or vegetables, including dried

beans;

- (ix) popcorn and popcorn snacks;
- (x) cereal, including granola;
- (xi) dry mix;
- (xii) vinegar;
- (xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

- (xiv) mustard;
- (xv) roasted coffee or dry tea;
- (xvi) a dried herb or dried-herb mix;
- (xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

- (xix) frozen raw and uncut fruit or vegetables; or
- (xx) any other food that is not a TCS food, as defined in §229.661(b)(13) of this title.

(B) has an annual gross income of \$50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(10) Department--The Texas Department of State Health Services.

(11) Drinking water--Traditionally known as "potable water" and that meets the standards set forth in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking water."

(12) Event--A unique public gathering at which food products are served and for which an appropriate regulatory authority grants permission, whether by permit, license, or another official written document.

(13) Exotic animal--Member of a species of game animals not indigenous to this state, including axis deer, nilgai antelope, red sheep, or other cloven-hoofed ruminant animals.

(14) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption,

such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in this section; or

(vi) a private home that receives catered or home-delivered food.

(15) Game animals--Wild animals that are indigenous to this state and not amenable to the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(16) General use pesticide--A pesticide that is not classified by the United States Environmental Protection Agency for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(17) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons, such as a retirement home, correctional facility, or a long-term care facility.

(18) Livestock--Cattle, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, or domesticated game birds.

(19) Mobile food unit (MFU)--A vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. An MFU must completely retain its mobility at all times. An MFU does not include a stand or a booth. A roadside food vendor is classified as an MFU.

(20) Outfitter operation--Any operation, such as trail rides, bus tours, harbor cruises, or river raft trips, in which food is offered to patrons and which operates out of a central preparation location or food establishment.

(21) Plumbing Code--The International Plumbing Code, as amended, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101 (relating to Amendments to Mandatory Building Code) or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(22) Private water system--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(23) Public water system--A drinking water system that complies with 30 TAC §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(24) Pushcart--A non-self-propelled MFU limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and readily movable by one or two persons. A pushcart is classified as an MFU. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of MFU requires the support of a central preparation facility.

(25) Regulatory authority--The department, the local (municipality, county, or public health district), federal enforcement body, or authorized representative having jurisdiction over the food establishment.

(26) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as an MFU.

(27) Safe material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in the article becoming a component of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Texas Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the U.S. Food and Drug Administration.

(28) Self-service food market--A market that is unstaffed and offers prepackaged non-TCS food and prepackaged refrigerated or frozen TCS food that is stored in equipment that complies with §228.225 of this chapter (relating to Self-Service Food Market).

(29) Service animal--A canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability as specified in Texas Health and Safety Code, §437.023.

(30) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and that includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include self-service food markets.

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SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §§228.31 - 228.45

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.31. *Responsibility.*

§228.32. *Knowledge.*

§228.33. *Certified Food Protection Manager and Food Handler Requirements.*

§228.34. *Duties.*

§228.35. *Responsibilities and Reporting Symptoms and Diagnosis.*

§228.36. *Conditions of Exclusions and Restrictions.*

§228.37. *Managing Exclusions and Restrictions.*

§228.38. *Hands and Arms.*

§228.39. *Fingernail Maintenance.*

§228.40. *Jewelry Prohibition.*

§228.41. *Outer Clothing, Clean Condition.*

§228.42. *Food Contamination Prevention.*

§228.43. *Hair Restraints.*

§228.44. *Animals, Handling Prohibitions.*

§228.45. *Contamination Events.*

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25 TAC §228.31, §228.32

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and

provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.31. Certified Food Protection Manager and Food Handler Requirements.

(a) The original food manager certificate shall be posted in the food establishment in a location that is conspicuous to consumers.

(b) Except in a temporary food establishment, at least one certified food protection manager must be employed by each food establishment.

(c) All food employees, except for the certified food protection manager, shall successfully complete an accredited food handler training course, within 30 days of employment. This requirement does not apply to temporary food establishments.

(d) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.

§228.32. Reporting Symptoms and Diagnosis Signage.

A food establishment shall post a sign or poster, clearly visible to food employees, by all handwashing sinks. The sign or poster shall notify food employees to report symptoms and diagnosis information about their health as it relates to diseases that are transmissible through food.

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SUBCHAPTER C. FOOD

25 TAC §§228.61 - 228.83

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.61. *Condition Safe, Unadulterated, and Honestly Presented.*

§228.62. *Approved Sources.*

§228.63. *Specifications for Receiving.*

§228.64. *Molluscan Shellfish, Original Container and Records.*

§228.65. *Preventing Contamination by Employees.*

§228.66. *Preventing Food and Ingredient Contamination.*

§228.67. *Preventing Contamination From Ice Used as a Coolant.*

§228.68. *Preventing Contamination From Equipment, Utensils, and Linens.*

§228.69. *Preventing Contamination From the Premises.*

§228.70. *Preventing Contamination by Consumers.*

§228.71. *Cooking.*

§228.72. *Freezing.*

§228.73. *Reheating for Hot Holding.*

§228.74. *Juice Packaged in a Food Establishment.*

§228.75. *Temperature and Time Control.*

§228.76. *Specialized Processing Methods, Variance Requirement.*

§228.77. *Clostridium Botulinum and Listeria Monocytogenes Controls.*

§228.78. *Food Identity, Presentation, On-premises Labeling, and Accurate Representation.*

§228.79. *Labeling.*

§228.80. *Consumer Advisory.*

§228.81. *Contaminated Food, Disposition.*

§228.82. *Additional Safeguards, Special Requirements for Serving Highly Susceptible Populations.*

§228.83. *Donation of Foods.*

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25 TAC §§228.61 - 228.64

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.61. Approved Sources for Exotic Game Animals.

(a) Exotic animals. If exotic animals are received for sale or service, they shall:

(1) be commercially raised for food; and

(A) raised, slaughtered, processed, and deemed to be "inspected and approved" under an inspection program administered by United States Department of Agriculture (USDA) in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection; or

(B) raised, slaughtered, processed, and deemed to be "inspected and passed" under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to USDA inspection;

(2) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (1)(A) or (B) of this subsection; and

(3) as allowed by law, for exotic animals that are field dressed:

(A) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (1)(A) or (B) of this subsection; and

(B) be transported and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (1)(A) or (B) of this subsection.

(b) Cooking. Exotic animals shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the methods for cooking game animals according to Food Code, §3-401.11, and under a voluntary inspection program as specified in subsection (a) of this section.

§228.62. Specifications for Receiving.

(a) Temperature.

(1) Grade A pasteurized milk shall be received in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius (45 degrees Fahrenheit) or less.

(2) Molluscan shellfish shall be received in refrigerated equipment or on ice that maintains a temperature of seven degrees Celsius (45 degrees Fahrenheit) or less, as required in the Texas Molluscan Shellfish Rules, §241.61(a) of this title (relating to Molluscan Shell Stock Temperature Control).

(b) Chicken Eggs. Chicken eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR 56, Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs, and 9 CFR 590, Inspection of Eggs and Egg Products.

(c) Frozen milk products. Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Frozen Desserts Manufacturer Licensing Act, Texas Health and Safety Code, Chapter 440, and 21 CFR 135, Frozen Desserts.

(d) Shell stock identification. Shell stock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shell stock, as specified in §§241.50 - 241.71 of this title (relating to Molluscan Shellfish).

§228.63. Buffet Notification.

A card, sign, or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas, such as salad bars and buffets as specified in Food Code, §3-304.16.

§228.64. Donation of Foods.

(a) Previous service. Except as specified in paragraphs (1) and (2) of this subsection, foods which have been previously served to a consumer may not be donated.

(1) Packaged time and temperature control for safety foods (TCS foods), such as unopened milk, may be re-served or donated if immediately stored in a cooling bin maintained at five degrees Celsius (41 degrees Fahrenheit) or below.

(2) The following food products may be re-served or donated.

(A) Packaged non-TCS foods.

(B) Whole fruit, such as apples or bananas.

(b) Unpackaged and unserved foods. Unpackaged and unserved TCS foods may be donated if:

(1) the temperature of the food is at or below five degrees Celsius (41 degrees Fahrenheit), or an ambient temperature of seven degrees Celsius (45 degrees Fahrenheit) for raw shell eggs, at the time of donation, and is protected from contamination;

(2) the food has been at or above 57 degrees Celsius (135 degrees Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements in Food Code, §3-501.14 and §3-501.15, or maintained at proper holding temperatures required in Food Code, §3-501.16;

(3) the donor can substantiate that the food recipient has the facilities to meet the transportation, storage, and reheating requirements of this chapter; and

(4) the food is to be transported by the food recipient directly to a consumer, the recipient only needs to meet the transportation requirements in this chapter, including holding temperatures.

(c) Labeling. Donated foods transported offsite shall be labeled with the name of the food, the source of the food, and the date of preparation.

(d) Shelf life. Donated TCS foods may not exceed the shelf life for leftover foods outlined in this chapter.

(e) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling shall not be donated.

(f) Distressed foods.

(1) Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer.

(2) Such foods in paragraph (1) of this subsection may be sold or donated to a licensed food salvage establishment if permitted under the provisions of the Texas Health and Safety Code, Chapter 432.

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SUBCHAPTER D. EQUIPMENT, UTENSILS, AND LINENS

25 TAC §§228.101 - 228.125

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and

Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

- §228.101. *Multiuse Materials.*
- §228.102. *Single-service and Single-use, Characteristics.*
- §228.103. *Durability and Strength.*
- §228.104. *Cleanability.*
- §228.105. *Accuracy of Temperature Measuring Devices.*
- §228.106. *Functionality of Equipment.*
- §228.107. *Equipment, Numbers and Capacities.*
- §228.108. *Utensils, Temperature Measuring Devices, and Testing Devices.*
- §228.109. *Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.*
- §228.110. *Installation.*
- §228.111. *Equipment, Maintenance and Operation.*
- §228.112. *Utensils and Temperature and Pressure Measuring Devices.*
- §228.113. *Cleaning of Equipment and Utensils.*
- §228.114. *Frequency of Cleaning.*
- §228.115. *Methods of Cleaning.*
- §228.116. *Sanitization Objectives, Food-contact Surfaces and Utensils.*
- §228.117. *Sanitization Frequency, Before Use After Cleaning.*
- §228.118. *Sanitization Methods, Hot Water and Chemicals.*
- §228.119. *Laundrying, Clean Linens.*
- §228.120. *Laundrying, Frequency, Specifications.*
- §228.121. *Laundrying Methods.*
- §228.122. *Drying, Equipment and Utensils.*
- §228.123. *Lubricating and Reassembling.*
- §228.124. *Storage.*
- §228.125. *Preventing Contamination.*

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SUBCHAPTER E. WATER, PLUMBING, AND WASTE

25 TAC §§228.141 - 228.154

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

- §228.141. *Source.*
- §228.142. *Water Quality Standards.*
- §228.143. *Water Quantity and Availability.*
- §228.144. *Water Distribution, Delivery, and Retention Systems.*
- §228.145. *Plumbing Systems, Approved Materials.*
- §228.146. *Plumbing Design, Construction, and Installation.*
- §228.147. *Plumbing, Numbers and Capacities.*
- §228.148. *Plumbing, Location and Placement.*
- §228.149. *Plumbing, Operation and Maintenance.*
- §228.150. *Sewage Retention, Drainage, and Delivery.*
- §228.151. *Disposal Facility.*
- §228.152. *Refuse, Recyclables, and Returnables, Facilities on the Premises.*
- §228.153. *Refuse Removal.*
- §228.154. *Facilities for Disposal and Recycling, Community or Individual Facility.*

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◆ ◆ ◆
25 TAC §§228.141 - 228.143

STATUTORY AUTHORITY

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The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

- §228.141. *Source.*
A water source obtained from other than a community public water system shall be sampled and analyzed in accordance with the requirements found in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

§228.142. Water Quality Standards.

(a) Public and private water systems.

(1) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations, state drinking water quality standards in accordance with 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems); and

(2) Water from a nonpublic water system shall meet the requirements of 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), pertaining to transient noncommunity water systems.

(b) Sampling. Water from a nonpublic water system shall be sampled and tested according to 30 TAC Chapter 290, Subchapter F, concerning transient noncommunity water systems, except nondrinkable water.

(c) Sample report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment, or the report shall be maintained as specified in 30 TAC Chapter 290, Subchapter F, concerning transient noncommunity water systems.

§228.143. Water Distribution, Delivery, and Retention Systems.

Nonpublic water mains, water pumps, pipes, hoses, connections, and other appurtenances shall meet the requirements of 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

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SUBCHAPTER F. PHYSICAL FACILITIES

25 TAC §§228.171 - 228.186

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.171. Indoor Areas, Surface Characteristics.

§228.172. Outdoor Areas, Surface Characteristics.

§228.173. Floors, Walls, and Ceilings.

§228.174. Functionality.

§228.175. Handwashing Sinks.

§228.176. Toilets and Urinals.

§228.177. Lighting Intensity.

§228.178. Ventilation, Mechanical.

§228.179. Dressing Areas and Lockers, Designation.

§228.180. Service Sinks, Availability.

§228.181. Handwashing Sinks, Conveniently Located.

§228.182. Toilet Rooms, Convenience and Accessibility.

§228.183. Employee Accommodations, Designated Areas.

§228.184. Distressed Merchandise, Segregation and Location.

§228.185. Receptacles, Waste Handling Units, and Designated Storage Areas.

§228.186. Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials.

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25 TAC §§228.171, §228.172

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The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.171. Wall and Ceiling Coverings and Coatings.

(a) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment and utensil washing areas, toilet rooms and vestibules should be light in color or meet the requirements and approval of the regulatory authority.

(b) Darker-colored coverings for the items listed in subsection (a) of this section may require additional lighting, as specified in Food Code, §6-303.11, or meet the requirements set by the regulatory authority, to allow cleaning of the surface.

§228.172. Dogs in Outdoor Dining Areas of a Food Establishment.

Dogs may be allowed in outdoor dining areas of a food establishment if:

(1) the establishment posts a sign in a conspicuous location in the area stating that dogs are allowed;

(2) the customer and dog access the area directly from the exterior of the establishment;

(3) the dog does not enter the interior of the establishment;

(4) the customer keeps the dog on a leash and controls the dog;

(5) the customer does not allow the dog on a seat, table, countertop, or similar surface; and

(6) in the area, the establishment does not:

(A) prepare food; or

(B) permit open food other than food that is being served to a customer; and

(7) the requirements specified in this section do not apply to service animals or service animals in training.

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SUBCHAPTER G. POISONOUS OR TOXIC MATERIALS

25 TAC §§228.201 - 228.213

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.201. *Original Containers, Identifying Information, Prominence.*

§228.202. *Working Containers, Common Name.*

§228.203. *Storage, Separation.*

§228.204. *Presence and Use.*

§228.205. *Container Prohibitions, Poisonous or Toxic Material Containers.*

§228.206. *Chemicals.*

§228.207. *Lubricants, Incidental Food Contact, Criteria.*

§228.208. *Pesticides.*

§228.209. *Medicines.*

§228.210. *First Aid Supplies, Availability.*

§228.211. *First Aid Supplies, Storage.*

§228.212. *Other Personal Care Items, Storage.*

§228.213. *Storage and Display, Separation.*

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

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25 TAC §228.211

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rule implements Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.211. *First Aid Supplies, Availability.*

A first aid kit shall be provided in all food establishments.

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

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SUBCHAPTER H. REQUIREMENTS APPLICABLE TO CERTAIN ESTABLISHMENTS

25 TAC §§228.221 - 228.225

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

- §228.221. *Mobile Food Units.*
- §228.222. *Temporary Food Establishments.*
- §228.223. *Bed and Breakfast.*
- §228.224. *Outfitter Operations.*
- §228.225. *Self-Service Food Market.*

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

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25 TAC §§228.221 - 228.225

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.221. Mobile Food Units.

(a) Mobile food unit provisions.

(1) General. Except as otherwise provided in this paragraph and in paragraph (2) of this subsection, the regulatory authority:

(A) may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation;

(B) may prohibit the sale of some or all time and temperature control for safety foods (TCS foods); and

(C) when no health hazard will result, may waive or modify requirements of this section relating to physical facilities, except those requirements as specified in paragraphs (7) - (9) of this subsection, subsection (c)(1)(A) - (E) of this section, and Food Code, Subparts 3-401, 3-402, 3-403, 3-404, and 3-501.

(2) Restricted operation. A mobile food unit (MFU) that serves only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time and temperature control for safety food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of this chapter, relating to the necessity of water and sewage systems nor to those requirements, relating to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Readily movable.

(A) The regulatory authority prohibits alteration, removal, attachments, additions, placement, or change in, under, or upon the MFU that prevents or otherwise reduces ready mobility.

(B) A regulatory authority may require an MFU to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the MFU is readily moveable.

(4) Initial Permitting Inspection. The regulatory authority requires an MFU to come to a location designated by the regulatory authority. The mobile unit must be totally operable at time of inspection, including handwash facilities, warewash facilities, refrigeration, and wastewater disposal. Required documentation to have available includes:

(A) Certified Food Protection Manager Certification.

(B) Central Preparation Facility Authorization (if required). A signed letter of authorization is required, to verify facility use, if the central preparation facility is not owned by the mobile unit operator.

(C) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.

(D) Servicing Area Authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.

(E) Menu. A menu of all food items to be sold.

(5) Single-service articles. An MFU shall provide only single service articles for use by the consumer.

(6) Equipment, numbers, and capacities.

(A) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Food Code, Chapter 3 - Food.

(B) Manual warewashing, sink compartment requirements.

(i) A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils as specified in Food Code, Paragraph 4-301.12(A).

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified in Food Code, Paragraph 4-301.12(B).

(C) At least one handwashing sink shall be available for convenient use by employees and properly provisioned in accordance with Food Code, §6-301.11-12.

(7) Mobile water system materials, design, and operation. MFU water systems shall meet the requirements of Food Code, Part 5-3.

(8) MFU drinking water tank shall meet the requirements of Food Code, §5-303.13.

(A) Fill hose and water holding tank shall be labeled as "Potable Water."

(B) Drinking water in an MFU holding tank shall be tested for contamination by sampling upon request by the regulatory authority.

(9) Sewage and other liquid waste.

(A) If liquid waste results from operation of an MFU, the waste shall be stored in a permanently installed retention tank for waste retention.

(B) A leak-proof sewage holding tank in an MFU shall meet the requirements of Food Code, §5-401.11 for capacity and drainage.

(C) All connections on the vehicle for servicing the MFU waste disposal facilities shall be of a different size or type than those used for supplying potable water to the MFU.

(D) Discharge liquid waste shall not be discharged from the retention tank while the MFU is in motion.

(E) Flushing a waste retention tank shall meet the requirements of Food Code, §5-402.15.

(F) Removing MFU wastes shall meet the requirements of Food Code, §5-402.14.

(G) Liquid waste holding tank shall be labeled as "waste water."

(10) MFU water and wastewater exemption.

(A) A roadside vendor that sells only prepackaged food is exempt from the requirements of this chapter relating to water and wastewater.

(B) An MFU that prepares food requiring no water for operations and no hand contact with food is exempt from the requirements of this chapter relating to water and wastewater if the required cleaning and sanitization equipment exists at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in Food Code, Paragraph 5-203.11(C).

(11) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. An MFU shall operate from a central preparation facility or other fixed food establishment and shall report to such location daily for supplies, cleaning, and servicing operations.

(2) Construction. The central preparation facility or other fixed food establishment, used as a base of operation for an MFU, shall be constructed and operated in compliance with the requirements of Food Code, Chapter 6 - Physical Facilities.

(c) Outdoor servicing area and operations.

(1) Protection.

(A) An MFU servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(B) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.

(C) A servicing area will not be required where only packaged food is placed on the MFU or where an MFU does not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or

machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of Food Code, §6-201.11.

§228.222. Temporary Food Establishments.

(a) General. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time and temperature control for safety foods (TCS foods), and when no health hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of this chapter.

(1) Foods that are not prepared on-site or that require extensive preparation or cooking must be prepared at a licensed food establishment.

(2) Each temporary establishment may be required by the regulatory authority to have at least one person on-site who has a minimum of an accredited food handler certification.

(b) Food temperatures. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter (relating to Specifications for Receiving), and §228.64 of this chapter (relating to Donation of Foods).

(c) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of Food Code, Chapter 3 - Food. The ice shall be obtained only in blocked, chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in the bags until it is dispensed and be dispensed in a way that protects it from contamination.

(d) Equipment and utensils.

(1) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the temporary food establishment.

(3) Hot and cold holding equipment. Equipment for cooling or heating food and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified in Food Code, Subparts 3-401-403 and 3-501.

(4) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a three-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment. Each compartment shall be large enough to immerse the largest piece of equipment that will be used. A means to heat water must also be provided.

(e) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.

(f) Water.

(1) Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.

(2) Water does not need to be under pressure but shall come from approved sources which include:

- (A) commercially bottled drinking water;
- (B) closed portable water containers;
- (C) enclosed vehicular water tanks;
- (D) on-premise water storage tanks; or
- (E) piping, tubing or hoses connected to an approved

source.

(g) Wet storage. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(h) Sewage. All waste water and sewage generated from the temporary food establishment shall be disposed of through an approved sanitary sewage system that is:

(1) a public sewage system; or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(i) Handwashing. Handwashing facilities shall include a container with a spigot that provides potable, clean, warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.

(j) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel covered with mats, ply-wood, removable platforms, duckboards if covered with mats, or other suitable materials approved by the regulatory authority, such as tarps, that effectively control dust and mud.

(k) Ceilings and outer openings of food preparation areas.

(1) Walls and Ceilings. Walls and ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.

(2) Outer openings. The outer openings shall be protected against entry of insects and rodents by:

- (A) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;
- (B) properly designed and installed air curtains; or
- (C) other effective means.

(3) Exclusion provision. Paragraph (2) of this subsection does not apply if flying insects and other pests are absent due to the location of the temporary food establishment or other limiting conditions.

§228.223. Bed and Breakfast.

(a) General.

(1) A bed and breakfast extended, in addition to licensing with the applicable regulatory authority, shall comply with the minimum requirements of this section if the establishment:

(A) has more than seven rooms for rent; or

(B) provides food service other than breakfast to overnight guests.

(2) A bed and breakfast food establishment that provides food service to customers in addition to its overnight guests must comply with the rules and regulations applicable to retail food establishments, including licensing with the applicable regulatory authority.

(3) A bed and breakfast limited:

(A) has seven or fewer rooms for rent;

(B) serves only breakfast to overnight guests;

(C) is not a retail food establishment; and

(D) complies with subsection (b) of this section.

(b) Certified food protection manager. The owner or manager shall successfully complete a food manager's certification course accredited by this department.

(c) Food supplies. Food shall be obtained from approved sources in accordance with Food Code, Subpart 3-201, §228.61 of this chapter (relating to Approved Sources for Exotic Game Animals), and §228.62 of this chapter (relating to Specifications for Receiving) and shall be in sound condition and be safe for human consumption.

(d) Food preparation and protection.

(1) Food preparation and protection. Food shall be prepared and protected in accordance with Food Code, Chapter 3 - Food.

(2) Temperature requirements. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter, and §228.64 of this chapter (relating to Donation of Foods).

(e) Cleaning and sanitizing.

(1) Manual. A three-compartment sink shall be used if washing, rinsing, and sanitizing of utensils and equipment is done manually; or a two-compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.

(2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.

(f) Personal hygiene. Employees shall conform to good hygienic practices as required in in Food Code, Subparts 2-301-304 and 2-401-402.

(g) Employee restrooms. A restroom shall be available for use by employees.

(h) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(i) Handwash sinks.

(1) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas and restrooms.

(2) Intended use. Handwash sinks shall be used for no other purpose other than handwashing.

(j) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the bed and breakfast establishment shall be smooth, non-absorbent and easily cleanable.

(k) Insect proof/rodent proof.

(1) Construction. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Chemical control. Pesticides and rodenticides shall be applied in accordance with Food Code, Subpart 7-206.

(l) Equipment. Equipment shall be provided to maintain time and temperature control for safety foods (TCS foods) at the temperatures required in accordance with Food Code, Chapter 3 - Food.

(m) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(n) Sewage. Sewage shall be disposed through an approved facility that is:

(1) a public sewage system; or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to law in 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(o) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source that meets the standards in accordance with:

(1) state drinking water quality standards in accordance with 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems); or

(2) private water system standards as provided in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

§228.224. Outfitter Operations.

(a) General. Requirements in this section are specific for outfitter operations. The regulatory authority may impose additional requirements to protect against health hazards that may be specific to these operations.

(b) Food supplies. Food supplies, including ice, shall be obtained from approved sources described in Food Code, §3-201.11-17 (relating to Sources), §228.61 of this chapter (relating to Approved Sources for Exotic Game Animals), and §228.62 of this chapter (relating to Specifications for Receiving). No home-prepared products shall be offered.

(c) Food temperatures. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter, and §228.64 of this chapter (relating to Donation of Foods).

(d) Food preparation and protection for excursions.

(1) Except for paragraphs (2) - (4) of this subsection, all food shall be prepared and protected in central preparation facility and meet requirements contained in Food Code, Chapter 3 - Food.

(2) Only commercially prepackaged ready-to-eat foods or ready-to-eat foods that have been prepared and packaged with no cooking at a central preparation facility may be served.

(3) Raw time and temperature control for safety foods (TCS foods) may be cooked on-site if cooked and immediately served.

(4) All food must be stored to protect from contamination in accordance with Food Code, Chapter 3 - Food.

(5) TCS foods that require complex preparation must be served within the first 24 hours of the excursion departure time.

(6) Leftovers. Leftover food shall not be re-heated or re-served.

(e) Warewashing.

(1) Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used for washing and sanitizing utensils when approved by the regulatory authority.

(2) An outfitter operation without effective facilities for cleaning and sanitizing tableware shall only provide single-service articles for use by food employees and consumers.

(f) Ice usage.

(1) Ice that is used for cooling food may not be used for human consumption.

(2) Ice used for human consumption must be stored in a clean sanitized container that is properly constructed and maintained in good repair.

(g) Potable water.

(1) Potable water shall be used on excursions for human consumption, food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.

(2) Potable water must be stored in a clean sanitized container that is easily cleanable and good condition.

(h) Handwashing.

(1) Handwashing facilities shall include:

(A) a container with a spigot that can be turned on to allow potable, clean, water;

(B) a wastewater container;

(C) soap;

(D) disposable towels; and

(E) a waste receptacle.

(2) Handwashing facilities are not required if the only food items offered are commercially prepackaged foods that are dispensed in their original containers.

(i) Equipment. All equipment and utensils intended for food contact shall be approved for food use.

(j) Thermometers. Thermometers shall be provided, accurate, and accessible during excursions.

(k) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(l) Certified food protection manager. If food other than prepackaged ready-to-eat food is being served, at least one guide or instructor of the outfitter operation, who is on the excursion, shall successfully complete a food manager's certification course accredited by this department.

(m) Central preparation facility. An outfitter operation must have a central preparation facility as specified in §228.2(20) of this chapter (relating to Definitions).

§228.225. Self-Service Food Market.

(a) Self-service food markets shall comply with the minimum standards of this section.

(b) Self-service food markets shall:

(1) be equipped with 24/7 video surveillance records of consumers viewing, selecting, handling, and purchasing products that identify these consumers. Video surveillance records must be maintained and available for the regulatory authority for a period of 14 calendar days from the date of the video; and

(2) provide information to the regulatory authority as to the responsible party that will be available for routine inspections.

(c) Pre-packaged food sold at a self-service food market shall:

(1) meet the labeling requirements as specified in Food Code, Paragraph 3-201.11(C); and

(2) be tamper evident.

(d) A food specified in Food Code, Paragraphs 3-501.17(A) or (B) or §3-501.18 shall be discarded if it:

(1) exceeds the temperature or time specified in Food Code, Paragraphs 3-501.17(A) and (B), except time that the product is frozen;

(2) is in a container or package that does not bear an expiration date or day; or

(3) is not appropriately marked with a date or day that exceeds the temperature and time combination as specified in Food Code, Paragraphs 3-501.17(A) and (B).

(e) All self-service food market display-units offering refrigerated, time and temperature control for safety foods (TCS foods) shall have an automatic shut-off control or a plan approved by the regulatory authority that prevents the market or market equipment from dispensing food if:

(1) there is a power failure, mechanical failure, or other condition that results in failure of the equipment to maintain food temperatures as specified under Food Code, Chapter 4 - Equipment, Utensils, and Linens; and

(2) where a condition specified in paragraph (1) of this subsection occurs, until the equipment is serviced and restocked with food that has been maintained at temperatures specified in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter (relating to Specifications for Receiving), and §228.64 of this chapter (relating to Donation of Foods).

(f) When a condition specified in subsection (e)(1) of this section occurs, the ambient temperature may not exceed five degrees Celsius (41 degrees Fahrenheit), or seven degrees Celsius (45 degrees Fahrenheit) for a unit holding raw shell eggs only, for more than 30 minutes immediately after the display is filled, serviced, or restocked.

(g) All self-service food market display-units offering TCS food, shall be:

(1) equipped with a self-closing door; or

(2) maintained at five degrees Celsius (41 degrees Fahrenheit), or seven degrees Celsius (45 degrees Fahrenheit) for raw shell eggs, if it is an open display unit.

(h) Self-service food markets shall have a sign readily visible from the automated payment kiosk stating:

(1) the name of the business to whom complaints or comments shall be addressed;

(2) the address of the business responsible for the market; and

(3) the responsible business's telephone number and email or web information, when applicable.

(i) When a retail food establishment operating as a self-service food market incorporates the provision in this section, it will not be required to maintain a person in charge onsite as specified in Food Code, Paragraph 2-101.11(A).

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SUBCHAPTER I. COMPLIANCE

25 TAC §§228.241 - 228.257

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.241. *Use for Intended Purpose.*

§228.242. *Additional Requirements.*

§228.243. *Variances.*

§228.244. *Facility and Operating Plans.*

§228.245. *Confidentiality, Trade Secrets.*

§228.246. *Construction Inspection and Approval, Preoperational Inspections.*

§228.247. *Permit Requirement, Prerequisite for Operation.*

§228.248. *Conditions of Retention, Responsibilities of the Permit Holder.*

§228.249. *Inspection Frequency, Performance-based and Risk Based.*

§228.250. *Competency of Inspectors and Access.*

§228.251. *Report of Findings.*

§228.252. *Imminent Health Hazard.*

§228.253. *Priority Item/Priority Foundation Item, Time Frame for Correction.*

§228.254. *Core Item Violations, Time Frame for Correction.*

§228.255. *Examination and Detention of Food.*

§228.256. *Investigation and Control.*

§228.257. *Reporting of Communicable Diseases.*

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25 TAC §§228.241 - 228.246

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The new rules implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.241. *Use for Intended Purpose.*

Plans may be required by the regulatory authority for:

(1) the construction of a food establishment;

(2) the conversion of an existing structure for use as a food establishment; or

(3) the remodeling of a food establishment or a change of type of food establishment or food operation, or under the conditions set by the regulatory authority, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this section.

§228.242. *Confidentiality, Trade Secrets.*

In accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, the regulatory authority shall treat as confidential the information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in Food Code, §8-201.12 and §8-201.14.

§228.243. *Construction Inspection and Approval, Preoperational Inspections.*

The regulatory authority may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified in Food Code, Paragraph 8-201.12(E), and is in compliance with this chapter.

§228.244. *Performance and Risk Based Inspection.*

The regulatory authority shall inspect each food establishment based upon an assessment of the food establishment's history of compliance

with this chapter and the potential for causing foodborne illness by evaluating:

(1) past performance, for nonconformance with Food Code or Hazard Analysis Critical Control Point (HACCP) plan requirements that are priority items or priority foundation items;

(2) past performance, for numerous or repeat violations of code or HACCP plan requirements that are core items;

(3) past performance, for complaints investigated and found to be valid;

(4) the hazards associated with the particular foods that are prepared, stored, or served;

(5) the type of operation including the methods and extent of food storage, preparation, and service;

(6) the number of people served;

(7) whether the population served is a highly susceptible population; and

(8) any other risk factors deemed relevant to the operation by the regulatory authority.

§228.245. *Competency of Inspectors and Access.*

(a) Competency of inspectors. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas or a Sanitarian-in-Training in Texas, as defined in 16 TAC Chapter 119, or should meet the U.S. Food and Drug Administration Voluntary National Retail Food Regulatory Program Standards basic curriculum and field training elements in order to:

(1) assure application of basic scientific principles, including Hazard Analysis Critical Control Point principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of this chapter; and

(4) assure fair and uniform enforcement of this chapter.

(b) Verification and documentation of correction. In the case of temporary food establishments, all priority and priority foundation items must be corrected immediately, and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations upon execution of an Emergency Suspension or Closing Order until authorized to resume by the regulatory authority.

§228.246. *Investigation and Control.*

Removal of restriction or exclusion. The regulatory authority shall release a food employee or conditional employee from restriction or exclusion according to Texas Health and Safety Code, §438.033, and the conditions specified under Food Code, §2-201.13.

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 March 19, 2021.

TRD-202101152

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 834-6753

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SUBCHAPTER J. PRIVATE WATER SYSTEMS

25 TAC §§228.271 - 228.278

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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§228.271. *Water Supply and Pressure.*

§228.272. *Water Quality.*

§228.273. *Backflow Prevention.*

§228.274. *Disinfection of New or Repaired Water System Facilities.*

§228.275. *Flushing of Water System Mains.*

§228.276. *Collection System Location.*

§228.277. *Well Logs.*

§228.278. *Interconnection.*

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

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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6753

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CHAPTER 289. RADIATION CONTROL

SUBCHAPTER E. REGISTRATION

REGULATIONS

25 TAC §289.226

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §289.226, concerning Registration of Radiation Machine Use and Services.

BACKGROUND AND PURPOSE

The purpose of the amendment is to correct rule citation references and define registrant responsibilities. Other changes to §289.226 include clarifying rule requirements as suggested by staff and stakeholders and updating terminology. The amendment clarifies qualifications for radiation safety officers (RSOs), requires RSOs to review operating and safety procedures at least annually, and clarifies the service company responsibility to perform equipment performance evaluations on radiation machines within 30 days of installation or repair that affects radiation output. In addition, the amendment adds safety requirements to Operating and Safety Procedures and strengthens the

requirements for quality control of digital imaging. Minor editorial changes were made to create less ambiguity within the amendment.

Texas Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.226 has been reviewed and DSHS has determined that the reasons for adopting the section continue to exist because a rule on this subject is needed to protect public health and safety and to fulfill DSHS's statutory responsibilities as the state's Radiation Control Agency.

SECTION-BY-SECTION SUMMARY

The term "department" replaces the former term "agency" throughout §289.226 for consistency with the use of "department" in 25 Texas Administrative Code.

Amended §289.226(a)(2) modifies the requirements for the registration of person using radiation machines. Subsection (a)(2)(A) adds a requirement that no person can use a radiation machine unless they have a certificate of registration.

Amended §289.226(b)(11)(B) adds the measurement of air kerma for a machine registered under §289.229 as a service that requires registration as a service company.

Amended §289.226(b)(11)(E) clarifies that any company that must energize a radiation machine for demonstration or sale of radiation machines or image acquisition systems must register as a service company.

Amended §289.226(b)(16) defines the term "veterinary-use" for this section.

Amended §289.226(c)(1) adds a prohibition that no person shall be exposed to useful beam for training, demonstration, or other non-healing arts purposes.

Amended §289.226(c)(3) adds a prohibition that radiation machines must be designated for human-use or veterinary-use but cannot be designated as both, unless performing research or approval is granted by the agency.

Amended §289.226(d)(8) adds an exemption for bone densitometry systems from the requirement to perform equipment performance evaluations.

Amended §289.226(e)(3)(B) adds qualifications for approval of a RSO according to facility types.

Amended §289.226(e)(3)(B)(i)(II) adds qualifications for approval of a non-practitioner to become an RSO.

Amended §289.226(e)(3)(B)(i)(III) adds qualifications for approval of a person to become an RSO without being a licensed practitioner or having radiation machine-related credentials.

Amended §289.226(e)(3)(B)(i)(III)(-a-) adds the list of credentials that a person must have in order to become an RSO without being a licensed practitioner or having radiation machine-related credentials.

Amended §289.226(e)(3)(B)(i)(III)(-b-) adds additional documentation that must be provided to qualify as a non-practitioner RSO without radiation machine-related credentials.

Amended §289.226(e)(3)(B)(ii) requires academic institutions or research and development facilities to have RSOs who are faculty or staff members with a bachelor's degree or higher in a

radiation-related field and at least two years of supervised experience in the use of radiation machines.

Amended §289.226(e)(3)(B)(ii)(I) and (II) lists documentation required for §289.226(e)(3)(B)(ii).

Amended §289.226(e)(3)(E) adds stipulation that DSHS may determine that a person, who otherwise meets the RSO requirements of this section, may be unqualified based on the person's regulatory compliance history.

Amended §289.226(e)(5) removes laser, laser services, laser hair removal facilities, laser hair removal training programs, and laser hair removal individuals since these programs have moved to the Texas Department of Licensing and Regulation.

Amended §289.226(e)(7) clarifies the reference for registration fees that can be found at §289.204 of this title.

Amended §289.226(e)(8)(B) clarifies that applications must file an assumed names certificate with the Texas Secretary of State instead of with the county clerk in the county where the business is located.

Amended §289.226(f)(1)(B) adds electronic brachytherapy machines to the list of accelerators that must apply for and receive a certificate of registration before using the machine.

Amended §289.226(f)(5) clarifies documentation and credentials required for registration of accelerators, therapeutic radiation machines, and electronic brachytherapy devices used on humans.

Amended §289.226(h)(2)(G) removes the requirement to provide training data for approval of registration for healing arts screening.

Amended §289.226(h)(3) adds the requirement that screening standards and procedures shall meet national standards such as those recommended by the American College of Radiology or other national standards.

Amended §289.226(i)(2) adds reference to §289.255 of this title for industrial radiographic operations.

Amended §289.226(i)(3) adds that the applicant must receive a certificate of registration from the agency before operating industrial radiographic machines.

Amended §289.226(m)(3) adds electronic brachytherapy machines to the list of machines that require agency approval before using the machine.

Amended §289.226(m)(13)(C) adds that companies who provide demonstrations and sales of radiation machines may never expose individuals to a useful beam except for healing arts purposes and unless such exposure has been specifically and individually ordered by a licensed practitioner of the healing arts.

Amended §289.226(m)(13)(C)(i) - (iii) adds specific examples in which deliberate exposure of humans to the useful beam is strictly prohibited.

Amended §289.226(m)(13)(E) states that a service company that demonstrates radiation machines for healing arts purposes must perform and document machine testing to meet the requirements of §289.227 of this title.

Amended §289.226(n)(1)(A)(i) revises the requirement that RSOs must review the chapter and policies and procedures at an interval not to exceed 12 months to ensure procedures are current and conform with the chapter.

Amended §289.226(n)(1)(A)(ii) adds that RSOs are responsible for the facility's compliance with the rules.

Amended §289.226(n)(1)(E) makes the RSO responsible to ensure corrective actions for violations issued by the agency are implemented to avoid repeat violations.

Amended §289.226(n)(3) adds that the RSO shall make entries of the dosimetry monitoring records from subsection (n)(1)(B) of this section at intervals not to exceed 30 days after receipt of a monitoring report.

Amended §289.226(o)(5)(B) corrects rule citation references.

Amended §289.226(o)(7)(D) adds requirements that a radiation machine must have the entrance exposure re-tested after the machine has been repaired or adjusted by a registered service company.

Amended §289.226(o)(7)(E) adds that the licensed medical physicist (LMP) or service company performing equipment performance evaluations (EPEs) must submit results to the facility within 30 days after completion of testing.

Amended §289.226(o)(7)(E)(i) - (ix) adds documentation that must be included on an EPE report.

Amended §289.226(o)(7)(F) adds that an LMP or service company must maintain records of EPEs according to the length of time the facility is required to maintain records.

Amended §289.226(o)(7)(G)(i) - (ii) adds that dosimetry system available for use must be calibrated by the National Institute for Standards and Technology or by an American Association of Physicists in Medicine Accredited Dosimetry Calibration Laboratory and the calibration must have been completed within the previous 24 months and after any servicing that may have affected the system calibration.

Amended §289.226(t)(1)(C) adds RSO qualifications to the list of documents required for approval of reciprocal recognition of out-of-state certificates of registration.

Amended Figure §289.226(v)(1) to include record retention requirements that are currently in other sections of 25 Texas Administrative Code Chapter 289.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an existing rule;

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

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

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

Donna Sheppard has also determined that there will be no significant adverse economic impact on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule. The proposed rule will not affect fees to businesses. The proposed rule will not result in additional work for DSHS employees or other public entities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because this rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COST

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the section. The public benefit anticipated as the result of enforcing or administering the section is to ensure continued enhanced protection of the public, patients, workers, and the environment from unnecessary exposure to radiation by ensuring that the rule is clear and specific.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

TAKING IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Brian Vamvakias, Radiation Unit Manager, Policy, Standards, and Quality Assurance Section, Consumer Protection Division, DSHS, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; Exchange Building, 8407 Wall Street, Austin, Texas 78754, (512) 834-6655 or by email to CPDRuleComments@dshs.texas.gov.

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 emailing comments, please indicate "Comments on Proposed Rule 20R029" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, providing for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code, §531.0055; and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. The review of the rule implements Texas Government Code, §2001.039, regarding review of existing rules.

The amendment will implement Texas Health and Safety Code, Chapters 401 and 1001; and Texas Government Code, Chapter 531.

§289.226. *Registration of Radiation Machine Use and Services.*

(a) Purpose.

(1) This section provides for the registration of persons using radiation machines and persons who are in the business of providing radiation machine services.

(2) Requirements for the registration of persons using radiation machines.

(A) No person shall use radiation machines except as authorized in a certificate of registration issued by the Department of State Health Services (department) per the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

~~[(2) A person who receives, possesses, uses, owns, or acquires radiation machines prior to receiving a certificate of registration is subject to the requirements of this chapter.]~~

(b) Scope.

(1) In addition to the requirements of this section, all registrants are subject to the requirements of:

(A) §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections); [;]

(B) §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services); [;]

(C) §289.205 of this title (relating to Hearing and Enforcement Procedures); [;] and

(D) §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(2) Registrants using radiation machines in the healing arts are also subject to the requirements of §289.227 of this title (relating to Use of Radiation Machines in the Healing Arts). Morgues, educational facilities, and forensic medicine or investigations utilizing radiation machines for non-human use are subject to the specific requirements of §289.227 of this title.

(3) Registrants using analytical and other industrial radiation machines, such as x-ray equipment used for cathodoluminescence, ion implantation, gauging, or electron beam welding, are subject to the

requirements of §289.228 of this title (relating to Radiation Safety Requirements for Industrial Radiation Machines).

(4) Registrants using accelerators, therapeutic radiation machines, simulators, and electronic brachytherapy devices are also subject to the requirements of §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices).

(5) Registrants using mammography radiation machines are also subject to the requirements of §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography) and §289.234 of this title (relating to Mammography Accreditation).

(6) Registrants using radiation machines in industrial radiographic operations are also subject to the requirements of §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(7) Registrants using radiation machines in dental medicine [~~dental radiation machines~~] are subject to the requirements of §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines).

(8) Registrants using radiation machines in veterinary medicine are subject to the requirements of §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine).

(9) Registrants using laser radiation machines [~~or performing laser services~~] are subject to the requirements of §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices) [~~or the requirements of §289.302 of this title (relating to Registration and Radiation Safety Requirements for Use of Laser Hair Removal Devices)~~].

(10) To determine compliance with the requirements in this chapter for radiation machines [~~used on humans~~], all radiation air kerma rate [~~exposure rate (air kerma rate)~~] or dose measurements for fluoroscopy or computed tomography radiation machines shall be performed by a licensed medical physicist with a specialty in diagnostic medical physics.

(11) For purposes of this section, radiation services include [~~but are not limited to~~]:

(A) measurement of air kerma rate or dose measurements on radiation machines that are not for human use;

(B) measurement of air kerma for human-use, general radiographic and special purpose radiation machines, as defined in §289.227 and §289.229 of this title, by or under the supervision of a licensed medical physicist;

~~[(A) radiation machines that are not for human use, performance of exposure rate (air kerma rate) or dose measurements;]~~

~~[(B) radiation machines for human use, collecting entrance exposure (air kerma) data for general radiographic and special purpose radiation machines, as defined in §289.227(e) of this title, by or under the supervision of a licensed medical physicist;]~~

(C) [~~radiation machines for human use,~~] performance of services specified in paragraph (10) of this subsection or services requiring a licensed medical physicist as specified in §289.227(e) and §289.229 of this title on radiation machines for human use;

(D) presentation of department-accepted [~~agency-accepted~~] training courses that are specifically required by this chapter;

(E) demonstration and sale of radiation machines or imaging acquisition systems that require the individual to operate a radiation machine or cause a radiation machine to be energized [~~that require the individual to operate or cause a radiation machine to be operated in order to demonstrate or sell~~];

(F) assembly, installation or repair of a radiation machine to ensure it [~~a radiation machine~~] is operating according to manufacturer's specifications;

(G) completion of equipment performance evaluations (EPE) on dental radiation machines and [~~on~~] machines used in veterinary medicine; and

(H) provision of [~~providing~~] radiation machines to a facility for limited [~~time~~] periods.

(12) For purposes of this section, a person providing the services described in paragraph (11)(H) of this subsection is a provider of equipment.

(13) For purposes of this section, a practitioner of the healing arts is a person licensed to practice healing arts by either the Texas Medical Board as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatric Medical Examiners.

(14) For purposes of this section, a physician is an individual licensed by the Texas Medical Board.

(15) For purposes of this section, a certified physician is a physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(16) For purposes of this section, veterinary-use is the use of a radiation machine for the practice of veterinary medicine as defined by Texas Occupations Code Chapter 801. Animal research is not considered veterinary-use.

(17) [~~(16)~~] This section does not apply to an entity under the jurisdiction of the federal government.

(c) Prohibitions.

(1) No person shall cause the operation of a radiation machine that results in exposure of an individual to the useful beam [~~expose an individual to radiation~~] for training, demonstration, or other non-healing arts purposes.

(2) No person shall use radiation machines or perform radiation machine services except as authorized in a certificate of registration issued by the department per [~~agency in accordance with~~] the requirements of this section.

(3) Radiation machines shall be designated for human-use or veterinary-use but shall not be designated for both unless one of the following conditions are met:

(A) the machine use is for human research conducted per subsection (u) of this section; or

(B) the facility has applied for and received written authorization from the department.

(d) Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, provided that the dose equivalent rate averaged over an area of 10 square centimeters (cm²) does not exceed 0.5 millirem per hour (mrem/hr)(0.005 mSv per hour (mSv/hr)) at 5 centimeters (cm) from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(2) Radiation machines in transit or ~~in~~ storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services.

(3) Facilities that have placed all radiation machines in storage, including on-site storage secured from unauthorized use or removal, and have notified the department ~~[agency]~~ in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation. Before ~~[Prior to]~~ resuming use of the machine(s) for human use, the machine shall meet all requirements of this section.

(4) Inoperable radiation machines are exempt from the requirements of this section. For ~~[the purposes of]~~ this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(5) Domestic television receivers, video display terminals, transmission microscopes, and electron microscopes, including the servicing of such devices, are exempt from the requirements of this section.

(6) A person that takes possession of a radiation machine as the result of foreclosure, bankruptcy, or other default of payment may possess the machine without registering it. If the machine is energized, it shall be under the supervision of a person registered per ~~[in accordance with]~~ this section and shall be energized only to demonstrate that the machine is operable for sale, lease, or transfer purposes.

(7) Facilities, including academic institutions and research or development facilities, registered for the use of radiation machines are exempt from the registration requirements of subsection (j) of this section, regarding radiation services, to the extent that their personnel perform radiation services only for the registrant by whom they are employed.

(8) Bone densitometry machines used by, or under the supervision of, a licensed physician, are exempt from equipment performance evaluations.

(e) General requirements for application for registration.

(1) Application for registration shall be completed on forms prescribed by the department ~~[agency]~~ and shall contain all the information required by the form and accompanying instructions. For initial registrations with multiple use locations, a separate application RC Form 226-2 shall be completed for each use location under the registration.

(2) A radiation safety officer (RSO) shall be designated on each application form. The qualifications of that individual shall be submitted to the department ~~[agency]~~ with the application. The RSO shall meet the applicable qualifications specified in paragraph (3) of this subsection and carry out the responsibilities of subsection (n) of this section.

(3) Qualifications for RSOs for registrants ~~[(except for industrial radiography)]~~.

(A) All RSOs ~~[and laser safety officers]~~ shall meet the following general qualifications in addition to qualifications in specific categories:

(i) knowledge of potential radiation hazards and emergency precautions; and

(ii) completed educational courses related to ionizing radiation safety or a radiation safety officer course; or

(iii) experience in the use and familiarity of the type of equipment used.

(B) Specific qualifications for RSOs by the facility type are as follows.

(i) RSOs for healing arts facilities shall meet the following qualifications:

(I) practitioner RSOs shall submit documentation of their licensing board number;

(II) qualifications for a non-practitioner RSO with radiation machine-related credentials, and the following credentials will be accepted for an RSO who is not a practitioner:

(-a) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised radiation safety experience or supervised use of radiation machines;

(-b) evidence of a valid limited certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised radiation safety experience or supervised use of radiation machines;

(-c) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least two years of supervised radiation safety experience or supervised use of radiation machines;

(-d) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised radiation safety experience or supervised use of radiation machines;

(-e) for radiation therapy facilities, evidence of registry by the ARRT or ARCRT and at least four years of supervised radiation-related experience or supervised use of radiation therapy machines; or

(-f) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in one or more of the following appropriate specialties:

(-1-) medical health physics, diagnostic medical physics, or nuclear medical physics for diagnostic x-ray facilities; or

(-2-) medical health physics or therapeutic medical physics for radiation therapy facilities; or

(III) qualification for a non-practitioner RSO without radiation machine-related credentials, and an RSO who is not a practitioner and who does not have radiation machine-related credentials must meet the following criteria:

(-a-) credentials:

(-1-) evidence of registration with the Texas Board of Nursing as a registered nurse and at least two years of supervised experience in the use of radiation machines in their respective specialty;

(-2-) evidence of registration with the Texas Physician Assistant Board and at least two years of supervised experience in the use of radiation machines in their respective specialty; or

(-3-) evidence of bachelor's or higher degree in radiologic technology, health physics, or nuclear technology and at least two years of supervised experience in the use of radiation machines; and

(-b-) additional documentation for a non-practitioner RSO without radiation machine-related credentials, and the following documentation must be provided to be qualified:

(-1-) an attestation by a physician or qualified department director describing the radiation safety experience and performance of the RSO responsibilities listed in subsection (n) of this section, as applicable, and attestation must include that the RSO has achieved a level of radiation safety knowledge sufficient to function independently as RSO for the medical use for which they are applying; and

(-2-) documentation of an accredited radiation safety or radiation machine course completion, and the course must be at least 24 credit hours and include the principles of image processing, radiation protections, dose optimization and reduction; biological effects of ionizing radiation; radiology quality control and improvement; and review of Texas Regulations related to radiation as applicable.

(ii) Academic institutions or research and development facilities shall have RSOs who are faculty or staff members with a bachelor's degree or higher in a radiation-related field and at least two years of supervised experience in the use of radiation machines and the following documentation is also required:

(I) an attestation by a physician or qualified department director describing the radiation safety experience and performance of the RSO responsibilities listed in subsection (n) of this section, as applicable, and attestation must include that the RSO has achieved a level of radiation safety knowledge sufficient to function independently as RSO for the medical use for which they are applying.

(II) documentation that the individual has satisfactorily completed 40 hours of education related to safe use of radiation machines from an accredited institution.

[(B) Specific qualifications for RSOs by facility are as follows:]

[(i) Healing arts facilities shall have:]

[(i) a practitioner RSO with documentation of licensing board number; or]

[(ii) a non-practitioner RSO with at least one of the following:]

[(a) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least 2 years of supervised experience and/or supervised use of radiation machines;]

[(b) evidence of a valid limited certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least 4 years of supervised experience and/or supervised use of radiation machines;]

[(c) evidence of registry by the American Registry of Radiologic Technologists (ARRT) or the American Registry of Clinical Radiologic Technologists (ARCRT) and at least 2 years of supervised experience and/or supervised use of radiation machines;]

[(d) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least 2 years of supervised experience and/or supervised use of radiation machines;]

[(e) evidence of registration with the Texas Board of Nursing as a Registered Nurse and at least 2 years of supervised experience and/or supervised use of radiation machines in the respective specialty;]

[(f) evidence of registration with the Texas Physician Assistant Board, and at least 2 years of supervised use of radiation machines in the respective specialty;]

[(g) for radiation therapy facilities, evidence of registry by the ARRT or ARCRT and at least 4 years of supervised experience and/or supervised use of radiation therapy machines;]

[(h) evidence of bachelor's (or higher) degree in radiologic technology, health physics, or nuclear technology and at least 2 years of supervised experience and/or supervised use of radiation machines; or]

[(i) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in one or more of the following appropriate specialties:]

[(1) medical health physics, diagnostic medical physics, or nuclear medical physics for diagnostic x-ray facilities; or]

[(2) medical health physics or therapeutic medical physics for radiation therapy facilities.]

[(ii) Academic institutions and/or research and development facilities shall have RSOs who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. This individual may also serve as the RSO over the healing arts section of the facility.]

(iii) Industrial radiography operations shall have an RSO who meets the requirements of §289.255(e)(4)(B) of this title.

(C) The RSO identified on a certificate of registration issued before September 1, 1993, need not comply with the training requirements in this subsection.

(D) The RSO for an application for registration of an electronic brachytherapy device shall meet the qualifications of this subsection and shall carry out the responsibilities of subsection (n) of this section.

(E) The department may determine that a person who otherwise meets the RSO qualifications specified in this section is unqualified to be named as the RSO, based on the person's history with ensuring a facility's compliance with the Act and rules of this chapter.

(4) Any time after the filing of the original application, the department [agency] may require additional information to determine if the certificate of registration should be issued or denied.

(5) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities or use locations. Applications for certification of mammography systems[, lasers, laser services, laser hair removal facilities, laser hair removal training programs, and laser hair removal individuals] shall be made separately.

(6) Applications and documents submitted to the department [agency] may be made available for public inspection except that the department [agency] may withhold any document or part thereof from public inspection per [in accordance with] §289.231(aa) of this title.

(7) Each application for a certificate of registration shall be accompanied by the fee prescribed in §289.204 of this title. [An application for a certificate of registration for an electronic brachytherapy device shall be accompanied by the fee prescribed in Figure: 25 TAC §289.204(j); category (3) for other therapeutic radiation machines.]

(8) Each application shall be accompanied by a completed RC Form 226-1 (Business Information Form) that shall contain the le-

gal name of the entity or business. Unless exempt per [in accordance with] the Business and Commerce Code, Chapter 71, the applicant shall:

(A) be authorized to conduct business in the State of Texas as listed on the Texas Secretary of State (SOS) web site; and

(B) file an assumed name certificate with the Texas SOS if using an assumed name in their application[, and/or the office of the county clerk in the county where the business is located].

(f) Application for registration for human use of radiation machines.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person having a radiation machine used in the healing arts shall apply for registration with the department [agency] within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered per [in accordance with] subsection (g) of this section, and healing arts screening that shall be approved per [in accordance with] subsection (h) of this section.

(B) Each person having an accelerator, [or] therapeutic radiation machine, or electronic brachytherapy device [capable of operating at or above 1 million electron volts (MeV)] shall apply for and receive a certificate of registration from the department [agency] before using the accelerator [for human use]. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department [agency].

~~[(C) Each person having a simulator and/or therapeutic radiation machine capable of operating below 1 MeV for human use shall apply for registration with the agency within 30 days of energizing the equipment.]~~

(2) The applicant shall ensure that radiation machines are operated by individuals qualified by [reason of] training and experience to use the radiation machines [machine] for the purpose requested per [in accordance with] this section in such a manner as to minimize danger to occupational and public health and safety.

(3) An application for healing arts shall be signed by a licensed practitioner. The signature of the administrator, president, or chief executive officer will be accepted instead [in lieu] of a licensed practitioner's signature if the facility has more than one licensed practitioner who may direct the operation of radiation machines. The application shall also be signed by the RSO.

(4) An application for accelerators or therapeutic radiation machines, including electronic brachytherapy devices, for human use, shall be signed by a physician licensed by the Texas Medical Board. The signature of the administrator, president, or chief executive officer will be accepted instead [in lieu] of a physician's signature if the facility has more than one physician who may direct the operation of radiation machines. The application shall also be signed by the RSO.

(5) Each applicant for accelerators, therapeutic radiation machines, and electronic brachytherapy devices, shall submit:

(A) operating and safety procedures as described in §289.229(h)(1)(G) of this title;

(B) credentials:

(i) units operating above 1 MeV and electronic brachytherapy devices shall submit credentials for a Board-Certified Radiation Oncologist; or

(ii) units under 1 MeV shall submit credentials for a Board-Certified Dermatologist or Board-Certified Radiation Oncologist;

(C) a copy of the most current record of surveys, calculations, and quality assurance checks on each device; and

(D) a floor plan of the physical facility.

~~[(5) Each applicant for accelerators or therapeutic radiation machines, other than electronic brachytherapy devices, shall submit:]~~

~~[(A) operating and safety procedures as described in §289.229(h)(1)(G) of this title; and]~~

~~[(B) a description of the proposed facilities.]~~

~~[(6) Each person having an electronic brachytherapy device shall apply for and receive a certificate of registration from the agency before using the device for human use. An application for an electronic brachytherapy device shall include:]~~

~~[(A) a list identifying the radiation safety officer, all certified physicians (except visiting certified physicians), licensed medical physicists, and qualified operators, with documentation of training and education in accordance with §289.229(h)(1)(D) and (E) of this title;]~~

~~[(B) a current copy of the quality assurance program in accordance with §289.229(h)(1)(F) of this title;]~~

~~[(C) a copy of the most current record of surveys, calculations, and quality assurance checks on each device;]~~

~~[(D) a copy of the device manufacturer's United States Food and Drug Administration certification;]~~

~~[(E) a copy of the operating and safety procedures as described in §289.229(h)(1)(G) of this title; and]~~

~~[(F) a description of the proposed facilities showing how the requirements of §289.229(k) of this title are to be met. The description of the proposed facilities shall also include:]~~

~~[(i) a diagram of the physical facility showing the location of the electronic brachytherapy treatment rooms;]~~

~~[(ii) an indication whether the facility is a new structure or a modification to an existing structure; and]~~

~~[(iii) the type and thickness of the portable shielding if used and a procedure demonstrating the use of the shielding prior to treatment.]~~

(g) Application for registration of mobile service operations.

(1) In addition to the requirements of subsections (e) and (f) of this section or §289.230 of this title, as applicable, each applicant shall apply for and receive authorization from the department [agency] before beginning mobile service operations.

(2) The following shall be submitted:

(A) an established main location where the machine(s), records, etc. will be maintained for inspection. This shall be a street address, not a post office box number;

(B) a sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed machine inside, furnish the floor plan indicating protective shielding and the operator's position; and

(C) a current copy of the applicant's operating and safety procedures regarding radiological practices for the protection of patients, operators, employees, and the general public.

(h) Application for registration of healing arts screening.

(1) In addition to the requirements of subsections (e) and (f) of this section, each applicant shall apply for and receive authorization for healing arts screening before initiating a screening program.

(2) Persons requesting approval from the department [agency] for healing arts screening programs shall submit:

(A) name and address of the applicant;

(B) diseases or conditions for which the x-ray examinations are to be used in diagnoses;

(C) a detailed description of the x-ray examinations proposed in the screening program;

(D) a description of the population to be examined in the screening program, for example, age, sex, physical condition, and other appropriate information;

(E) for mobile screening operations, location(s) where radiation machines are maintained;

(F) operating and safety procedures as follows:

(i) for all radiographic machines (except bone densitometers) to include:

(I) an evaluation of the radiation machines to be used in the screening program;

(II) documentation that the evaluation was performed by a licensed medical physicist with a specialty in diagnostic medical physics;

(III) the evaluation shall show that the machines satisfy all requirements of this chapter;

(ii) for bone densitometers, the manufacturer's evaluation of the radiation machine(s) to be used in the screening program;

~~[(G) training data to include:]~~

~~[(i) the qualifications of each individual who will be operating the radiation machine(s);]~~

~~[(ii) the name and address of the physician licensed in Texas who will interpret the radiographs; and]~~

~~[(G) [(H)] documentation for verification of the following procedures:~~

~~(i) a method of recommending a means of selecting a physician for patients who do not have a physician;~~

~~(ii) a description of the procedures to be used in advising the individuals screened and their physicians of the results of the screening procedure and any further medical needs indicated; and~~

~~(iii) a description of the procedures for the retention or disposition of the radiographs and other records about [pertaining to] the x-ray examinations.~~

(3) Screening standards/procedures shall meet national standards such as the American College of Radiology or other national standards.

(i) Application for registration of radiation machines for non-human use, including use in morgues, forensic medicine or investigations, and educational facilities.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person having an accelerator for non-human use shall apply for and receive a certificate of registration from the department [agency] before beginning the use of the accelerator. A person may energize the accelerator for purposes of installation and testing before receiving a certificate of registration from the department [agency].

(B) Each person having an accelerator for non-human use shall submit:

(i) operating and safety procedures as described in §289.229(f)(3)(B) of this title; and

(ii) a description of the applicant's proposed facilities per [in accordance with] §289.229(f)(2) and (f)(3)(A), (D) and (E) of this title.

(2) Each person having a radiation machine for non-human use, other than those specified in paragraph (1)(A) of this subsection and those used for industrial radiographic operations as defined in §289.255 of this title, shall apply for registration with the department [agency] within 30 days after beginning use of the machine.

(3) Each applicant for use of radiation machines in industrial radiographic operations shall submit the information required in §289.255(t)(1) of this title and receive a certificate of registration from the department before beginning use of the machine(s).

(4) An application for the uses specified in this subsection shall be signed by the applicant, registrant, or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO.

(j) Application for registration of radiation machine services.

(1) In addition to the requirements of subsection (e) of this section, each applicant shall comply with the following.

(A) Each person who intends to provide radiation services described in subsection (b)(11) of this section shall apply for and receive a certificate of registration from the department [agency] before providing the service.

(B) An application for radiation services shall be signed by the applicant or registrant or a person duly authorized to act for and on the applicant's or registrant's behalf. The application shall also be signed by the RSO.

(2) The applicant shall document the qualifications of the specific training and experience that qualifies each individual to perform the service as follows:

(A) for individuals performing assembly, installation, or repair of radiation machines in subsection (b)(11)(F) of this section, document the qualifications listed in paragraph (5) of this subsection;

(B) for individuals performing the services specified in subsection (b)(10) and (11)(C) of this section, obtain a copy of the individual's license from the Texas Board of Licensure for Professional Medical Physicists; and

(C) for all other services, document the qualifications listed in paragraph (5) of this subsection.

(3) No person shall provide services specified in subsection (b)(10) and (11) of this section that are not specifically authorized by the department [agency].

(4) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the department [agency] except for:

(A) services specified in subsection (b)(11)(B), (C) and (E) of this section; or

(B) the initial installation of the first machine(s) for a new certificate of registration.

(5) The ~~minimum~~ Minimum education and training for persons performing radiation machine assembly, installation, or repair are as follows.

(A) All persons performing radiation machine assembly, installation, or repair shall meet one of the following requirements:

(i) ~~one~~ [4] year of formal training (may be satisfied by factory school, military technical training school, or other courses in radiation machine assembly, installation or repair techniques) or an ~~associate~~ [assöciäete's] degree in biomedical equipment repair;

(ii) a bachelor's degree in electrical engineering with specialized training in radiation producing devices; or

(iii) a combination of training and experience totaling ~~one~~ [4] year to include:

(I) experience or education providing familiarity with the type(s) of equipment to be serviced, to include radiation safety;

(II) knowledge of protective measures to reduce potentially hazardous conditions; and

(III) ~~six~~ [6] months of supervised assembly and repair of the type(s) of equipment to be serviced.

(B) A registrant holding a valid certificate of registration who has hired individuals to perform services before September 1, 1993, need not comply with the education and training requirements in this paragraph. Individuals hired on or after September 1, 1993, shall comply with the education and training requirements in this paragraph.

(6) Each applicant for providers of equipment shall also submit:

(A) the address of an established main location where the radiation machines, records, etc., will be maintained for inspection. This shall be a street address, not a post office box number; and

(B) a current copy of the applicant's operating and safety procedures [which is required when personnel are provided in addition to equipment]. This is required when the applicant's personnel are provided to operate the equipment for their client.

(7) Each applicant for ~~department-accepted~~ [agency-accepted] training courses specifically required by §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), and §289.255 of this title shall also submit:

(A) a course syllabus;

(B) the number of instructional hours for each subject;

(C) a list of training resources, for example, reference books, texts, workbooks, physical facilities, etc.;

(D) all test questions and corresponding answers; and

(E) the radiation safety training, education, and experience of each instructor.

(8) A record documenting the qualifications of each individual that performs the service shall be made and maintained for inspection by the department per [agency in accordance with] subsection (v) of this section.

(k) Issuance of certificates of registration.

(1) A certificate of registration application will be approved if the department [agency] determines that an application meets the requirements of the Act [Texas Radiation Control Act (Act)] and the requirements of this chapter. The certificate of registration authorizes the proposed activity in the form and contains the conditions and limitations as the department [agency] deems appropriate or necessary.

(2) The department [agency] may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, additional requirements and conditions concerning the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary [in order] to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of radiation machines subject to this section.

(3) The department [agency] may request, and the registrant shall provide, additional information after the certificate of registration has been issued to enable the department [agency] to determine whether the certificate of registration should be modified per [in accordance with] subsection (s) of this section.

(l) Terms and conditions of certificates of registration.

(1) Each certificate of registration issued per [in accordance with] this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules and orders of the department [agency].

(2) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the department [agency] authorizes the transfer in writing.

(3) Each person registered by the department [agency] for radiation machine use per [in accordance with] this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(4) In ~~deciding~~ [making a determination] whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of registration, the department [agency] may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the department [agency] shall deny an application for a certificate of registration, an amendment to a certificate of registration, or renewal of a certificate of registration if the applicant's compliance history reveals that at least three department [agency] actions have been issued against the applicant, within the previous 6 years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(m) Responsibilities of the registrant.

(1) The registrant is responsible for complying with this chapter and the conditions of the certificate of registration.

(2) The registrant shall designate an individual qualified per [in accordance with] subsection (e)(3) of this section as the radiation safety officer and shall ensure the individual continually performs the responsibilities of the radiation safety officer as identified in subsection (n) of this section.

(3) Persons using radiation machines per [in accordance with] subsection (f)(1)(B) of this section (concerning radiation accel-

erator or therapeutic radiation machines or electronic brachytherapy devices for human use), subsection (g) of this section (concerning an application for mobile service operations), subsection (i)(1)(A) of this section (concerning persons having an accelerator for non-human use), and subsection (i)(3) of this section (concerning radiation machines in industrial radiographic operations) shall have a valid certificate of registration issued by the department before [~~agency prior to~~] use.

(4) Other than the initial installation of the first machines(s) for a new certificate of registration, no person shall use radiation machines unless they have applied for registration within 30 days of beginning use of the machines per [~~in accordance with~~] subsection (f)(1)(A) of this section.

(5) No registrant shall engage any person for services described in subsection (b)(11) of this section until the person provides to the registrant evidence of registration with the department [~~agency~~].

(6) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the department [~~agency~~] except for:

(A) the initial installation of the first machines(s) for a new certificate of registration; and

(B) the registrant authorized for demonstration and sale may demonstrate a radiation machine per [~~in accordance with~~] paragraph (13) of this subsection.

(7) The registrant shall notify the department [~~agency~~] of any changes that would render the information contained in the application for registration or [~~and/or~~] the certificate of registration inaccurate. The notification shall be in writing and signed by an authorized representative.

(A) Notification is required within 30 days after the following changes:

- (i) name or mailing address;
- (ii) street address where machine will be used;
- (iii) additional use location;
- (iv) RSO; or
- (v) name and registration number of the contracted provider of equipment, registered per [~~in accordance with~~] this section.

(B) The registrant shall notify the department [~~agency~~] within 30 days after [~~of~~] changes in the radiation machines that include:

- (i) any change in the category(ies) of machine type or type of use as specified in §289.231(11) of this title and as authorized in the certificate of registration; or
- (ii) any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category.

(8) The registrant, or the parent company, shall notify the department [~~agency~~] in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy. This notification shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the case name and number, and date of filing the petition.

(9) The registrant shall inventory all radiation machines in the registrant's possession at an interval not to exceed one [~~1~~] year.

(A) The inventory shall include:

- (i) manufacturer's name;
 - (ii) model and serial number of the control panel;
- and
- (iii) location of radiation machine(s) (for example, room number).

(B) Records of the inventory shall be made and maintained for inspection by the department per [~~agency in accordance with~~] subsection (v) of this section.

(10) The registrant shall maintain records of receipt, transfer, and disposal of radiation machines.

(A) The records shall include:

- (i) manufacturer's name;
- (ii) model and serial number from the control panel;
- (iii) date of the receipt, transfer, and disposal;
- (iv) name and address of person machine(s) received from, transferred to, or disposed of; and
- (v) name of the individual recording the information.

(B) Records of the receipt, transfer, or disposal of the machine(s) shall be made and maintained for inspection by the department per [~~agency in accordance with~~] subsection (v) of this section.

(11) The persons using loaner radiation machines shall comply with the following.

(A) For persons having a valid certificate of registration, loaner radiation machines may be used for up to 30 days. Within the following 30 days, the registrant shall:

- (i) notify the department [~~agency~~] of a change in the category(ies) of machine type or type of use as specified in §289.231(11) of this title and as authorized in the certificate of registration; or
- (ii) notify the department [~~agency~~] of any increase in the number of machines authorized by the certificate of registration in any machine type or type of use category; and
- (iii) perform an equipment performance evaluation on the radiation machine(s) per [~~in accordance with~~] §289.227(o) of this title.

(B) For persons who do not hold a valid certificate of registration, loaner radiation machines may be used for human use up to 30 days, by or under the direction of a practitioner, before applying for a certificate of registration per [~~in accordance with~~] subsection (e) of this section. This does not include:

- (i) accelerators for human use as described in subsection (f)(1)(B) of this section;
- (ii) mobile services as described in subsection (g) of this section;
- (iii) healing arts screening as described in subsection (h) of this section;
- (iv) accelerators for non-human use as described in subsection (i)(1)(A) of this section; and
- (v) industrial radiography as described in subsection (i)(3) of this section.

(12) Persons authorized to provide radiation machines shall comply with the following.

(A) Providers of equipment shall:

(i) ensure that all radiation machines used on humans for healing arts purposes meet the requirements of §289.227(o) of this title; and

(ii) provide radiation machines only to facilities holding a valid certificate of registration.

(B) Providers of equipment shall keep a log of radiation machines provided in Texas. The record shall list the following current information:

(i) date machine is provided;

(ii) name of customer; and

(iii) customer's certificate of registration number.

(C) Records of machines provided shall be made and maintained for inspection by the department per [agency in accordance with] subsection (v) of this section.

(13) Persons authorized to perform demonstration and sale of radiation machines in Texas shall comply with the following.

(A) A daily log shall be maintained and shall include:

(i) date of all demonstrations and sales of radiation machines performed in Texas;

(ii) name and address of the customer; and

(iii) customer's certificate of registration number unless the service provided is an initial installation as described in paragraph (6) of this subsection.

(B) Records of all demonstrations and sales shall be made and maintained for inspection by the department per [agency in accordance with] subsection (v) of this section.

(C) Individuals must not be exposed to the useful beam except for healing arts purposes and unless such exposure has been specifically and individually ordered by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes:

(i) exposure of an individual for training or demonstration;

(ii) QA/QC testing; or

(iii) other non-healing arts purposes.

~~[(C) Demonstration of radiation machines on humans shall be performed by or under the direction of a practitioner in accordance with paragraph (11) of this subsection.]~~

(D) Demonstration of radiation machines performed by the service provider shall be on phantoms only.

(E) The registrant authorized for demonstration and sale of radiation machines is responsible for performing and documenting all tests required by [in accordance with] §289.227 of this title when demonstration of a radiation machine involves exposure specifically and individually ordered by a licensed practitioner of the healing arts [for radiation machines used on humans for demonstration purposes].

(n) Responsibilities of RSOs.

(1) Duties of the RSO include[; but are not limited to]:

(A) establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable (ALARA)[; and to review them at intervals not to exceed 12 months to ensure that the procedures are current and conform with this chapter];

(i) review them at intervals not to exceed 12 months to ensure that the procedures are current and conform with this chapter; and

(ii) review and ensure that all actions required in this chapter are performed at the respective intervals to maintain compliance;

(B) ensuring that individual monitoring devices are properly used by occupationally-exposed personnel, [that] records are kept of the monitoring results, and [that] timely notifications are made as required by §289.203 of this title;

(C) investigating and reporting to the department [agency] each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter;

(D) assuming control and having the authority to institute corrective actions including the shut-down of operations when necessary in an emergency [situations] or unsafe conditions; [and]

(E) ensuring that corrective actions for violations issued by the department are implemented to avoid a repeat violation; and

(F) [(E)] maintaining records as required by this chapter.

(2) The RSO shall ensure that personnel are adequately trained and complying with this chapter, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(3) The RSO shall make entries of the records in paragraph (1) of this subsection at intervals not to exceed 30 days after receipt of a monitoring report.

(o) Responsibilities of assemblers and [and/or] installers.

(1) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the department [agency] except for the initial installation of the first machine(s) for a new certificate of registration.

(2) Persons who assemble or install radiation machines shall notify the department [agency] of the following information within 30 days after assembly or [of] installation:

(A) the name, address, and certificate of registration number, except in the case of initial machine installation, of persons who have received the machines;

(B) the type of radiation machine, the manufacturer's name, model number, and control panel serial number of each radiation machine; and

(C) the date of transfer or disposal of each radiation machine.

(3) Persons who assemble, install, or repair radiation machines, or components of the machines, shall ensure the radiation machines meet the applicable requirement of this chapter when the machines are placed in operation.

(4) Persons assembling, installing, and repairing radiation machines shall keep a daily log to include the following information:

- (A) date of service;
- (B) name of customer;
- (C) customer's certificate of registration number unless the installation is an initial installation described in paragraph (1) of this subsection; and

(D) records of assembling, installing and repairing of the machines shall be made and maintained for inspection by the department per [agency in accordance with] subsection (v) of this section.

(5) Equipment performance evaluations shall be performed as follows:

(A) on all medical, chiropractic or podiatric radiation machines within 30 days after the initial installation, re-installation, and after repair of a machine component that would affect the radiation output that includes but is not limited to the timer, tube, power supply, and thereafter, per [in accordance with] §289.227(o)(1) of this title; and

(B) on all dental radiation machines and radiation machines used in veterinary medicine within 30 days after the initial installation, re-installation, and after repair of a machine component that would affect the radiation output that includes [but is not limited to] the timer, tube, and power supply, and thereafter, per §289.232(j)(5)(J)(i) [in accordance with §289.232(i)(7)] and §289.233(j)(5)(N)(i)(I) - (III) [§289.232(i)(5)(N)] of this title, as applicable.

(6) Radiation air kerma rate [exposure rate (air kerma rate)] or dose measurements for fluoroscopy and computed tomography (CT) radiation machines, as required by §289.227 and §289.233 of this title shall be performed by a licensed medical physicist with a specialty in diagnostic medical physics.

(7) Radiation entrance exposure [(air kerma)] data required during EPEs on general radiographic and special purpose radiation machines, as defined in §289.227(e) and §289.233(d) of this title, shall be performed by or under the supervision of a licensed medical physicist with a specialty in diagnostic medical physics. The physicist shall:

(A) establish written procedures for non-physicists that document entrance exposure [(air kerma)] data;

(B) calculate the entrance exposure [(air kerma)];

(C) verify the entrance exposure [(air kerma)] meets compliance with §289.227(j) of this title;

(D) retest the machine, by measuring entrance exposure, at the facility's specified technique after repair or adjustment by a service technician; [sign the EPE reports.]

(E) submit any test or EPE results to the facility within 30 days after completion of testing. Documentation shall include:

(i) name of the facility;

(ii) address of facility; if satellite facility, address of where the radiation machine is located;

(iii) business email address;

(iv) registration number of the facility;

(v) make, model, and serial number from the machine control panel;

(vi) registration number of physicist and service company performing EPE;

(vii) mailing/business address of physicist performing EPE;

(viii) date of the last calibration of testing equipment;

(ix) signature of physicist that performed the EPE;

(F) retain documentation of subparagraph (E) of this paragraph according to subsection (v) of this section; and

(G) maintain a calibrated dosimetry system available for use:

(i) The system shall be calibrated by the National Institute for Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL).

(ii) The calibration shall be performed within the previous 24 months and after any servicing that may have affected system calibration.

(p) Expiration of certificates of registration.

(1) Except as provided by subsection (r) of this section, each certificate of registration expires at the end of the day, in the month and year stated in the certificate of registration.

(2) If a registrant does not submit an application for renewal of the certificate of registration per [in accordance with] subsection (r) of this section, as applicable, on or before the expiration date specified in the certificate of registration, the registrant shall:

(A) terminate use of all radiation machines and [and/or] terminate radiation machine servicing or radiation services as applicable; and

(B) pay any outstanding fees per [in accordance with] §289.204 of this title.

(3) The expiration [Expiration] of the certificate of registration does not relieve the registrant of the requirements of this chapter.

(q) Termination of certificates of registration.

(1) When a registrant decides to terminate all activities involving radiation machines or services authorized under the certificate of registration, the registrant shall immediately:

(A) request termination of the certificate of registration in writing signed by the RSO, owner, or an individual authorized to act on behalf of the registrant; and

(B) submit to the department [agency] a record of the disposition of the radiation machines, if applicable; and if transferred, to whom they are transferred.

(2) The registrant shall pay any outstanding fees per [in accordance with] §289.204 of this title.

(r) Renewal of certificates of registration.

(1) An application for renewal of a certificate of registration shall be filed per [in accordance with] subsection (e) of this section and applicable paragraphs of subsections (f) - (j) of this section.

(2) If a registrant applies [files an application] for [a] renewal in proper form before the existing certificate of registration expires, such [existing] certificate of registration shall not expire until the application status has been determined by the department [agency].

(s) Modification, suspension, and revocation of certificates of registration.

(1) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked because [by reason] of amend-

ments to the Act, because of amendments to the [by reason of] rules in this chapter, or orders issued by the department [agency].

(2) Any certificate of registration may be revoked, suspended, or modified, in whole or in part, for:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the department [agency] to refuse to grant a certificate of registration on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the certificate of registration, or order of the department [agency]; or

(D) existing conditions that constitute a substantial threat to [the] public health or safety or the environment.

(3) Each certificate of registration revoked by the department [agency] ends at the end of the day on the date of the department's [agency's] final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the department [agency] order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, before [~~prior to~~] the institution of proceedings, therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been allowed [~~afforded an opportunity~~] to demonstrate compliance with all lawful requirements.

(t) Reciprocal recognition of out-of-state certificates of registration.

(1) Whenever any radiation machine is to be brought into the state for any temporary use, the person proposing to bring the machine into the state shall apply for and receive a notice from the department [agency] granting reciprocal recognition before [~~prior to~~] beginning operations. The request for reciprocity shall include a:

(A) completed RC Form 226-1 (Business Information Form);

(B) completed RC Form 226-3 (Application for Registration of Industrial Radiation Machines);

(C) RSO qualifications per subsection (e)(3) of this section.

(D) [~~(C)~~] completed RC [BRC] Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(E) [~~(D)~~] completed qualification forms (RC [BRC] Forms 255-E, 255-T or [~~and/or~~] 255-OS) for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

[(E) name and Texas licensing board number of the practitioner if the radiation machines are used on humans;]

(F) copy of the applicant's current certificate of registration or equivalent document;

(G) copy of the applicant's current operating and safety procedures pertinent to the proposed use; and

(H) the fee as specified in §289.204(d) of this title. [~~and~~]

[(t) qualifications of personnel who will be operating the machines for human use.]

(2) Upon a determination that the request for reciprocity meets the requirements of the department [agency], the department [agency] may issue a notice granting reciprocal recognition authorizing the proposed use.

(3) Once reciprocity is granted, the out-of-state registrant shall file a RC [BRC] Form 252-3 with the department before [agency] ~~prior to~~ each entry into the state. This form shall be filed at least three [3] working days before the radiation machine is to be used in the state. If, for a specific case, the three-day [3-day] period would impose an undue hardship, the out-of-state registrant may, at the determination of the department [agency], obtain permission to proceed sooner.

(4) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the department [agency]:

(A) completed RC [BRC] Form 252-3;

(B) copy of the notice from the department [agency] granting reciprocity;

(C) copy of the out-of-state registrants operating and safety procedures; and

(D) copy of the applicable rules as specified in the notice granting reciprocity.

(5) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the department per [agency in accordance with] the requirements of this section.

(6) The department [agency] may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another department [agency] upon determining that the action is necessary [~~in order~~] to prevent an undue hazard to occupational and public health and safety or property.

(7) Reciprocal recognition will expire two [2] years from the date it is granted. A new request for reciprocity shall be submitted to the department [agency] every two [2] years. Reciprocity requests made after the initial request shall include the following:

(A) completed RC Form 226-1(Business Information Form);

(B) completed RC Form 226-3 (Application for Registration of Industrial Radiation Machines);

(C) RSO qualifications in accordance with subsection (e)(3) of this section.

(D) [~~(C)~~] completed RC [BRC] Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

(E) [~~(D)~~] completed qualification forms RC [~~BRC~~] Forms 255-E, 255-T or [~~and/or~~] 255-OS for each radiographer who will be working in Texas if the reciprocity request is for industrial radiography;

[(E) name and Texas licensing board number of the practitioner if the radiation machines are used on humans;]

(F) copy of the applicant's current certificate of registration or equivalent document;

(G) copy of the applicant's current operating and safety procedures pertinent to the proposed use; and

(H) the fee as specified in §289.204(d) of this title. [; and]

~~[(I) qualifications of personnel who will be operating the machines.]~~

(8) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the department [~~agency~~] before providing radiation services. The application shall be filed per [~~in accordance with~~] subsections (e), (i), and (j) of this section, as applicable.

(u) Medical research and investigational devices.

(1) Any research using radiation machines on humans shall be approved by an Investigational Review Board (IRB) as required by Title 45, Code of Federal Regulations (CFR), Part 46 and Title 21, CFR, Part 56. The IRB shall include at least one physician to direct any use of radiation per [~~in accordance with~~] §289.231(b) of this title.

(2) Facilities with radiation machines with investigational device exemptions that are involved in clinical studies shall comply with primary regulations that govern the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include:

- (A) 21 CFR, Part 812, Investigational Device Exemptions;
- (B) 21 CFR, Part 50, Protection of Human Subjects;
- (C) 21 CFR, Part 56, Institutional Review Boards;

(D) 21 CFR, Part 54, Financial Disclosure by Clinical Investigators; and

(E) 21 CFR, Part ~~820~~ [821], Subpart C, Design Controls of the Quality System Regulation.

(v) Record/document retention requirements for registration of radiation machines.

(1) Each registrant shall maintain the following records/documents at each site, including authorized records sites for mobile services, at the time intervals specified for inspection by the department [~~agency~~].

~~Figure: 25 TAC §289.226(v)(1)~~

[~~Figure: 25 TAC §289.226(v)(1)~~]

(2) Records listed in paragraph (1) of this subsection may be maintained in electronic format.

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 March 19, 2021.

TRD-202101154

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 2, 2021

For further information, please call: (512) 834-6655



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.2

The Health and Human Services Commission withdraws the emergency adoption of new §500.2, concerning Waiver of 36-Month Requirement During the COVID-19 Pandemic, which appeared in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7086).

Filed with the Office of the Secretary of State on March 19, 2021.

TRD-202101130

Nycia Deal

Attorney

Health and Human Services Commission

Effective date: March 19, 2021

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



26 TAC §500.3

The Health and Human Services Commission withdraws the emergency rule §500.3, which appeared in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7659).

Filed with the Office of the Secretary of State on March 19, 2021.

TRD-202101131

Nycia Deal

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Health and Human Services Commission

Effective date: March 19, 2021

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND UTILIZATION REVIEW FOR CHEMICAL DEPENDENCY TREATMENT CENTERS

28 TAC §§3.8001 - 3.8005, 3.8007 - 3.8030

The Texas Department of Insurance withdraws the proposed repeal of §§3.8001 - 3.8005, 3.8007 - 3.8030, which appeared in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6684).

Filed with the Office of the Secretary of State on March 17, 2021.

TRD-202101125

James Person

General Counsel

Texas Department of Insurance

Effective date: March 17, 2021

For further information, please call: (512) 676-6584



28 TAC §3.8001

The Texas Department of Insurance withdraws proposed new §3.8001, which appeared in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6684).

Filed with the Office of the Secretary of State on March 17, 2021.

TRD-202101126

James Person

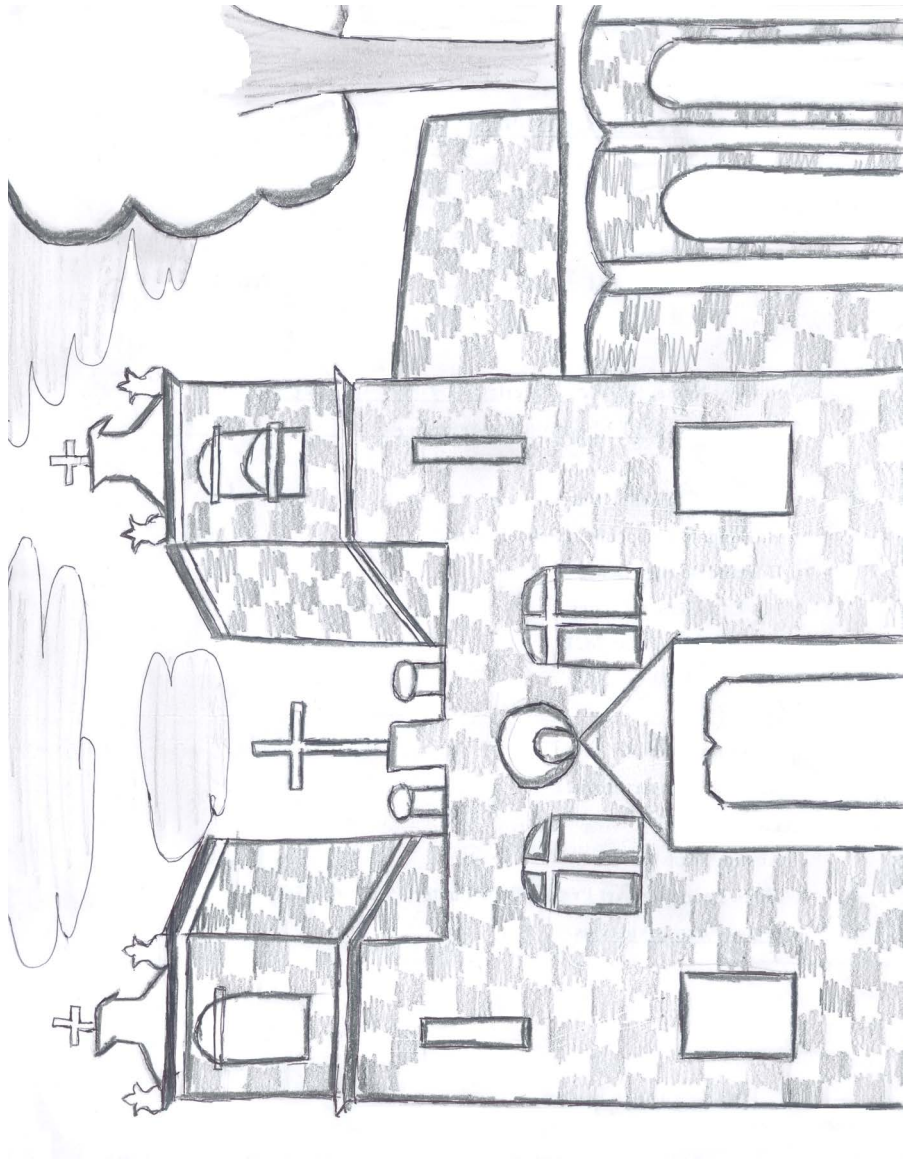
General Counsel

Texas Department of Insurance

Effective date: March 17, 2021

For further information, please call: (512) 676-6584





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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER V. TEXAS TRANSFER ADVISORY COMMITTEE AND DISCIPLINE- SPECIFIC SUBCOMMITTEES

19 TAC §§1.237 - 1.243

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 1, Subchapter V, §§1.237 - 1.243, Texas Transfer Advisory Committee and Discipline-Specific Subcommittees with changes to the proposed text as published in the January 15, 2021, issue of the *Texas Register* (46 TexReg 423) and will be republished.

The adopted rules create the Texas Transfer Advisory Committee and Discipline-Specific Subcommittees as part of the implementation of Texas Education Code §61.823.

In conjunction with this rulemaking, the Coordinating Board repealed Chapter 27 of the Board Rules that previously implemented the advisory committee requirements of §61.823. These adopted rules replace the existing advisory committee structure.

Agency staff conducted more than twenty-four meetings, over a span of six months, using an informal stakeholder workgroup to develop a conceptual framework for both the substantive revisions of the transfer rules and to develop an advisory committee structure to implement Texas Education Code §61.823. The stakeholder workgroup was composed of an equal number of representatives from public junior colleges and general academic teaching institutions. The adopted rules in this subchapter and the Texas Transfer Advisory Committee rules in Title 19, Chapter 4, Subchapter B, address longstanding challenges in the transfer system to enable students to earn and reliably transfer credits among institutions of higher education. These rules create additional certainty for students and institutions toward the goal of reducing the cost of higher education for Texas families. In response to comments, the Board made changes at adoption to the definition in §1.238(8) to clarify the elements of the Field of Study curriculum.

Rule 1.237 defines the purpose and authority for the rules.

Rule 1.238 defines terms used in this subchapter. The terms are defined with reference to the rules adopted in the repeal and re-adoption of Chapter 4, Subchapter B. Using cross-references to Chapter 4, Subchapter B, will ensure that the definitions are consistent between the two chapters and that people and insti-

tutions affected by the rules will understand the relationship between the two chapters.

Rule 1.239 sets out the duties of the new advisory committee, Texas Transfer Advisory Committee (TTAC), that will advise the Commissioner of Higher Education (Commissioner) on the development of the courses in the Field of Study Curricula and transfer efficiency. The stakeholder workgroup recommended the creation of a central advisory committee to oversee the development of Field of Study Curricula through the use of Discipline-Specific Subcommittees that will report back to the TTAC. The TTAC will then make recommendations to the Commissioner who may approve or deny Field of Study Curricula as defined in new Chapter 4, Subchapter B rules. The TTAC's composition of an equal number of members from public junior colleges and general academic teaching institutions is anticipated to create more confidence in the feasibility and efficiency of transfer of Field of Study Curricula.

Rule 1.240 sets out the composition, terms, and officers of the TTAC to meet the requirements of Texas Education Code §61.823.

Rule 1.241 provides that TTAC shall meet at least annually. The rule also defines a quorum of the advisory committee as a majority of the representatives of each the public junior colleges and general academic teaching institutions. This rule is intended to ensure equal representation and voting power between the sending and receiving institutions affected by the development and implementation of the Field of Study Curricula.

Rule 1.242 sets out the duties of the subcommittees, which include recommending to the TTAC specific courses for inclusion in each Field of Study Curriculum. Their meetings and processes are set out more fully in the Texas Transfer Framework Rules in Chapter 4, Subchapter B.

Rule 1.243 sets out the composition, terms, and officers of the subcommittees. While the subcommittees are not independent advisory committees they will be composed of an equitable and representative combination of subject matter experts from public junior colleges and academic teaching institutions.

The following comment(s) were received regarding the adoption of the new rule.

Comment: The University of North Texas (UNT) raised several concerns related to the proposed rules. UNT correctly identified differences in the definition of the Field of Study Curriculum. They asked that the definition of a Field of Study Curriculum be clarified. In §1.238(8) the Field of Study Curriculum is defined as a set of courses that satisfy baccalaureate degree requirements and in §4.23(7) the definition of Field of Study Curriculum is further defined as a set of courses that will satisfy the lower-division requirements and identifies the three components of a Field of Study Curriculum. They suggested aligning the definitions and

requested clarification that the Field of Study Curriculum under the revised Texas Transfer Framework would allow a student to fulfill a Field of Study Curriculum without necessarily completing the core curriculum or completing all lower-division courses.

Similar comments were received via phone conversations and email that relayed the same concern, specifically related to the discipline of Music.

Response: The Coordinating Board agrees that the definitions presented in Chapter 1.238(8) and 4.23(7) differ and agree to revise the rules to align. Staff also agree that some disciplines may not benefit from the Texas Transfer Framework and the Texas Transfer Advisory Committee would decide which disciplines to develop Fields of Study under the proposed Texas Transfer Framework.

The following revisions to Chapter 1 and Chapter 4 will align the differences, as follows:

Chapter 1.238(8) Field of Study Curriculum—a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in Title 19, Chapter 4, Subchapter B, §4.23(7).

Chapter 4.23(7) Field of Study Curriculum—Field of Study Curriculum—a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

Comment: The University of North Texas pointed out that the proposed Transfer Framework allowed for additional lower-division courses upon transfer to a four-year institution.

Response: The Coordinating Board agrees that the Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students.

The Coordinating Board recognizes the statutory requirement in Texas Education Code §61.823 for institutions to apply the block of courses to the major, if the student is deemed Texas Transfer Framework Field of Study complete by the receiving university. To implement this section, the credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees at the receiving institution. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major-specific requirements.

The proposed framework:

(1) Each Texas Transfer Framework Field of Study Curriculum will consist of Selected Major Specific Core Courses, Discipline Foundation Courses, and Directed Electives. Staff reviewed majors and found that the proposed framework would work for a majority of high-transfer majors, and

(2) General Academic Institutions have the authority to determine if a transferring student is Texas Transfer Framework Field of Study-complete. This means that if a transferring student did not complete the Directed Electives for a specific major, as required by Coordinating Board rule, Rule 4.32(b) (D) and (E), then the receiving institution can make the determination that the student is not Texas Transfer Framework Field of Study-com-

plete and additional lower-division courses for that major can be required by the receiving institution.

Comment: The University of North Texas (UNT) raised concern related to a limit on the Discipline Foundation Courses and the Directed Electives and requested that greater flexibility be provided in the total number of semester credit hours included in a Field of Study Curriculum. UNT provided an example of Music as a discipline that would need to have additional lower-division courses taken in the major, prior to transferring.

Similar comments were received from four additional institutional representatives and the Texas Association of Schools of Music.

Del Mar College in a memo to Dr. Jonda Halcomb which was forwarded to the Coordinating Board, expressed concern that as constructed the proposed Texas Transfer Framework could not accommodate the required Music curriculum and would not benefit students pursuing Music degrees.

A memo to Odessa College raised additional concerns about the Music Field of Study Curriculum and future Transfer Framework/Agreement. The memo was then forwarded to the Coordinating Board.

The Texas Association of Schools of Music commented noting his concern that the Music Field of Study would be negatively impacted by the new Texas Transfer Framework.

Dr. Diana Sipes, Associate Dean and Professor of Music, School of Arts, Media & Communication

Texas A&M University-Corpus Christi also commented noting her concern that the Music Field of Study, along with other arts programs, would be negatively impacted by the new Texas Transfer Framework.

Amarillo College commented noting concerns related to the proposed Texas Transfer Framework and the Music Field of Study. They provided a detailed overview of the curriculum music students complete and stated that the existing Field of Study Curriculum currently in effect was working well for many institutions.

Response: The Coordinating Board agrees and recognizes that all disciplines may not fit into the proposed Texas Transfer Framework. Specifically, the language in proposed §4.32(b)(3)(B) limits the Discipline Foundation Courses and the Directed Electives to not exceed 18 semester credit hours. Music is an example of a discipline that may not align with the proposed Texas Transfer Framework. Importantly, the existing Fields of Study remain in effect, including the Music Field of Study, which became effective in September 2018.

A key aspect of the proposed rules is the establishment of the Texas Transfer Advisory Committee (TTAC). The TTAC would work with subcommittees comprised of faculty experts in the discipline, much like the important work that was done on the Music Field of Study Advisory Committee, to review the existing Music Field of Study and recommend if appropriate, how it could be revised to fit into the new Texas Transfer Framework. The proposed rules provide an ample transition time for existing Field of Study Curricula to be remain in effect while TTAC decides which Field of Study to consider for inclusion under the new Texas Transfer Framework. The proposed effective dates are as follows:

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021, will remain in effect until August 31,

2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

Comment: The Texas Association of Community Colleges and the Texas Association of Chief Academic Officers submitted a joint letter in support of the Coordinating Board's efforts. Specifically, the groups are supportive of the following:

The Texas Transfer Advisory Committee with equal representation of public junior colleges and general academic teaching institutions will oversee the development of Field of Study Curricula through Discipline-Specific Subcommittees. (Texas Administrative Code, Title 19, Chapter 1, Subchapter V, §§1.237 - 1.243)

To fulfill the requirement of Education Code §61.823, Field of Study Curriculum will include the 42-semester credit hour Texas Core Curriculum (Texas Education Code §61.822), 12 semester credit hours of Discipline Foundation Courses (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(4)), and 6 semester credit hours of Directed Electives (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(5)). (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(7))

If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.32(c))

General Academic Teaching Institutions that wish to create an alternative list of Discipline Foundation Courses under the exceptional circumstances specified in the rule must seek approval from the Commissioner of Higher Education (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.32(b)(2)(E))

Courses listed in the Lower Division Academic Course Guide Manual are fully transferable among public institutions and shall be substituted for the equivalent course at the receiving institution. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B §4.24(a))

A process to dispute a receiving institution's denial of credit transfer will be available to students and to sending institutions. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B §4.27)

The associations strongly urged the Coordinating Board to fully consider the following comments:

It is our understanding that the current Field of Study Curricula will be used as a foundation for creating Discipline Foundation Courses, and the term Field of Study will now encompass all elements of a full 60-semester credit hour associate degree and the lower division component of baccalaureate degrees at general academic teaching institutions.

The associations respectfully request the THECB make explicit in its explanation of the new rules that the full 60 semester credit hours that comprise a Field of Study Curriculum will transfer and satisfy major-specific lower division requirements of corresponding baccalaureate degrees.

Proposed Texas Administrative Code Title 19, Chapter 4, Subchapter B §4.32(c) indicates a receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. As part of the graduation audit process, public junior colleges will indicate completion of Field of Study Curricula on student transcripts.

Response: The Coordinating Board appreciates the letter of support for the proposed rules. The Coordinating Board concurs with the clarification that the current Field of Study Curricula will be used as the foundation for creating the Discipline Foundation Courses. The Texas Transfer Framework Field of Study will encompass the following components:

Selected discipline-specific *Texas Core Curriculum* courses, of an unspecified number of hours,

Up to 12 SCH of *Discipline Foundation Courses*, and

At least 6 SCH of *Directed Electives* (see Rule 4.32).

The Coordinating Board agrees that the credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The Coordinating Board agrees that it is the responsibility of the receiving general academic institution to determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment and the public junior colleges may indicate completion of Field of Study Curricula on student transcripts.

Comment: The University of Texas at Dallas, submitted a letter expressing concerns related to the ability of a student to take lower-division courses when they transfer to the university. They stated, "The interpretation that all lower-division courses, rather than common lower-division courses, must be substituted has the unintended consequence of curricular misalignment that ultimately disadvantages transfer students who are prohibited by the state from following the same curricular path as native students, resulting in transfer students not having sufficient lower-division prerequisites and content knowledge for their subsequent courses."

They raised concern regarding the ability of transfer students to take lower-division courses if they are Texas Transfer Framework Field of Study complete. They state, "Specifically, the proposed rules appear to prohibit a four-year university from requiring additional lower-division courses beyond the Field of Study Curricula."

They also expressed concern that transfer students would be required to take only upper-division courses upon transfer to the university. They pointed out that many university upper-division

courses have prerequisites and that transfer students would be disadvantaged if they could not take the prerequisite courses. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including the Core Curriculum, that are not major specific requirements.

Dr. King also expressed her concern that transfer students would be required to take only upper-division courses upon transfer to the university. She pointed out that many university upper-division courses have prerequisites and that transfer students would be disadvantaged if they could not take the prerequisite courses. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including the Core Curriculum, that are not major specific requirements.

They also raised concern regarding faculty buy-in and participation in the new framework. They also stated that the goals of the Transfer Framework are to assist students to seamlessly transfer from a two-year to a four-year institution in a cost-effective and efficient manner. They stated that this could be achieved with the ability of a four-year institution requiring additional lower-division courses and providing transfer students the same advantages in upper-division coursework as their native peers.

Response: The Coordinating Board appreciates the comments and recognizes the need for clarity to ensure faculty-buy in and to appropriately structure the Texas Transfer Framework Field of Study to affirm that transfer and native students are afforded the same opportunities. The proposed rules provide a new structure of governance that will allow discipline specific subcommittees, comprised of faculty experts in that discipline, to collaboratively develop a thoughtful and meaningful approach to transfer and to identify majors and courses that fit into the proposed Texas Transfer Framework. The Texas Transfer Advisory Committee (TTAC) would provide a cohesive approach to govern the process that will provide students with a seamless path for transfer based on transfer data, enrollment patterns, and course completions. The Coordinating Board staff are confident that this new framework and governance structure will be able to address the concerns raised.

The proposed Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major specific requirements.

The Coordinating Board recognizes the statutory requirement for institutions to apply the block of courses to the major, if the transfer student is deemed Texas Transfer Framework Field of Study complete by the receiving university.

Comment: Texas A&M University submitted a letter requesting clarification of the bolded language in two proposed rules in Chapter 4:

Rule 4.23(7) Field of Study Curriculum--a set of courses that will satisfy the lower-division requirements for a baccalaureate degree in a specific academic area at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

Rule 4.32(c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

They stated, the language could be interpreted to mean that transfer students would be prohibited from taking additional lower-division coursework to satisfy baccalaureate degree programs. They further stated that this could result in a loss of curricular flexibility noting that the majority of Texas A&M University degree programs require students to complete additional lower-division courses.

Response: The Coordinating Board appreciates the comments and recognizes the need for clarity to ensure faculty-buy in and to appropriately structure the Texas Transfer Framework Field of Study to affirm that transfer and native students are afforded the same opportunities. The proposed rules provide a new structure of governance that will allow discipline specific subcommittees, comprised of faculty experts in that discipline, to collaboratively develop a thoughtful and meaningful approach to transfer and to identify majors and courses that fit into the proposed Texas Transfer Framework. The Texas Transfer Advisory Committee (TTAC) would provide a cohesive approach to govern the process that will provide students with a seamless path for transfer based on transfer data, enrollment patterns, and course completions. The Coordinating Board staff are confident that this new framework and governance structure will be able to address the concerns raised.

The proposed Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major specific requirements.

The Coordinating Board recognizes the statutory requirement for institutions to apply the block of courses to the major, if the transfer student is deemed Texas Transfer Framework Field of Study complete by the receiving university.

The rules are adopted under the Texas Education Code, §§61.821 and 61.823, which provide for Field of Study Curriculum and authorize the Board to utilize advisory committees to assist the Board. Texas Education Code §61.028(a) authorizes the Board to delegate duties to the Commissioner of Higher Education.

§1.237. Authority and Purpose.

(a) The authority for the Texas Transfer Advisory Committee is Texas Education Code §61.823.

(b) The purpose of the Texas Transfer Advisory Committee is to advise the Commissioner on development of the Field of Study Curricula.

§1.238. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Core Curriculum or Texas Core Curriculum (TCC)--a required curriculum for an undergraduate degree, as defined in Title 19, Chapter 4, Subchapter B, §4.23(3) (relating to Definitions).

(4) Directed Electives--a component of the Field of Study Curriculum, as defined in Title 19, Chapter 4, Subchapter B, §4.23(4).

(5) Discipline Foundation Courses (DFC)--a component of the Field of Study Curriculum, as defined in Title 19, Chapter 4, Subchapter B, §4.23(5).

(6) Discipline-Specific Subcommittee--a subcommittee comprised of faculty from general academic teaching institutions and public junior colleges in a single discipline. The Chief Academic Officer of each university system or institution of higher education which offers a degree program for which a Field of Study Curriculum is proposed may submit a recommended nominee. A Discipline-Specific Subcommittee is formed at the request of the Texas Transfer Advisory Committee to aid and advise the development of a Field of Study Curriculum in a specific discipline. A Discipline Specific Subcommittee is not an advisory committee.

(7) Faculty Member--a person who is employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, or dean.

(8) Field of Study Curriculum--a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in Title 19, Chapter 4, Subchapter B, §4.23(7).

(9) General academic teaching institution--an institution of higher education as defined in Texas Education Code, §61.003(3).

(10) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003(8).

(11) Public junior college--an institution of higher education as defined in Texas Education Code, §61.003(2).

(12) Texas Transfer Advisory Committee (TTAC)--the advisory committee with responsibility for advising the Commissioner and Board on Field of Study Curricula, including their establishment and revision. The TTAC may request to form a Discipline-Specific Subcommittee to assist in the development of a Field of Study Curriculum.

§1.239. Duties of the Texas Transfer Advisory Committee.

(a) The Texas Transfer Advisory Committee (TTAC) shall advise the Commissioner and Board on the following:

(1) Oversight of the Field of Study Curricula, review of relevant data, coordination of the schedule of discipline-specific reviews, and recommending discipline-specific curricula;

(2) Recommendations for Field of Study Curricula to be approved by the Commissioner, including recommendations of Texas Core Curriculum courses relevant to specific disciplines and courses for the Discipline Foundation Courses and the Directed Electives components;

(3) Reviewing and making recommendations to the Commissioner to optimize the transferability and applicability of credits and increase transfer students' success within majors;

(4) Development and coordination of a Field of Study Curricula review schedule for the Discipline-Specific Subcommittees based on reasonable factors, including prioritizing development of frameworks in high-enrollment and high-need disciplines;

(5) Convening and reviewing the work of Discipline-Specific Subcommittees, in accordance with the established Field of Study Curricula review schedule;

(6) Monitoring curricular changes at general academic teaching institutions and student course enrollment patterns within and across public junior colleges and general academic teaching institutions;

(7) Developing the Discipline Foundation Courses component of the Field of Study Curriculum, with consideration for the most frequently used transfer pathways; and

(8) Recommendations regarding the timing and structure of transfer policy-related agency surveys and data collection from institutions of higher education, and the timely and appropriate dissemination of information to help inform institutional decisions about curriculum and program design.

(b) The agency shall provide a 30-day informal notice and comment period to all impacted institutions prior to the Commissioner's approval or denial of a set of Discipline Foundation Courses.

(c) At least annually, the TTAC will report on the recommendations of the Discipline-Specific Subcommittees, the status of these subcommittees, and other recommendations as appropriate to improve student transfer and success across the state.

§1.240. Texas Transfer Advisory Committee Composition, Officers, and Terms.

(a) The Texas Transfer Advisory Committee (TTAC) shall be composed of no more than twenty-four (24) members. The committee will be equally composed of representatives of public junior colleges and general academic teaching institutions.

(1) At least a majority of the members of the TTAC shall be faculty members of an institution of higher education. The Chief Academic Officer of an institution shall consult with the faculty of the institution before nominating or recommending a person to the Board as the institution's representative on the TTAC.

(2) The TTAC shall also include student and academic advisor representatives as ex-officio members who are not included among the 24 committee members.

(3) The Commissioner will consider the appropriate representation of higher education sectors, including representation from the Board Accountability Peer Groups, in selecting members of TTAC.

(4) The Commissioner has final authority to appoint TTAC membership.

(b) Members shall serve staggered terms of up to three years.

(c) The TTAC will have co-chairs appointed by the Commissioner: one from a public junior college and one from a general academic teaching institution. The Commissioner may appoint a chair to serve not more than three terms.

§1.241. Meetings of the Texas Transfer Advisory Committee.

(a) The Texas Transfer Advisory Committee will meet at least twice a year and may do so more frequently as needed if both co-chairs agree.

(b) All meetings will be open to the public and broadcast on the web.

(c) A quorum of the TTAC requires presence of a majority of the twelve members representing the public junior colleges and a majority of the twelve members representing the general academic teaching institutions.

§1.242. Duties of the Discipline-Specific Subcommittees.

The Discipline-Specific Subcommittees shall advise the Texas Transfer Advisory Committee (TTAC) as requested by TTAC on course curricular issues, including the following:

(1) Current structures of and recent changes in degree program requirements, student course enrollment patterns, and student success within and across public junior colleges and general academic teaching institutions for a given discipline, at the direction of the TTAC.

(2) Recommendations for the list of courses to be included in a Field of Study Curriculum for a discipline, including identifying discipline-related courses within the Texas Core Curriculum and a recommended set of Discipline Foundation Courses.

§1.243. Discipline-Specific Subcommittees Composition, Officers, and Terms.

(a) The Discipline-Specific Subcommittees shall be composed of an equal representation of public junior college faculty and general academic teaching institution faculty from nominees recommended by the Chief Academic Officer of every college or university that chooses to participate on that discipline-specific workgroup. The Commissioner has final authority to select members of the Discipline-Specific Subcommittees.

(b) Members shall serve staggered terms of up to three years but may be replaced upon nomination of a new representative by their institution's Chief Academic Officer.

(c) Each subcommittee shall select two co-chairs from its membership to preside over the subcommittee. The co-chairs must include one co-chair from the public junior college members and one co-chair from the general academic teaching institution members.

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206

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CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER B. TRANSFER OF CREDIT,
CORE CURRICULUM AND FIELD OF STUDY
CURRICULA

19 TAC §§4.21 - 4.36

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §§4.21 - 4.36, Transfer of Credit, Core Curriculum and Field of Study, without changes to the proposed text as published in the January 15, 2021, issue of the *Texas Register* (46 TexReg 426). The rules will not be republished.

In conjunction with this rulemaking, the Coordinating Board repealed Chapter 27 of the Board Rules that previously implemented the advisory committee requirements of §61.823, and replaced that chapter with a new Chapter 1, Subchapter V. The Board repealed existing Chapter 4, Subchapter B, and via separate rulemaking re-adopted Chapter 4, Subchapter B.

Agency staff conducted more than twenty-four meetings, over a span of six months, using an informal stakeholder workgroup to develop a conceptual framework for both the substantive revisions of rules governing Field of Study Curriculum and transfer of credit between institutions. The stakeholder workgroup was composed of an equal number of representatives from public junior colleges and general academic teaching institutions. The adopted rules in this subchapter and the adopted Texas Transfer Advisory Committee rules in Title 19, Chapter 1, Subchapter V, address longstanding challenges in the transfer system to enable students to earn and reliably transfer credits among institutions of higher education. These rules create additional certainty for students and institutions toward the goal of reducing the cost of higher education for Texas families.

No comments were received regarding the proposed repeals.

The repeal is adopted under Texas Education Code §61.027, which provides the Coordinating Board with general rulemaking authority; Texas Education Code §61.002, which establishes the Coordinating Board as the agency charged to provide leadership and coordination for the Texas higher education system; Texas Education Code §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education; and Texas Education Code §§61.821, 61.8221, 61.823-61.828, 61.830, 61.059(l), 61.059(p), and 61.0593, which provide for the development and implementation of field of study curricula, authorize the Board to form advisory committees to assist the Board, and authorize the Board to adopt rules as necessary. Texas Education Code §61.028(a) authorizes the Board to delegate duties to the Commissioner of Higher Education.

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

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19 TAC §§4.21 - 4.38

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Chapter 4, Subchapter B, §§4.21 - 4.38, Transfer of Credit, Core Curriculum and Field of Study, with changes to the proposed text as published in the January 15, 2021, issue of the *Texas Register* (46 TexReg 427). The rules will be republished.

In conjunction with this rulemaking, the Coordinating Board repealed Chapter 27 of the Board Rules that previously implemented the advisory committee requirements of §61.823, and replaced that chapter with a new Chapter 1, Subchapter V. The Board repealed Chapter 4, Subchapter B, and adopted new rules as detailed below. The Coordinating Board adopted Chapter 4, Subchapter B, rules 4.21, 4.24, 4.26, 4.28-4.31 with changes to current rules which are repealed. Rule 4.37 is renumbered without changes from current §4.35 which is repealed. Rule 4.38 as amended is renumbered with only typographical corrections from current §4.36 which is repealed. The Board made revisions at adoption to §4.23(7) to clarify the elements of the Field of Study curriculum and align the definition with that of newly-adopted rule 1.238(8).

Agency staff conducted more than twenty-four meetings, over a span of six months, using an informal stakeholder workgroup to develop a conceptual framework for both the substantive revisions of rules governing Field of Study Curriculum and transfer of credit between institutions. The stakeholder workgroup was composed of an equal number of representatives from public junior colleges and general academic teaching institutions. The adopted rules in this subchapter and the adopted Texas Transfer Advisory Committee rules in Title 19, Chapter 1, Subchapter V, address longstanding challenges in the transfer system to enable students to earn and reliably transfer credits among institutions of higher education. These rules create additional certainty for students and institutions toward the goal of reducing the cost of higher education for Texas families.

The Coordinating Board adopted a new advisory committee structure to implement Texas Education Code §61.823 that utilizes one advisory committee (the new Texas Transfer Advisory Committee or "TTAC") that works with the assistance of subcommittees to lend expertise and make recommendations to the Texas Transfer Advisory Committee on courses that should be included in Discipline Foundation Courses, selected discipline-relevant Texas Core Curriculum courses, and the development of the Field of Study Curricula.

The Texas Transfer Advisory Committee is composed of an equal number of representatives from groups representing public junior colleges and general academic teaching institutions, not to exceed a total of 24 members. A quorum of the Texas Transfer Advisory Committee is defined as a majority of members from each group. The Texas Transfer Advisory Committee will convene Discipline-Specific Subcommittees to recommend Discipline Foundation Courses in each Field of Study Curriculum that the Texas Transfer Advisory Committee

proposes to develop and recommend to the Commissioner of Higher Education. The Texas Transfer Advisory Committee must have a super-majority of the representatives of each of the public junior colleges and general academic teaching institutions in order to recommend a Field of Study Curriculum to the Commissioner for approval. The TTAC may vote by simple majority to send a proposed Field of Study Curriculum back to the subcommittee for revision if they do not vote to approve it as proposed.

The Field of Study Curriculum is composed of three components that together will fulfill the requirement of Education Code §61.823: discipline-relevant courses selected from the existing Texas Core Curriculum, the Discipline Foundation Courses, and Directed Electives. With the assistance of the Discipline-Specific Subcommittees, the TTAC will develop and recommend the set of recommended discipline-relevant Texas Core Curriculum courses and the Discipline Foundation Courses to the Commissioner.

The Discipline Foundation Courses are a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours, selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under Title 19, Chapter 4, Subchapter B, §4.35.

Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution. The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed eighteen (18) semester credit hours in total. Each institution will submit its Directed Electives to the Board in addition to posting them on the institution's website. This established list and its publication will allow students to ensure that they can enroll in courses that are applicable to a bachelor's degree. The publication requirements allow a general academic teaching institution to assist transfer students in becoming well-prepared to complete the institution's upper-division course work and earn a degree. By creating a definite list of Discipline Foundation Courses, and combining those with the selected discipline-relevant Texas Core Curriculum, and a published set of Directed Electives for each Field of Study Curriculum at a receiving institution, the Board anticipates the reliability of transfer and certainty for students and sending institutions will be greatly improved. The collaborative process, which includes super-majority voting requirements, creates the opportunity for two- and four-year institutions to work together to improve outcomes and ultimately reduce cost for Texas students. The rules also revise the credit transfer dispute resolution process by improving transparency for students about the procedure and allowing students or sending institutions to appeal to the Commissioner as an option of last resort.

Each general academic teaching institution will determine whether a student is Field of Study Curriculum complete. Each general academic teaching institution must transfer the credit and substitute that block of courses for that institution's lower-division courses upon enrollment of a student who is Field of Study Curriculum complete. A student who is Field of Study Curriculum complete can then move on to the upper-division

courses required of students native to that institution. The rules meet the requirement of Texas Education Code §61.823, by requiring a general academic teaching institution to transfer applicable credits for partial completion of a Field of Study Curriculum upon enrollment of a transfer student.

The adopted rules also provide for a data-driven evaluation process by requiring institutions to report certain data to the Coordinating Board so that the institution and the Board can determine whether and how the new processes and Field of Study Curricula improve transfer pathways in Texas over time.

Rule 4.21 is adopted without changes to current §4.21 which is repealed.

Rule 4.22 reflects new adopted provisions governing Field of Study Curricula.

Rule 4.23 includes definitions for terms used in Chapter 4, Subchapter B, and cross-referenced to Chapter 1, Subchapter V.

Rule 4.23(4) "Directed Electives" is defined as at least six credit hours that each general academic teaching institution may require as one component of Field of Study Curriculum for completion at that institution. The general academic teaching institution must publish the Directed Electives on its website and cross-list the courses using the Texas Common Course Numbering System course number. These courses are limited to those in the Lower-Division Academic Course Guide Manual.

Rule 4.23(5) defines "Discipline Foundation Courses" as courses within a major course of study that form one component of Field of Study Curriculum. Each institution must apply the credits toward the student's corresponding major or track offered by the institution for that Field of Study.

Rule 4.23(6) defines "Discipline-Specific Subcommittee" as a subcommittee formed by the Texas Transfer Advisory Committee (TTAC). These subcommittees are charged with recommending to the TTAC courses that should be included in a Field of Study Curriculum developed by TTAC.

Rule 4.23(7) implements Field of Study Curriculum set out in Education Code §61.823. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives. Each receiving institution must apply the credit for any Field of Study Curriculum courses completed by the student to the required coursework for the degree program to the corresponding degree program offered by the receiving institution.

Rule 4.23(8) and (9) defines types of institutions of higher education to conform to Education Code §61.003.

Rule 4.23(11) defines the new Texas Transfer Advisory Committee (TTAC), which replaces the advisory committees in Chapter 27, being repealed in conjunction with this rulemaking. The TTAC has responsibility for advising the Commissioner on Field of Study Curricula, including their establishment and revision. The TTAC may request to form a Discipline-Specific Committee to assist in the development of a Field of Study Curriculum.

Rule 4.24 is adopted without changes to current §4.24 which is repealed.

Rule 4.25 is adopted and relates to general transfer of credit requirements and prohibitions.

Rule 4.26 is adopted without changes to current §4.26 which is repealed.

Rule 4.27 provides clarity and specificity around the resolution of credit transfer disputes among institutions. The rules require a receiving institution that proposes to deny a student's transfer credits to provide notice to the student and under certain timelines. If the sending and receiving institutions are unable to resolve the dispute, the student or the sending institution may appeal to the Commissioner. The Commissioner or his designee will make the final determination about the transfer of credit. Each institution must publish the transfer credit dispute process in its course catalog. The Board is required to keep and track data on transfer credit dispute resolutions.

Rules 4.28-4.31 governing the Texas Core Curriculum are adopted without changes to current rules 4.28-4.31 which are repealed.

Rule 4.32 as adopted describes the creation and implementation of Field of Study Curricula in detail. The rule provides that the Commissioner will appoint the TTAC and the TTAC may request the assistance of a Discipline-Specific Subcommittee to assist the Texas Transfer Advisory Committee. The TTAC will recommend a new Field of Study Curriculum to the Commissioner who is authorized to approve or deny the Field of Study Curriculum. Consistent with §4.23(7), the rule sets out the three components of a new Field of Study Curriculum and sets out the mandatory provisions of the Discipline Foundation Courses and Directed Electives. Subsection (b)(2)(E) creates a process by which a general academic teaching institution may seek approval from the Commissioner to create an alternative list of Discipline Foundation Courses for the institution in exceptional circumstances, specified in the rule. The rule sets out the process for approval of the alternative Discipline Foundation Courses. This rule sets out the requirements for reporting and publication of the Discipline Foundation Courses.

Subsection (b)(3) describes the process governing an institution's selection, reporting, and publication of its Directed Electives. The rule specifies that each institution must have at least six hours of Directed Electives for each Field of Study Curriculum and that the Directed Electives and Discipline Foundation Courses must total eighteen (18) credit hours for each institution.

Subsection (c), as adopted, provides that a receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers.

Subsection (d) describes the acceptance and application of credit when a student has achieved only partial completion of a Field of Study Curriculum prior to enrollment in a receiving general academic teaching institution.

The rule sets out the requirements for publication of the Field of Study Curricula and transcription requirements.

Subsection (g) of the adopted rule establishes transition provisions that govern the expiration of Field of Study Curricula and how institutions should "teach out" students who, on or before August 31, 2022, have earned credit in a Field of Study Curriculum that exists on March 1, 2021.

Rule 4.33 as adopted sets out the process for approval of the Field of Study Curricula, including Texas Transfer Advisory Committee's use of Discipline-Specific Subcommittees, the TTAC's process for voting on approval to recommend a Field of Study Curriculum to the Commissioner and the Commissioner's authority to approve or deny the Field of Study Curriculum.

The rule provides that the Texas Transfer Advisory Committee's approval of a Field of Study Curriculum requires approval by a supermajority vote of two-thirds of the general academic teaching institution representatives who are present and voting and two-thirds of the public junior college representatives who are present and voting.

The rule as adopted also creates a process for the Commissioner to provide informal notice and receive comments from affected institutions prior to approving or denying the Field of Study Curricula recommended by the TTAC. The Commissioner will report to the Board all Field of Study Curricula the Commissioner has approved or denied since the last quarterly Board meeting. The Commissioner will provide an annual report to the TTAC on all Field of Study Curricula that the Commissioner approved during the prior year.

Rule 4.34 specifies the conditions upon which the Commissioner will consider and modify or revise a Field of Study Curriculum.

Rule 4.35 sets out the process by which a general academic teaching institution may petition the Commissioner to create an alternative list of Discipline Foundation Courses for the institution in exceptional circumstances, specified in the rule. The rule sets out the process for approval of the alternative Discipline Foundation Courses. This rule sets out the requirements for reporting and publication of the alternative Discipline Foundation Courses. The Commissioner will consider a petition for alternative Discipline Foundation Courses (DFC) not later than 30 days after receiving the report from TTAC. The Commissioner will inform the Board and maintain on the Board's website a list of approved alternative DFC.

Rule 4.36 adopted the provisions of §4.33 which is repealed. This provision requires institutions of higher education to submit evaluations of the transfer policies, including data on the degree programs that have Field of Study Curricula, credit transfer data, and advising practices. The data must include: a chart or table showing the number of total transfer students for each degree program that has a Board-approved Field of Study Curriculum for each of the last five years; the chart should indicate year-by-year the percentage of students who transferred having completed the applicable Field of Study Curriculum; the percentage of students who transferred without having completed the applicable Field of Study Curriculum; and any information about progress toward graduation or graduation rates that can compare transfer student performance with non-transfer student performance during the evaluation period.

Subsection (c) of the rule sets out requirements for the TTAC to create a schedule for review of Field of Study Curricula.

Rule 4.37 as adopted is renumbered without changes from §4.35 which is repealed.

Rule 4.38 as adopted is renumbered with only typographical corrections from §4.36 which is repealed.

The following comment(s) were received regarding the adoption of the new rules.

Comment: The University of North Texas (UNT) raised several concerns related to the proposed rules. They correctly identified differences in the definition of the Field of Study Curriculum. They asked that the definition of a Field of Study Curriculum be clarified. In Chapter 1.238(8) the Field of Study Curriculum is defined as a set of courses that satisfy baccalaureate degree requirements and in Chapter 4.23(7) the definition of Field of Study Curriculum is further defined as a set of courses that will satisfy the lower-division requirements and identifies the three components of a Field of Study Curriculum. They suggested aligning the definitions and requested clarification that the Field of Study Curriculum under the revised Texas Transfer Framework would allow a student to fulfill a Field of Study Curriculum without necessarily completing the core curriculum or completing all lower-division courses.

Similar comments were received via phone conversations and email that relayed the same concern, specifically related to the discipline of Music.

Response: The Coordinating Board agrees that the definitions presented in Chapter 1.238(8) and 4.23(7) differ and agree to revise the rules to align. Staff also agree that some disciplines may not benefit from the Texas Transfer Framework and the Texas Transfer Advisory Committee would decide which disciplines to develop Fields of Study under the proposed Texas Transfer Framework.

The following revisions to Chapter 1 and Chapter 4 will align the differences, as follows:

Chapter 1.238(8) Field of Study Curriculum--a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in Title 19, Chapter 4, Subchapter B, §4.23(7).

Chapter 4.23(7) Field of Study Curriculum-- Field of Study Curriculum--a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

Comment: The University of North Texas pointed out that the proposed Transfer Framework allowed for additional lower-division courses upon transfer to a four-year institution.

Response: The Coordinating Board agrees that the Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students.

The Coordinating Board recognizes the statutory requirement in Texas Education Code §61.823 for institutions to apply the block of courses to the major, if the student is deemed Texas Transfer Framework Field of Study complete by the receiving university. To implement this section, the credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees at the receiving institution. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major-specific requirements.

The proposed framework:

(1) Each Texas Transfer Framework Field of Study Curriculum will consist of Selected Major Specific Core Courses, Discipline Foundation Courses, and Directed Electives. Staff reviewed majors and found that the proposed framework would work for a majority of high-transfer majors, and

(2) General Academic Institutions have the authority to determine if a transferring student is Texas Transfer Framework Field of Study-complete. This means that if a transferring student did not complete the Directed Electives for a specific major, as required by Coordinating Board rule, Chapter 4. 32(b) (D) and (E), then the receiving institution can make the determination that the student is not Texas Transfer Framework Field of Study-complete and additional lower-division courses for that major can be required by the receiving institution.

Comment: The University of North Texas (UNT) raised concern related to a limit on the Discipline Foundation Courses and the Directed Electives and requested that greater flexibility be provided in the total number of semester credit hours included in a Field of Study Curriculum. UNT provided an example of Music as a discipline that would need to have additional lower-division courses taken in the major, prior to transferring.

Similar comments were received from four additional institutional representatives and the Texas Association of Schools of Music.

Del Mar College in a memo which was then forwarded to the Coordinating Board, expressed concern that as constructed the proposed Texas Transfer Framework could not accommodate the required Music curriculum and would not benefit students pursuing Music degrees.

Odessa College, raised additional concerns about the Music Field of Study Curriculum and future Transfer Framework/Agreement. The memo was then forwarded to the Coordinating Board.

The Texas Association of Schools of Music commented noting his concern that the Music Field of Study would be negatively impacted by the new Texas Transfer Framework.

Texas A&M University-Corpus Christi also commented noting her concern that the Music Field of Study, along with other arts programs, would be negatively impacted by the new Texas Transfer Framework.

Amarillo College, commented noting her concerns related to the proposed Texas Transfer Framework and the Music Field of Study. They provided a detailed overview of the curriculum music students complete and stated that the existing Field of Study Curriculum currently in effect was working well for many institutions.

Response: The Coordinating Board agrees and recognizes that all disciplines may not fit into the proposed Texas Transfer Framework. Specifically, the language in proposed §4.32(b)(3)(B) limits the Discipline Foundation Courses and the Directed Electives to not exceed 18 semester credit hours. Music is an example of a discipline that may not align with the proposed Texas Transfer Framework. Importantly, the existing Fields of Study remain in effect, including the Music Field of Study, which became effective in September 2018.

A key aspect of the proposed rules is the establishment of the Texas Transfer Advisory Committee (TTAC). The TTAC would work with subcommittees comprised of faculty experts in the discipline, much like the important work that was done on the Music Field of Study Advisory Committee, to review the exist-

ing Music Field of Study and recommend if appropriate, how it could be revised to fit into the new Texas Transfer Framework. The proposed rules provide an ample transition time for existing Field of Study Curricula to be remain in effect while TTAC decides which Field of Study to consider for inclusion under the new Texas Transfer Framework. The proposed effective dates are as follows:

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021 will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

Comment: The Texas Association of Community Colleges and the Texas Association of Chief Academic Officers submitted a joint letter in support of the Coordinating Board's efforts. Specifically, the groups are supportive of the following:

The Texas Transfer Advisory Committee with equal representation of public junior colleges and general academic teaching institutions will oversee the development of Field of Study Curricula through Discipline-Specific Subcommittees. (Texas Administrative Code, Title 19, Chapter 1, Subchapter V, §§1.237-1.243)

To fulfill the requirement of Education Code §61.823, Field of Study Curriculum will include the 42-semester credit hour Texas Core Curriculum (Texas Education Code §61.822), 12 semester credit hours of Discipline Foundation Courses (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(4)), and 6 semester credit hours of Directed Electives (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(5)). (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.23(7))

If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.32(c))

General Academic Teaching Institutions that wish to create an alternative list of Discipline Foundation Courses under the exceptional circumstances specified in the rule must seek approval from the Commissioner of Higher Education (Texas Administrative Code, Title 19, Chapter 4, Subchapter B, §4.32(b)(2)(E))

Courses listed in the Lower Division Academic Course Guide Manual are fully transferable among public institutions and shall be substituted for the equivalent course at the receiving institution. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B §4.24(a))

A process to dispute a receiving institution's denial of credit transfer will be available to students and to sending institutions. (Texas Administrative Code, Title 19, Chapter 4, Subchapter B §4.27)

The associations strongly urged the Coordinating Board to fully consider the following comments:

It is our understanding that the current Field of Study Curricula will be used as a foundation for creating Discipline Foundation Courses, and the term Field of Study will now encompass all elements of a full 60-semester credit hour associate degree and the lower division component of baccalaureate degrees at general academic teaching institutions.

The associations respectfully request the THECB make explicit in its explanation of the new rules that the full 60 semester credit hours that comprise a Field of Study Curriculum will transfer and satisfy major-specific lower division requirements of corresponding baccalaureate degrees.

Proposed Texas Administrative Code Title 19, Chapter 4, Subchapter B §4.32(c) indicates a receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. As part of the graduation audit process, public junior colleges will indicate completion of Field of Study Curricula on student transcripts.

Response: The Coordinating Board appreciates the letter of support for the proposed rules. The Coordinating Board concurs with the clarification that the current Field of Study Curricula will be used as the foundation for creating the Discipline Foundation Courses. The Texas Transfer Framework Field of Study will encompass the following components:

Selected discipline-specific Texas Core Curriculum courses, of an unspecified number of hours,

Up to 12 SCH of Discipline Foundation Courses, and

At least 6 SCH of Directed Electives (see Rule 4.32).

The Coordinating Board agrees that the credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The Coordinating Board agrees that it is the responsibility of the receiving general academic institution to determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment and the public junior colleges may indicate completion of Field of Study Curricula on student transcripts.

Comment: The University of Texas at Dallas, submitted a letter expressing her concerns related to the ability of a student to take lower-division courses when they transfer to the university. They stated, "The interpretation that all lower-division courses, rather than common lower-division courses, must be substituted has the unintended consequence of curricular misalignment that ultimately disadvantages transfer students who are prohibited by the state from following the same curricular path as native students, resulting in transfer students not having sufficient lower-division prerequisites and content knowledge for their subsequent courses."

They raised concern regarding the ability of transfer students to take lower-division courses if they are Texas Transfer Framework Field of Study complete. They state, "Specifically, the proposed rules appear to prohibit a four-year university from requiring additional lower-division courses beyond the Field of Study Curricula."

They also expressed her concern that transfer students would be required to take only upper-division courses upon transfer to the university. They pointed out that many university upper-division courses have prerequisites and that transfer students would be disadvantaged if they could not take the prerequisite courses. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including the Core Curriculum, that are not major specific requirements.

They also raised concern regarding faculty buy-in and participation in the new framework. They also stated that the goals of the Transfer Framework are to assist students to seamlessly transfer from a two-year to a four-year institution in a cost-effective and efficient manner. They stated that this could be achieved with the ability of a four-year institution requiring additional lower-division courses and providing transfer students the same advantages in upper-division coursework as their native peers.

Response: The Coordinating Board appreciates the comments and recognizes the need for clarity to ensure faculty-buy in and to appropriately structure the Texas Transfer Framework Field of Study to affirm that transfer and native students are afforded the same opportunities. The proposed rules provide a new structure of governance that will allow discipline specific subcommittees, comprised of faculty experts in that discipline, to collaboratively develop a thoughtful and meaningful approach to transfer and to identify majors and courses that fit into the proposed Texas Transfer Framework. The Texas Transfer Advisory Committee (TTAC) would provide a cohesive approach to govern the process that will provide students with a seamless path for transfer based on transfer data, enrollment patterns, and course completions. The Coordinating Board staff are confident that this new framework and governance structure will be able to address the concerns raised.

The proposed Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major specific requirements.

The Coordinating Board recognizes the statutory requirement for institutions to apply the block of courses to the major, if the transfer student is deemed Texas Transfer Framework Field of Study complete by the receiving university.

Comment: Texas A&M University submitted a letter requesting clarification of the bolded language in two proposed rules in Chapter 4:

4.23(7) Field of Study Curriculum--a set of courses that will satisfy the lower-division requirements for a baccalaureate degree in a specific academic area at a general academic teaching in-

stitution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

4.32 (c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

They stated, the language could be interpreted to mean that transfer students would be prohibited from taking additional lower-division coursework to satisfy baccalaureate degree programs. They further stated that this could result in a loss of curricular flexibility noting that the majority of Texas A&M University degree programs require students to complete additional lower-division courses.

Response: The Coordinating Board appreciates the comments and recognizes the need for clarity to ensure faculty-buy in and to appropriately structure the Texas Transfer Framework Field of Study to affirm that transfer and native students are afforded the same opportunities. The proposed rules provide a new structure of governance that will allow discipline specific subcommittees, comprised of faculty experts in that discipline, to collaboratively develop a thoughtful and meaningful approach to transfer and to identify majors and courses that fit into the proposed Texas Transfer Framework. The Texas Transfer Advisory Committee (TTAC) would provide a cohesive approach to govern the process that will provide students with a seamless path for transfer based on transfer data, enrollment patterns, and course completions. The Coordinating Board staff are confident that this new framework and governance structure will be able to address the concerns raised.

The proposed Texas Transfer Framework provides greater flexibility for institutions to ensure that transfer students credits are applied toward the major, while still fulfilling the same degree requirements as native, non-transfer students. The credit hours that comprise a Texas Transfer Framework Field of Study Curriculum will transfer and satisfy major-specific lower-division requirements of corresponding baccalaureate degrees. The transfer student may take additional lower-division courses to satisfy requirements, including courses in the Core Curriculum, that are not major specific requirements.

The Coordinating Board recognizes the statutory requirement for institutions to apply the block of courses to the major, if the transfer student is deemed Texas Transfer Framework Field of Study complete by the receiving university.

The new rules are adopted under Texas Education Code §61.027, which provides the Coordinating Board with general rulemaking authority; Texas Education Code §61.002, which establishes the Coordinating Board as the agency charged to provide leadership and coordination for the Texas higher education system; Texas Education Code §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education; and Texas Education Code §§61.821, 61.8221, 61.823-61.828,

61.830, 61.059(l), 61.059(p), and 61.0593, which provide for the development and implementation of Field of Study Curricula, authorize the Board to form advisory committees to assist the Board, and authorize the Board to adopt rules as necessary. Texas Education Code §61.028(a) authorizes the Board to delegate duties to the Commissioner of Higher Education.

§4.21. *Purpose.*

The purpose of this subchapter is to provide for the development and implementation of policies that encourage the free and appropriate transferability of lower division course credit among institutions of higher education, and especially to provide for the smooth transfer of lower division credit through core curricula, field of study curricula, and a procedure for the resolution of transfer disputes.

§4.22. *Authority.*

The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of Core Curricula, Field of Study Curricula, and a transfer dispute resolution process under Texas Education Code §§61.059, 61.0593, 61.821, 61.823-61.828.

§4.23. *Definitions.*

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

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education.
- (3) Core Curriculum or Texas Core Curriculum--the curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to all institutions of higher education that offer academic undergraduate degree programs.
- (4) Directed Electives--a set of courses within a major course of study, consisting of at least six semester credit hours, specific to each general academic teaching institution and prescribed by the faculty of each general academic teaching institution. Directed Electives form part of the Field of Study Curriculum.
- (5) Discipline Foundation Courses (DFC)--a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours. The Discipline Foundation Courses form part of the Field of Study Curriculum.
- (6) Discipline-Specific Subcommittee--a subcommittee established under Title 19, Chapter 1, Subchapter V, §1.242 and §1.243. Each subcommittee is comprised of faculty from general academic teaching institutions and public junior colleges in a single discipline.
- (7) Field of Study Curriculum--Field of Study Curriculum--a set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.
- (8) General academic teaching institution--an institution of higher education defined in Texas Education Code, §61.003(3).
- (9) Public junior college--an institution of higher education defined in Texas Education Code, §61.003(2).
- (10) Texas Common Course Numbering System (TC-CNS)--a Board-approved course numbering system for lower-division

academic courses that assigns common course numbers in order to facilitate the transfer of lower-division academic courses among institutions of higher education by promoting consistency in course designation and identification.

(11) Texas Transfer Advisory Committee--the advisory committee established under Title 19, Chapter 1, Subchapter V. The Texas Transfer Advisory Committee has responsibility for advising the Commissioner and Board on Field of Study Curricula, including their establishment and revision. The Texas Transfer Advisory Committee may request to form a Discipline-Specific Committee to assist in the development of a Field of Study Curriculum.

(12) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003.

(13) Lower-Division Academic Course Guide Manual (ACGM)--a Board-approved publication listing academic courses that public two-year colleges may teach and report for contact hour reimbursement from state appropriations without special approval from the Board. Courses (except for developmental courses) listed in the ACGM are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.822.

(14) Faculty Member--a person employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.

§4.24. General Provisions.

(a) All successfully completed lower-division academic courses that are identified by the Texas Common Course Numbering System (TCCNS) and published in the Lower-Division Academic Course Guide Manual (ACGM) shall be fully transferable among public institutions and shall be substituted for the equivalent course at the receiving institution. Except in the case of courses belonging to a Board-approved Field of Study Curriculum (FOSC), applicability of transferred courses to requirements for specific degree programs is determined by the receiving institution.

(b) Nothing in this subchapter restricts the authority of an institution of higher education to adopt its own admission standards in compliance with this subchapter or its own grading policies so long as it treats transfer students and native students in the same manner.

(c) Institutional policies regarding acceptance of credit for correspondence courses, credit-by-examination, and other credit-earning instruments must be consistent with Southern Association of Colleges and Schools' guidelines and must treat transfer students and native students in the same manner.

(d) This subchapter applies specifically to academic courses and degree programs and does not apply to technical courses or technical degree programs.

§4.25. Requirements and Limitations.

(a) Each institution of higher education shall identify in its undergraduate catalog each lower-division course that is substantially equivalent to an academic course listed in the current edition of the Lower Division Academic Course Guide Manual.

(b) Each institution of higher education that offers lower-division courses must offer at least 45 semester credit hours of academic courses that are substantially equivalent to courses listed in the Lower Division Academic Course Guide Manual including those that fulfill the lower-division portion of the institution's core curriculum.

(c) All institutions of higher education must accept transfer of credit for successfully completed courses identified in subsections (a) and (b) of this section as applicable to an associate or baccalaureate degree in the same manner as credit awarded to non-transfer students in that degree program.

(d) Each institution must accept the same number of lower-division semester credit hours from transfer students as required for non-transfer students in the same baccalaureate program; however,

(1) An institution is not required to accept in transfer more semester credit hours in the major area of a degree program than the number set out in any applicable Board-approved Field of Study Curriculum for that program.

(2) In any degree program for which there is no Board-approved Field of Study Curriculum, an institution is not required to accept in transfer more lower-division course credit in the major applicable to a baccalaureate degree than the institution allows their non-transfer students in that major.

(3) An institution of higher education is not required to transfer credit in courses in which the student earned a "D" in the student's Field of Study Curriculum courses, Core Curriculum courses, or major.

(e) Each institution of higher education that admits undergraduate transfer students shall provide support services appropriate to meet the needs of transfer students. These support services should be comparable to those provided to non-transfer students regularly enrolled at the institution, including an orientation program similar to that provided for entering freshman enrollees.

(f) An institution of higher education is not required to accept in transfer, or apply toward a degree program, more than sixty-six (66) semester credit hours of lower-division academic credit. Institutions of higher education, however, may choose to accept additional semester credit hours.

(g) Each institution of higher education shall permit a student who transfers from another Texas public institution of higher education to choose a catalog for the purpose of specifying graduation requirements, based upon the dates of attendance at the receiving institution and at the transferring institution, in the same manner that a non-transfer student may choose a catalog. Each Texas public institution of higher education shall include information about graduation requirements under a particular catalog in its official publications, including print and electronic catalogs.

§4.26. Penalty for Noncompliance with Transfer Rules.

If it is determined by the Board that an institution inappropriately or unnecessarily required a student to retake a course that is substantially equivalent to a course already taken at another institution, in violation of the provisions of §4.25 of this title (relating to Requirements and Limitations), formula funding for credit hours in the repeated course will be deducted from the institution's appropriation.

§4.27. Resolution of Transfer Disputes for Lower-Division Courses.

(a) Institutions of higher education shall apply the following procedures in the resolution of credit transfer disputes involving lower-division courses:

(1) If an institution of higher education does not accept course credit earned by a student at another institution of higher edu-

ation, the receiving institution shall give written notice to the student and to the sending institution that it intends to deny the transfer of the course credit and shall include in that notice the reasons for the denial. The receiving institution must attach the procedures for resolution of transfer disputes for lower-division courses as outlined in this section to notice. The notice and procedure must include:

(A) clear instructions for appealing the decision to the Commissioner; and

(B) the name and contact information for the designated official at the receiving institution who is authorized to resolve the credit transfer dispute.

(2) A student who receives notice as specified in paragraph (1) of this subsection may dispute the denial of credit by contacting a designated official at either the sending or the receiving institution.

(3) The two institutions and the student shall attempt to resolve the transfer of the course credit in accordance with this section.

(4) If the student or the sending institution is not satisfied with the resolution of the credit transfer dispute, the student or the sending institution may notify the Commissioner in writing of the request for transfer dispute resolution. A receiving institution that denies course credit for transfer shall notify the Commissioner in writing of its denial and the reasons for the denial not later than the 45th day after the date the receiving institution provided the required notice of the transfer credit denial under subsection (a)(1) of this section.

(b) The Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and institutions. The decision is not a contested case. The Commissioner's decision is final and may not be appealed.

(c) Each institution of higher education shall publish in its course catalogs the procedures specified in this section.

(d) The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.

(e) If a receiving institution has cause to believe that a course being presented by a student for transfer from another institution is not of an acceptable level of quality, it should first contact the sending institution and attempt to resolve the problem. In the event that the two institutions are unable to come to a satisfactory resolution, the receiving institution may notify the Commissioner who may investigate the course. If its quality is found to be unacceptable, the Board may discontinue funding for the course.

§4.28. Core Curriculum.

(a) General.

(1) In accordance with Texas Education Code, §§61.821 - 61.832, each institution of higher education that offers an undergraduate academic degree program shall design and implement a core curriculum, including specific courses composing the curriculum, of no less than 42 lower-division semester credit hours.

(2) No upper-division course shall be approved to fulfill a foundational component area requirement in the core curriculum if it is substantially comparable in content or depth of study to a lower-division course listed in the Lower-Division Academic Course Guide Manual.

(3) Medical or dental units that admit undergraduate transfer students should encourage those students to complete their core curriculum requirement at a general academic teaching institution or public junior college.

(b) Texas Core Curriculum. Each institution of higher education that offers an undergraduate academic degree program shall develop its core curriculum by using the Board-approved purpose, core objectives, and foundational component areas of the Texas Core Curriculum.

(1) Statement of Purpose. Through the Texas Core Curriculum, students will gain a foundation of knowledge of human cultures and the physical and natural world, develop principles of personal and social responsibility for living in a diverse world, and advance intellectual and practical skills that are essential for all learning.

(2) Core Objectives. Through the Texas Core Curriculum, students will prepare for contemporary challenges by developing and demonstrating the following core objectives:

(A) Critical Thinking Skills: to include creative thinking, innovation, inquiry, and analysis, evaluation and synthesis of information;

(B) Communication Skills: to include effective development, interpretation and expression of ideas through written, oral and visual communication;

(C) Empirical and Quantitative Skills: to include the manipulation and analysis of numerical data or observable facts resulting in informed conclusions;

(D) Teamwork: to include the ability to consider different points of view and to work effectively with others to support a shared purpose or goal;

(E) Personal Responsibility: to include the ability to connect choices, actions and consequences to ethical decision-making; and

(F) Social Responsibility: to include intercultural competence, knowledge of civic responsibility, and the ability to engage effectively in regional, national, and global communities.

(3) Foundational Component Areas with Content Descriptions, Core Objectives and Semester Credit Hour (SCH) Requirements. Each institution's core curriculum will be composed of courses that adhere to the content description, core objectives, and semester credit hour requirements for a specific component area. The foundational component areas are:

(A) Communication (6 SCH).

(i) Courses in this category focus on developing ideas and expressing them clearly, considering the effect of the message, fostering understanding, and building the skills needed to communicate persuasively.

(ii) Courses involve the command of oral, aural, written, and visual literacy skills that enable people to exchange messages appropriate to the subject, occasion, and audience.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Teamwork, and Personal Responsibility.

(B) Mathematics (3 SCH).

(i) Courses in this category focus on quantitative literacy in logic, patterns, and relationships.

(ii) Courses involve the understanding of key mathematical concepts and the application of appropriate quantitative tools to everyday experience.

(iii) The following three Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, and Empirical and Quantitative Skills.

(C) Life and Physical Sciences (6 SCH).

(i) Courses in this category focus on describing, explaining, and predicting natural phenomena using the scientific method.

(ii) Courses involve the understanding of interactions among natural phenomena and the implications of scientific principles on the physical world and on human experiences.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Empirical and Quantitative Skills, and Teamwork.

(D) Language, Philosophy, and Culture (3 SCH).

(i) Courses in this category focus on how ideas, values, beliefs, and other aspects of culture express and affect human experience.

(ii) Courses involve the exploration of ideas that foster aesthetic and intellectual creation in order to understand the human condition across cultures.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Personal Responsibility, and Social Responsibility.

(E) Creative Arts (3 SCH).

(i) Courses in this category focus on the appreciation and analysis of creative artifacts and works of the human imagination.

(ii) Courses involve the synthesis and interpretation of artistic expression and enable critical, creative, and innovative communication about works of art.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Teamwork, and Social Responsibility.

(F) American History (6 SCH).

(i) Courses in this category focus on the consideration of past events and ideas relative to the United States, with the option of including Texas History for a portion of this component area.

(ii) Courses involve the interaction among individuals, communities, states, the nation, and the world, considering how these interactions have contributed to the development of the United States and its global role.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Personal Responsibility, and Social Responsibility.

(G) Government/Political Science (6 SCH).

(i) Courses in this category focus on consideration of the Constitution of the United States and the constitutions of the states, with special emphasis on that of Texas.

(ii) Courses involve the analysis of governmental institutions, political behavior, civic engagement, and their political and philosophical foundations.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Personal Responsibility, and Social Responsibility.

(H) Social and Behavioral Sciences (3 SCH).

(i) Courses in this category focus on the application of empirical and scientific methods that contribute to the understanding of what makes us human.

(ii) Courses involve the exploration of behavior and interactions among individuals, groups, institutions, and events, examining their impact on the individual, society, and culture.

(iii) The following four Core Objectives must be addressed in each course approved to fulfill this category requirement: Critical Thinking Skills, Communication Skills, Empirical and Quantitative Skills, and Social Responsibility.

(4) Component Area Option (6 SCH).

(A) Except as provided in subparagraph (B) of this paragraph, each course designated to complete the Component Area Option must meet the definition and Core Objectives specified in one of the foundational component areas outlined in paragraph (3)(A) - (H) of this subsection.

(B) As an option for up to three (3) semester credit hours of the Component Area Option, an institution may certify that the course(s):

(i) Meet(s) the definition specified for one or more of the foundational component areas; and

(ii) Include(s) a minimum of three Core Objectives, including Critical Thinking Skills, Communication Skills, and one of the remaining Core Objectives of the institution's choice.

(C) For the purposes of gaining approval for or reporting a Component Area Option course under subparagraph (B) of this paragraph, an institution is not required to notify the Board of the specific foundational component area(s) and Core Objectives associated with the course(s).

(5) Applicability of Texas Core Curriculum.

(A) Any student who first enrolls in an institution of higher education following high school graduation in fall 2014 or later shall be subject to the current Texas Core Curriculum requirements.

(B) Any student who is admitted under the terms of the Academic Fresh Start program and who first enrolls under that admission in fall 2014 or later shall be subject to the current Texas Core Curriculum requirements.

(C) Any student who first enrolled in an institution of higher education prior to fall 2014 shall, after consultation with an academic advisor, have the choice to:

(i) complete the core curriculum requirements in effect in summer 2014; or

(ii) transition to the current core curriculum requirements, in which case, previously completed core curriculum courses shall be applied to the current core curriculum requirements under the same terms as those that apply to a student who transfers from one institution to another. The student shall then complete the remaining requirements under the current core curriculum.

(c) Transfer of Credit--Completed Core Curriculum. If a student successfully completes the 42 semester credit hour core curriculum at a Texas public institution of higher education, that block of

courses must be substituted in transfer to any other Texas public institution of higher education for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution.

(d) Concurrent Enrollment.

(1) A student concurrently enrolled at more than one institution of higher education shall follow the core curriculum requirements in effect for the institution at which the student is classified as a degree-seeking student.

(2) A student who is concurrently enrolled at more than one institution of higher education may be classified as a degree-seeking student at only one institution.

(3) If a student maintains continuous enrollment from a spring semester to the subsequent fall semester at an institution at which the student has declared to be seeking a degree, the student remains a degree-seeking student at that institution regardless of the student's enrollment during the intervening summer session(s) at another institution.

(e) Transfer of Credit--Core Curriculum Not Completed. Except as specified in subsection (f) of this section, a student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution must receive academic credit within the core curriculum of the receiving institution for each of the courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the core curriculum of the receiving institution.

(f) Satisfaction of Foundational Component Areas. Each student must meet the number of semester credit hours in each foundational component area; however, an institution receiving a student in transfer is not required to apply to the fulfillment of a foundational component area requirement semester credit hours beyond the number of semester credit hours specified in a foundational component area.

(g) A course may only apply to a single foundational component area. If the SCH for a course in a foundational component exceed the number of SCH allotted in that foundational component area, the excess SCH must either be applied to the Component Area Option or as part of the specific degree requirements, such that the additional SCH will not increase the number of required SCH to complete the degree.

(h) Transcripts. All undergraduate student transcripts should indicate whether a student has completed the core curriculum satisfactorily, and which courses satisfied a requirement of the institution's core curriculum. Identifying numbers recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) must identify each completed core curriculum course on students' transcripts, in order to indicate courses utilized to satisfy core curriculum foundational component area requirements as follows:

- (1) Communication = 010;
- (2) Mathematics = 020;
- (3) Life and Physical Sciences = 030;
- (4) Language, Philosophy and Culture = 040;
- (5) Creative Arts = 050;
- (6) American History = 060;
- (7) Government/Political Science = 070;
- (8) Social and Behavioral Sciences = 080; and

(9) Component Area Option = 090.

(i) Notice. Each institution must publish and make readily available to students its core curriculum requirements stated in terms consistent with the Texas Common Course Numbering System.

(j) Substitutions and Waivers. No institution or institutional representative may approve course substitutions or waivers of the institution's core curriculum requirements for any currently enrolled student, except as provided in subsection (k) of this section. For students who transfer to a public institution from a college or university that is not a Texas public institution of higher education, courses the student completed prior to admission should be evaluated to determine whether they apply to one of the institution's core curriculum component areas. Only those courses the institution has accepted for transfer that can demonstrate fulfillment of the foundational component area content descriptions, core objectives, and semester credit hours required for the appropriate foundational component area or areas should be applied to the institution's core curriculum.

(k) Accommodations.

(1) An institution of higher education may, on a case-by-case basis, approve an accommodation of a specific core curriculum foundational component area requirement as described in paragraph (3) of this subsection for a student with a medically-documented learning disability, including but not limited to dyslexia, dysgraphia, or Asperger's Syndrome.

(2) Accommodation shall not include a waiver or exemption of any core curriculum requirement.

(3) An institution may approve for core curriculum applicability a course the institution offers but that is not approved as a part of the institution's core curriculum, if the institution demonstrates that the course has been approved to fulfill the same specific foundational component area requirement at five or more other Texas public colleges or universities. The Texas Common Course Numbering System course number may be used as evidence of the suitability of the course under this subsection.

§4.29. *Core Curricula Larger than 42 Semester Credit Hours.*

No institution may adopt a core curriculum of more than 42 semester credit hours.

§4.30. *Institutional Assessment and Reporting.*

Each public institution of higher education shall evaluate its core curriculum through the assessment of the core objectives on an ongoing basis, reporting the results of the assessment to the Board every ten years on the schedule that accords with the institution's accreditation reaffirmation self-study report to the Southern Association of Colleges and Schools or its successor. The evaluation and report must include:

- (1) a description of the assessment process for each of the six core objectives;
- (2) an explanation of measures, methodology, frequency and the timeline of assessment activities;
- (3) the criteria and/or targets used to benchmark the attainment of the six core objectives;
- (4) the results of the assessment, including evidence of the level of attainment targeted and achieved for each of the six core objectives;
- (5) an analysis of the results, including an interpretation of assessment information; and

(6) any actions planned, including how the results and analysis of the assessment process will be used to improve student learning and achievement.

§4.31. Implementation and Revision of Core Curricula.

In offering its Board-approved core curriculum, an institution of higher education must list only those courses that have been approved by the Board as compliant with the Texas Core Curriculum.

(1) Implementation and initial approval of core curricula.

(A) Each public institution of higher education must submit its proposed core curriculum to the Board for staff review and approval by November 30, 2013.

(B) An institution shall follow the procedures posted on the Board's website regarding the implementation and approval of the initial core curricula.

(C) The institution will receive a letter from Board staff giving notice of approval of the initial core curriculum and/or indicating any courses that do not meet provisions of the core curriculum.

(D) Upon receiving an approval letter from Board staff, the institution will document the approved core curriculum in institutional publications.

(2) Revision of Existing Approved Core Curricula.

(A) An institution of higher education may request changes to its core curriculum annually. One comprehensive request may be submitted each academic year, on a schedule that suits the institution's needs.

(B) An institution should follow the procedures posted on the Board's website to modify its core curriculum by adding or deleting courses and must provide information to justify the requested changes.

(C) The institution will receive a letter from Board staff giving notice of approval of the proposed changes and/or indicating any changes that do not meet provisions of the current core curriculum, and identifying an effective date for any approved change(s).

(D) Upon receiving an approval letter from Board staff, the institution shall make any required changes to its core curriculum and will document those changes in institutional publications.

§4.32. Field of Study Curricula.

(a) In accordance with Texas Education Code, §61.823, the Board is authorized to approve Field of Study Curricula for certain fields of study/academic disciplines. The Board delegates to the Commissioner development of Field of Study Curricula with the assistance of the Texas Transfer Advisory Committee, as defined by Title 19, Subchapter V, Chapter 1. The Texas Transfer Advisory Committee is responsible for convening Discipline-Specific Subcommittees. Discipline-Specific Subcommittees shall provide subject-matter expertise to the Texas Transfer Advisory Committee in developing Field of Study Curricula in specific disciplines.

(b) A complete Field of Study Curriculum will consist of the following components:

(1) Selected Texas Core Curriculum courses.

(A) Selected Texas Core Curriculum courses relevant to the discipline may be included in the Field of Study Curriculum for that discipline.

(B) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses from a list of all Texas Core Curriculum courses provided by the Board that may be used to satisfy

core curriculum requirements. Each Discipline-Specific Subcommittee shall recommend identified Texas Core Curriculum courses to the Texas Transfer Advisory Committee.

(C) The Texas Transfer Advisory Committee shall recommend the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum to the Commissioner who may approve or deny the inclusion of the recommended Texas Core Curriculum courses in the Field of Study Curriculum.

(D) Each institution of higher education must publish on its public website in manner easily accessed by students the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number.

(2) Discipline Foundation Courses (DFC).

(A) Discipline Foundation Courses are a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours, selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under Title 19, Chapter 4, Subchapter B, §4.35.

(B) Each receiving institution must apply the semester credit hours a student has completed in a Discipline Foundation Course upon the student's transfer into a corresponding major or track. The sending institution must indicate Discipline Foundation Courses on the transfer student's transcript.

(C) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses for inclusion on the Discipline Foundation Courses list. The Discipline-Specific Subcommittees must select from courses listed in the Lower-Division Academic Course Guide Manual. Each Discipline-Specific Subcommittee shall report this course list to the Texas Transfer Advisory Committee.

(D) The Texas Transfer Advisory Committee shall recommend the Discipline Foundation Courses selected by the Discipline Specific Subcommittees for inclusion in a Field of Study Curriculum to the Commissioner. The Commissioner may approve or deny the Discipline Foundation Courses recommended by the Texas Transfer Advisory Committee for inclusion in a Field of Study Curriculum.

(E) General academic teaching institutions may submit a request for an alternative set of Discipline Foundation Courses for a specific program of study according to the process in Title 19, Chapter 4, Subchapter B, §4.35.

(F) Each institution of higher education must report to the Coordinating Board and publish on its public website in manner easily accessed by students the Discipline Foundation Courses with the cross-listed TCCNS course numbers for each course.

(G) The Commissioner must publish the list of Discipline Foundation Courses for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course number for each course.

(3) Directed Electives.

(A) Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution.

(B) The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed eighteen (18) semester credit hours in total.

(C) Faculty from each general academic teaching institution may select a list of Directed Electives for the major course of study corresponding to each Field of Study curriculum. Faculty must select the Directed Electives only from courses listed in the Lower-Division Academic Course Guide Manual.

(D) The Chief Academic Officer of the institution must submit the list of Directed Electives for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number to the Commissioner who shall publish the list of each institution's Directed Electives for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course numbers for each course.

(E) Each institution of higher education must publish on its public website in manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.

(c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

(d) If a student transfers from one institution of higher education to another without completing the Field of Study Curriculum, the receiving institution must grant academic credit in the Field of Study Curriculum for each of the courses that the student has successfully completed in the Field of Study Curriculum of the sending institution. After granting the student credit for these courses, the institution may require the student to satisfy remaining course requirements in the current Field of Study Curriculum of the receiving general academic teaching institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content the student previously completed through the Field of Study Curriculum.

(e) Each institution must note the selected Texas Core Curriculum component and Discipline Foundation Courses components of the Field of Study Curriculum courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(f) The Board shall publish on its website the components of each Field of Study Curriculum, including the selected Texas Core Curriculum courses, the Discipline Foundation Courses, and the Directed Electives of each general academic teaching institution.

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021 will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in

effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

§4.33. *Approval of Field of Study Curricula.*

(a) In accordance with Title 19, Chapter 1, Subchapter V, §1.239, the Texas Transfer Advisory Committee shall review relevant data, coordinate a schedule of discipline-specific course reviews, and recommend Field of Study Curricula to the Commissioner and Board. In creating the schedule for development of Field of Study Curricula, the Texas Transfer Advisory Committee shall prioritize the factors set out in Chapter 1, Subchapter V, §1.239(a)(4).

(b) At the direction of the Texas Transfer Advisory Committee and in accordance with Title 19, Subchapter V, Chapter 1 §1.242, a Discipline-Specific Subcommittee shall review institutions' current program requirements and data about transfer students' course-taking and success in that discipline and recommend to the Texas Transfer Advisory Committee courses required in the Field of Study Curriculum for that major.

(c) The Texas Transfer Advisory Committee may consider for recommendation to the Commissioner Field of Study Curricula recommended by Discipline-Specific Subcommittees and any request by an institution for alternative Discipline Foundation Courses as described in §4.34(d) - (k).

(d) The Texas Transfer Advisory Committee's approval of a Field of Study Curriculum requires approval by a supermajority vote of two-thirds of the general academic teaching institution representatives who are present and voting and two-thirds of the public junior college representatives who are present and voting.

(1) If the Texas Transfer Advisory Committee fails to approve a Field of Study Curriculum, the Texas Transfer Advisory Committee may vote by a simple majority of all members present and voting to request that a Discipline Specific Subcommittee reconvene in an attempt to address and concerns identified by the Texas Transfer Advisory Committee.

(2) Upon final recommendation of the Discipline-Specific Subcommittee, the Texas Transfer Advisory Committee may reconsider a vote to recommend to the Commissioner approval of a Field of Study Curriculum.

(e) The Commissioner may approve or deny a Field of Study Curriculum recommended by the Texas Transfer Advisory Committee.

(f) Before making a final determination whether to approve or deny a Field of Study Curriculum recommended by the Texas Transfer Advisory Committee, the Commissioner shall provide for informal notice and comment by publishing each proposed Field of Study Curriculum in the Texas Register In Addition section for a minimum of 30 days. The Commissioner shall consider any comments prior to approving or denying the Field of Study Curriculum. The Commissioner's decision is final and may not be appealed.

(g) The Commissioner shall report to the Board at each quarterly meeting on each Field of Study Curriculum the Commissioner approved since the last Board meeting.

(h) The Commissioner shall annually provide a written report to the Texas Transfer Advisory Committee members with information on all approved Field of Study Curricula.

§4.34. *Revision of Approved Field of Study Curricula.*

(a) The Commissioner may modify or revise a Field of Study Curriculum when a need for such a revision is identified.

(b) Any Chief Academic Officer of an institution that offers a corresponding major or track may request a modification or revision to an approved Field of Study Curriculum. The Texas Transfer Advisory Committee shall evaluate institutions' proposed modifications or revisions to Field of Study Curricula and may refer the proposed revisions to Discipline-Specific Subcommittees prior to making a final recommendation to the Commissioner.

§4.35. *Petition for Alternative Discipline Foundation Courses.*

(a) An institution may request the Commissioner to approve alternative Discipline Foundation Courses based upon the following criteria:

(1) The institution demonstrates that approved Discipline Foundation Courses significantly vary from the institution's lower-division curriculum for a given major; or

(2) The institution demonstrates based on evidence that students completing approved Discipline Foundation Courses are not successful in the institution's upper-division curriculum.

(b) The Chief Academic Officer of an institution that requests alternative Discipline Foundation Courses based on the criteria in this rule must submit a petition for alternative Discipline Foundation Courses in writing to the Commissioner, along with a written, evidence-based rationale. The Commissioner shall promptly notify the Texas Transfer Advisory Committee of the request for alternative Discipline Foundation Courses.

(c) Upon notification by the Commissioner, the Texas Transfer Advisory Committee shall evaluate the institution's request for alternative Discipline Foundation Courses based upon the number of students affected, how the alternative Discipline Foundation Courses would impact transfer, and any other criteria as decided by a majority vote of public junior college representative members and general academic teaching institution members present and voting.

(d) After review of the criteria, the Texas Transfer Advisory Committee shall vote on whether to recommend the alternative DFC to the Commissioner. A majority of the public junior college sector representatives and a majority of the general academic teaching institution sector representatives who are present and voting must both vote in favor for the alternative DFC to advance to the Commissioner for approval.

(e) No more than 30 days after its vote on the petition, the Texas Transfer Advisory Committee shall provide a written report to the Commissioner explaining the rationale for the action taken by the Texas Transfer Advisory Committee on the request for alternative Discipline Foundation Courses.

(f) No more than 30 days after receiving the written report from the Texas Transfer Advisory Committee, the Commissioner shall consider the Texas Transfer Advisory Committee report and make a final determination whether to approve the alternative DFC. The Commissioner's decision is final and may not be appealed.

(g) The Commissioner shall inform the Board at the next quarterly meeting of all decisions to approve or deny petitions for alternative DFC.

(h) The Coordinating Board shall maintain a public website that includes a list of all alternative Discipline Foundation Courses approved by the Commissioner.

§4.36. *Evaluation of Field of Study Curricula.*

(a) Every five years, following the same timetable as the regular accreditation reports sent to the Southern Association of Colleges and Schools Commission on Colleges or its successor, each public institution of higher education shall review and evaluate its policies and practices regarding the acceptance and application of credit earned as part of a Board-approved Field of Study Curriculum, and report the results of that evaluation to the Board. The evaluation should include:

(1) the extent to which the institution's compliance with the acceptance of transfer credit through Field of Study Curricula is being achieved;

(2) the extent to which the institution's application to the appropriate degree program of credit earned as part of a Board-approved Field of Study Curriculum facilitates academic success; and

(3) the effectiveness of Field of Study Curricula in the retention and graduation of transfer students in those degree programs that have Board-approved Field of Study Curricula.

(b) Each institution's evaluation report must contain at least the following:

(1) a listing of the institution's degree programs or tracks that have Board-approved Field of Study Curricula;

(2) a description of the institution's policies and practices regarding applicable Board-approved field of study curricula, including admission-point evaluation of transfer credit, advising practices (including catalogue and website information on existing Field of Study Curricula and advising/counseling practices for enrolled students), and transcripting practices to show Field of Study Curriculum participation and completion; and

(3) a chart or table showing the number of total transfer students for each degree program that has a Board-approved Field of Study Curriculum, for each of the last five years; the chart should indicate year-by-year the percentage of students who transferred having completed the applicable Field of Study Curriculum, the percentage of students who transferred without having completed the applicable Field of Study Curriculum, and any information about progress toward graduation or graduation rates that can compare transfer student performance with non-transfer student performance during the evaluation period.

(c) The Texas Transfer Advisory Committee shall review all Field of Study Curricula approved on or after March 1, 2021, every four years from their date of Board approval. In developing a schedule of review as set out in Chapter 1, Subchapter V, §1.239, the Texas Transfer Advisory Committee shall consider reasonable factors, including prioritizing development of frameworks in high enrollment and high need disciplines. The Texas Transfer Advisory Committee may review a Field of Study Curricula more frequently if the Commissioner or Texas Transfer Advisory Committee identifies a need, including but not limited to, discipline changes of subject matter content, emerging and/or changing technologies or business/industry standards, changes in credentialing and/licensure requirements, or changes in programmatic accreditation.

§4.37. *Texas Common Course Numbering System.*

(a) Each institution shall include the applicable course numbers from the Texas Common Course Numbering System (TCCNS) in its printed and electronic catalogs, course listings, and any other appropriate informational resources, and in the application of the provisions of this subchapter. Institutions that do not use the TCCNS taxonomy as their sole means of course numbering shall publish the following information in their printed and electronic catalogs, course listings, and any other appropriate informational resources:

(1) The TCCNS prefix and number must be displayed immediately adjacent to the institutional course prefix and number (e.g. ENG 101 (ENGL 1301)) at the beginning of each course description; and

(2) The printed and electronic catalogs shall include a chart, table, or matrix, alphabetized by common course prefix, listing all common courses taught at the institution by both the common and local course number. For printed catalogs, the chart, table, or matrix should be referenced in a table of contents and/or a subject index.

(b) Each institutional catalog shall include an explanation of the TCCNS and the significance of TCCNS courses for transfer purposes.

(c) Each institution shall comply with the requirements of subsections (a) and (b) of this section no later than September 1, 2005.

(d) For good cause, the Commissioner may approve an exemption from the requirements of this section.

§4.38. Undergraduate Academic Certificate.

(a) Institutions of higher education are encouraged to develop undergraduate academic certificate programs of less than degree length. These rules are intended to provide a streamlined process for approval of these certificates.

(b) Undergraduate academic certificates may be awarded upon the completion of:

(1) the Board-approved approved core curriculum of the institution;

(2) a Board-approved Field of Study Curriculum; or

(3) a Board-approved statewide articulated transfer curriculum of less than degree length.

(c) Undergraduate academic certificates which meet one of the criteria in subsection (b) of this section require Board notification and are automatically approved.

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

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CHAPTER 27. FIELDS OF STUDY

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 27, concerning Fields of Study, specifically Subchapter B, §§27.121-27.127, Music Field of Study Advisory Committee; Subchapter C, §§27.141-27.147, Nursing Field of Study Advisory Committee; Subchapter D, §§27.161-27.167, Business Field of Study Advisory Committee; Subchapter E, §§27.181-27.187, Communications Field of Study Advisory Committee; Subchapter F, §§27.201-27.207, Engineering Technology Field of Study Advisory Committee; Subchapter G, §§27.221-27.227, Mexican American Studies Field of Study Advisory Committee;

Subchapter H, §§27.241-27.247, Architecture Field of Study Advisory Committee; Subchapter I, §§27.261-27.267, Computer Science/Information Technology Field of Study Advisory Committee; Subchapter J, §§27.281-27.287, Criminal Justice Field of Study Advisory Committee; Subchapter K, §§27.301-27.307, Performing Arts/Drama Field of Study Advisory Committee; Subchapter L, §§27.321-27.327, Multi And Interdisciplinary Studies Field of Study Advisory Committee; Subchapter M, §§27.341-27.347, General Psychology Field of Study Advisory Committee; Subchapter N, §§27.361-27.367, Biology Field of Study Advisory Committee; Subchapter O, §§27.381-27.387, Accounting Field of Study Advisory Committee; Subchapter P, §§27.401-27.407, Kinesiology and Exercise Science Field of Study Advisory Committee; Subchapter Q, §§27.421-27.427, Dance Field of Study Advisory Committee; Subchapter R, §§27.441-27.447, Finance Field of Study Advisory Committee; Subchapter S, §§27.461-27.467, Marketing Field of Study Advisory Committee; Subchapter T, §§27.481-27.487, English Language and Literature Field of Study Advisory Committee; Subchapter U, §§27.501-27.507, History Field of Study Advisory Committee; Subchapter V, §§27.521-27.527, Political Science And Government Field of Study Advisory Committee; Subchapter W, §§27.541-27.547, Social Work Field of Study Advisory Committee; Subchapter X, §§27.561-27.567, Sociology Field of Study Advisory Committee; Subchapter Y, §§27.581-27.587, Economics Field of Study Advisory Committee; Subchapter Z, §§27.601-27.607, Mathematics Field of Study Advisory Committee; Subchapter AA, §§27.621-27.627, Radio and TV Field of Study Advisory Committee; Subchapter BB, §§27.641-27.647, Management Information Systems Field of Study Advisory Committee; Subchapter CC, §§27.661-27.667, Health And Wellness Field of Study Advisory Committee; Subchapter DD, §§27.681-27.687, Communication Disorders Sciences and Services Field of Study Advisory Committee; Subchapter EE, §§27.701-27.707, Fine and Studio Arts Field of Study Advisory Committee; Subchapter FF, §§27.721-27.727, Journalism Field of Study Advisory Committee; Subchapter GG, §§27.741-27.747, Animal Sciences Field of Study Advisory Committee; Subchapter HH, §§27.761-27.767, Agricultural Business And Management Field of Study Advisory Committee; Subchapter II, §§27.781-27.787, Health Services Field of Study Advisory Committee; Subchapter JJ, §§27.801-27.807, Hospitality Administration Field of Study Advisory Committee; Subchapter KK, §§27.821-27.827, Natural Resources Conservation & Research Field of Study Advisory Committee; Subchapter LL, §§27.841-27.847, Chemistry Field of Study Advisory Committee; Subchapter MM, §§27.861-27.867, Media Studies Field of Study Advisory Committee; Subchapter NN, §§27.881-27.887, Advertising and Public Relations Field of Study Advisory Committee; and Subchapter OO, §§27.901-27.907, Nutrition and Dietetics Field of Study Advisory Committee. The repeals are adopted without changes to the proposed text as published in the January 15, 2021, issue of the *Texas Register* (46 TexReg 437) and will not be republished.

The adopted repeal of all of Chapter 27 is part of a comprehensive revision of the Texas transfer framework that is adopted in new Chapter 1, Subchapter V, Texas Transfer Advisory Committee and Discipline Specific Subcommittees and amended Chapter 4, Subchapter B, Transfer Of Credit, Core Curriculum and Field Of Study Curricula. These new rules and amendments are adopted concurrently with this adopted repeal. The elimination of the Advisory Committees set out in Subchapters B-OO is necessary to implement the new framework adopted in Chapter 1, Subchapter V. New Chapter 1, Subchapter V creates a struc-

ture under which the Texas Transfer Advisory Committee will advise the Commissioner and Board and will utilize discipline specific subcommittees to meet the requirements of Texas Education Code §61.823.

No comments were received regarding the adoption of the repeal.

SUBCHAPTER B. MUSIC FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.121 - 27.127

The repeal of Chapter 27 is adopted under Texas Education Code §61.821 and §61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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

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SUBCHAPTER C. NURSING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.141 - 27.147

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER D. BUSINESS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.161 - 27.167

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study

Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER E. COMMUNICATIONS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.181 - 27.187

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SUBCHAPTER F. ENGINEERING TECHNOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.201 - 27.207

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SUBCHAPTER G. MEXICAN AMERICAN STUDIES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.221 - 27.227

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER H. ARCHITECTURE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.241 - 27.247

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER I. COMPUTER SCIENCE/INFORMATION TECHNOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.261 - 27.267

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER J. CRIMINAL JUSTICE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.281 - 27.287

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER K. PERFORMING ARTS/DRAMA FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.301 - 27.307

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER L. MULTI AND INTERDISCIPLINARY STUDIES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.321 - 27.327

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER M. GENERAL PSYCHOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.341 - 27.347

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SUBCHAPTER N. BIOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.361 - 27.367

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SUBCHAPTER O. ACCOUNTING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.381 - 27.387

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SUBCHAPTER P. KINESIOLOGY AND EXERCISE SCIENCE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.401 - 27.407

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER Q. DANCE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.421 - 27.427

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SUBCHAPTER R. FINANCE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.441 - 27.447

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SUBCHAPTER S. MARKETING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.461 - 27.467

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SUBCHAPTER T. ENGLISH LANGUAGE AND LITERATURE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.481 - 27.487

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER U. HISTORY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.501 - 27.507

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SUBCHAPTER V. POLITICAL SCIENCE AND GOVERNMENT FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.521 - 27.527

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER W. SOCIAL WORK FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.541 - 27.547

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER X. SOCIOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.561 - 27.567

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER Y. ECONOMICS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.581 - 27.587

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SUBCHAPTER Z. MATHEMATICS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.601 - 27.607

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER AA. RADIO AND TV FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.261 - 27.627

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER BB. MANAGEMENT INFORMATION SYSTEMS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.641 - 27.647

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER CC. HEALTH AND WELLNESS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.661 - 27.667

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER DD. COMMUNICATION DISORDERS SCIENCES AND SERVICES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.681 - 27.687

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER EE. FINE AND STUDIO ARTS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.701 - 27.707

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER FF. JOURNALISM FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.721 - 27.727

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER GG. ANIMAL SCIENCES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.741 - 27.747

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER HH. AGRICULTURAL BUSINESS AND MANAGEMENT FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.761 - 27.767

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER II. HEALTH SERVICES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.781 - 27.787

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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SUBCHAPTER JJ. HOSPITALITY ADMINISTRATION FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.801 - 27.807

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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**SUBCHAPTER KK. NATURAL RESOURCES
CONSERVATION & RESEARCH FIELD OF
STUDY ADVISORY COMMITTEE**

19 TAC §§27.821 - 27.827

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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**SUBCHAPTER LL. CHEMISTRY FIELD OF
STUDY ADVISORY COMMITTEE**

19 TAC §§27.841 - 27.847

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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**SUBCHAPTER MM. MEDIA STUDIES FIELD
OF STUDY ADVISORY COMMITTEE**

19 TAC §§27.861 - 27.867

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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**SUBCHAPTER NN. ADVERTISING AND
PUBLIC RELATIONS FIELD OF STUDY
ADVISORY COMMITTEE**

19 TAC §§27.881 - 27.887

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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**SUBCHAPTER OO. NUTRITION AND
DIETETICS FIELD OF STUDY ADVISORY
COMMITTEE**

19 TAC §§27.901 - 27.907

The repeal of Chapter 27 is adopted under Texas Education Code §§61.821 and 61.823, which provide for Field of Study Curricula and authorize the Coordinating Board to form advisory committees to develop Field of Study Curricula.

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PART 2. TEXAS EDUCATION AGENCY
CHAPTER 33. STATEMENT OF INVESTMENT
OBJECTIVES, POLICIES, AND GUIDELINES
OF THE TEXAS PERMANENT SCHOOL FUND
SUBCHAPTER A. STATE BOARD OF
EDUCATION RULES

19 TAC §§33.5, 33.15, 33.25, 33.35, 33.60

The State Board of Education (SBOE) adopts amendments to §§33.5, 33.15, 33.25, 33.35, and 33.60, concerning statement of investment objectives, policies, and guidelines of the Texas Permanent School Fund (PSF). The amendment to §33.25 is adopted with changes to the proposed text as published in the December 18, 2020 issue of the *Texas Register* (45 TexReg 8952) and will be republished. The amendments to §§33.5, 33.15, 33.35, and 33.60 are adopted without changes to the proposed text as published in the December 18, 2020 issue of the *Texas Register* (45 TexReg 8952) and will not be republished. The adopted amendments modify the asset allocation of the Permanent School Fund (PSF), update transactions and restrictions that apply to the PSF, and update cross references and a section title.

REASONED JUSTIFICATION: In accordance with statute, the rules in Chapter 33 establish investment objectives, policies, and guidelines for the PSF.

The amendment to §33.5, Code of Ethics, updates a reference to 19 TAC §33.20, Responsible Parties and Their Duties.

The amendment to §33.15, Objectives, modifies the asset allocation of the PSF.

The amendment to §33.25, Permissible and Restricted Investments and General Guidelines for Investment Managers, updates transactions and restrictions that apply to the PSF. At adoption, changes were made to reinstate existing language in subsection (b)(12) and remove proposed new subsection (b)(13) relating to below investment grade bonds.

The amendment to §33.35, Guidelines for the Custodian and the Securities Lending Agent, updates the section title to include the PSF Liquid Account.

The amendment to §33.60, Performance and Review Procedures, updates a reference from the TNRC to the TEC.

The SBOE approved the proposed amendments for first reading and filing authorization at its November 20, 2020 meeting and for second reading and final adoption at its January 29, 2021 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow the

rules to align with statute as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 18, 2020, and ended at 5:00 p.m. on January 22, 2021. The SBOE also provided an opportunity for registered oral and written comments at its January 2021 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and corresponding response.

Comment. A member of the public commented "abstain."

Response. The SBOE can neither agree nor disagree with the comment since it provided no context. The commenter did not include contact information, so Texas Education Agency staff was unable to obtain clarification on the comment.

STATUTORY AUTHORITY. The amendments are adopted under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; TEC, §43.0052, as added by House Bill (HB) 4388, 86th Texas Legislature, 2019, and Texas Natural Resources Code (TNRC), §32.068 and §51.414, as added by HB 4388, 86th Texas Legislature, 2019, which created the Liquid Account within the PSF to be managed by the SBOE and require the SBOE and School Land Board to send quarterly investment and financial reports to the other; and TNRC, §32.012, as amended by Senate Bill (SB) 608, 86th Texas Legislature, 2019, and §32.0161, as added by SB 608, which require the SBOE to submit to the governor a list of six nominees for each of two positions on the School Land Board and requires the SBOE and the School Land Board to hold a joint annual public meeting to discuss the PSF.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Constitution, Article VII, §5(a) and (f); Texas Education Code (TEC), §43.001; TEC, §43.0052, as added by House Bill (HB) 4388, 86th Texas Legislature, 2019; and Texas Natural Resources Code (TNRC), §32.012, as amended by Senate Bill (SB) 608, 86th Texas Legislature, 2019; TNRC, §32.0161, as added by SB 608, 86th Texas Legislature, 2019; and TNRC, §32.068 and §51.414, as added by HB 4388, 86th Texas Legislature, 2019.

§33.25. *Permissible and Restricted Investments and General Guidelines for Investment Managers.*

(a) Permissible investments. Any investment that satisfies the prudence standard, is consistent with the Fund's investment policy and portfolio objectives, and is used in executing investment strategies approved by the State Board of Education (SBOE).

(b) Prohibited transactions and restrictions. Except as provided in subsection (a) of this section or as approved or delegated by the SBOE, the following prohibited transactions and restrictions apply to all Texas Permanent School Fund (PSF) investment managers with respect to the investment or handling of PSF assets, except as otherwise noted:

- (1) short sales of any kind except for U.S. Treasury futures for purposes of hedging fixed income portfolios;
- (2) purchasing letter or restricted stock;

- (3) buying or selling on margin;
- (4) engaging in purchasing or writing options or similar transactions;
- (5) borrowing by pledging or otherwise encumbering PSF assets;
- (6) purchasing the equity or debt securities of the PSF investment manager's own organization or an affiliated organization, but excluding purchases with respect to indexed or passively managed portfolios;
- (7) engaging in any purchasing transaction, after which the cumulative market value of common stock in a single corporation exceeds 2.5% of the PSF total market value or 5.0% of the manager's total portfolio market value, but excluding purchasing transactions with respect to indexed or passively managed portfolios;
- (8) engaging in any purchasing transaction, after which the cumulative number of shares of common stock in a single corporation held by the PSF exceeds 5.0% of the outstanding voting stock of that issuer, but excluding purchasing transactions with respect to indexed or passively managed portfolios;
- (9) engaging in any purchasing transaction, after which the cumulative market value of fixed income securities or cash equivalent securities in a single corporation (excluding the U.S. government, its federal agencies, and government sponsored enterprises) exceeds 2.5% of the PSF total market value or 5.0% of the investment manager's total portfolio market value with the PSF;
- (10) purchasing tax exempt bonds;
- (11) purchasing guaranteed investment contracts (GICs) from an insurance company or bank investment contracts (BICs) from a bank not rated at least AAA by Standard & Poor's or Moody's;
- (12) purchasing any publicly traded fixed income security not rated investment grade by Standard & Poor's (BBB-), Moody's (Baa3), or Fitch (BBB-), subject to the provisions of the PSF Investment Procedures Manual and the following restrictions:
 - (A) when ratings are provided by the three rating agencies, the middle rating shall be used;
 - (B) when ratings are provided by two ratings agencies, the lower rating is used; or
 - (C) when a rating is provided by one rating agency, the sole rating is used;
- (13) purchasing short-term money market instruments rated below A-1 by Standard & Poor's or P-1 by Moody's;
- (14) engaging in any transaction that results in unrelated business taxable income (excluding current holdings);
- (15) engaging in any transaction considered a "prohibited transaction" under the Internal Revenue Code or the Employee Retirement Income Security Act (ERISA);
- (16) purchasing precious metals or other commodities;
- (17) engaging in any transaction that would leverage a manager's position;
- (18) lending securities owned by the PSF, but held in custody by another party, such as a bank custodian, to any other party for any purpose, unless lending securities according to a separate written agreement the SBOE approved; and
- (19) purchasing fixed income securities without a stated par value amount due at maturity.

(c) General guidelines for investment managers.

(1) Each investment manager retained to manage a portion of PSF assets shall be aware of, and operate within, the provisions of this chapter and all applicable Texas statutes.

(2) As fiduciaries of the PSF, investment managers shall discharge their duties solely in the interests of the PSF according to the prudent expert rule, engaging in activities that include the following.

(A) Diversification. Each manager's portfolio should be appropriately diversified within its applicable asset class.

(B) Securities trading.

(i) Each manager shall send copies of each transaction record to the PSF investment staff and custodians.

(ii) Each manager shall be required to reconcile the accounts under management on a monthly basis with the PSF investment staff and custodians.

(iii) Each manager shall be responsible for complying fully with PSF policies for trading securities and selecting brokerage firms, as specified in §33.40 of this title (relating to Trading and Brokerage Policy). In particular, the emphasis of security trading shall be on best execution; that is, the highest proceeds to the PSF and the lowest costs, net of all transaction expenses. Placing orders shall be based on the financial viability of the brokerage firm and the assurance of prompt and efficient execution.

(iv) The SBOE shall require each external manager to indemnify the PSF for all failed trades not due to the negligence of the PSF or its custodian in instances where the selection of the broker dealer is not in compliance with §33.40 of this title (relating to Trading and Brokerage Policy).

(C) Acknowledgments in writing.

(i) Each external investment manager retained by the PSF must be a person, firm, or corporation registered as an investment adviser under the Investment Adviser Act of 1940, a bank as defined in the Act, or an insurance company qualified to do business in more than one state, and must acknowledge its fiduciary responsibility in writing. A firm registered with the Securities and Exchange Commission (SEC) must annually provide a copy of its Form ADV, Section II.

(ii) The SBOE may require each external manager to obtain coverage for errors and omissions in an amount set by the SBOE, but the coverage shall be at least the greater of \$500,000 or 1.0% of the assets managed, not exceeding \$10 million. The coverage should be specific as to the assets of the PSF. The manager shall annually provide evidence in writing of the existence of the coverage.

(iii) Each external manager may be required by the SBOE to obtain fidelity bonds, fiduciary liability insurance, or both.

(iv) Each manager shall acknowledge in writing receiving a copy of, and agreeing to comply with, the provisions of this chapter.

(D) Discretionary investment authority. Subject to the provisions of this chapter, any investment manager of marketable securities or other investments, retained by the PSF, shall have full discretionary investment authority over the assets for which the manager is responsible. Specialist advisors and investment managers retained for alternative asset investments may have a varying degree of discretionary authority, which will be outlined in contract documentation.

(d) Reporting procedures for investment managers. The investment manager shall:

(1) prepare a monthly and quarterly report for delivery to the SBOE, the SBOE Committee on School Finance/Permanent School Fund, and the PSF investment staff that shall include, in the appropriate format, items requested by the SBOE. The monthly reports shall briefly cover the firm's economic review; a review of recent and anticipated investment activity; a summary of major changes that have occurred in the investment markets and in the portfolio, particularly since the last report; and a summary of the key characteristics of the PSF portfolio. Quarterly reports shall comprehensively cover the same information as monthly reports but shall also include any changes in the firm's structure, professional team, or product offerings; a detail of the portfolio holdings; and transactions for the period. Periodically, the PSF investment staff shall provide the investment manager a detailed description of, and format for, these reports;

(2) when requested by the SBOE Committee on School Finance/Permanent School Fund, make a presentation describing the professionals retained for the PSF, the investment process used for the PSF portfolio under the manager's responsibility, and any related issues;

(3) when requested by the PSF investment staff, meet to discuss the management of the portfolio, new developments, and any related matters; and

(4) implement a specific investment process for the PSF. The manager shall describe the process and its underlying philosophy in an attachment to its investment management agreement with the PSF and manage according to this process until the PSF and manager agree in writing to any change.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: December 18, 2020

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



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012

The Texas Education Agency (TEA) adopts an amendment to §150.1012, concerning local optional teacher designation systems. The amendment is adopted with changes to the proposed text as published in the January 15, 2021 issue of the *Texas Register* (46 TexReg 450) and will be republished. The adopted amendment updates provisions for local optional teacher designation systems to address the lack of State of Texas Assessments of Academic Readiness (STAAR®) testing in the 2019-2020 school year, ensures that the employing school district receives the allotment for a designated teacher, modifies the percentage each district receives if a designated teacher is employed by multiple districts, adds another reason designations may be voided, improves the quality of local designation systems by requiring calibration activities to be tied to the approved

teacher observation rubric and requiring that the student growth and teacher observation data be from the same teaching assignment, and removes obsolete provisions.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.3521, establishes a local optional teacher designation system, and TEC, §48.112, establishes a teacher incentive allotment. Section 150.1012 implements the statutes by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the adopted amendment to §150.1012.

The adopted amendment to subsection (b)(1)(B) aligns the language with TEC, §48.112, to ensure that the employing district receives the generated allotment.

The adopted amendment to subsection (c)(1)(A) specifies that districts have seven business days to rectify an incomplete application. This change provides districts with a clear expectation of the timeline of incomplete submissions.

The adopted amendment to subsection (c)(1)(B) clarifies that only the system application is eligible for the resubmission process. This change ensures that the application process can be completed in a timely manner.

The adopted amendment to subsection (c)(1)(C) provides clarity about the requirements for provisionally approved districts to earn full approval.

The adopted amendment to subsection (c)(2)(A)(i)(I) updates the requirements of the teacher observation component. The adopted language states that congruence is among appraisers, that correlation is between teacher observation and student growth data, and that both congruence and correlation need to be tied to the rubric approved in subsection (c)(2)(A)(i)(II). This change provides clarity to districts on the application requirements and ensure that their calibration practices are tied to their approved teacher observation rubrics.

The adopted amendment to subsection (c)(2)(A)(i)(II) clarifies the requirements of a district-created rubric by adding reference to the standards outlined in 19 TAC §149.1001, Teacher Standards. This change ensures that the district-created rubric meets the same requirements as the other approved rubrics.

Adopted new subsection (c)(2)(A)(ii)(IV), relating to the student growth component, adds requirements for the quality of vendor-created assessments. This change ensures that all assessments meet the same requirements.

The adopted amendment to subsection (c)(2)(C) adds language to require that single-year data be collected from the same teaching assignment. This change ensures that the student growth and teacher observation data collected for each teacher can be compared. Additionally, language was added to allow TEA administrative discretion to allow districts to submit data if there are extenuating circumstances limiting their ability to collect data for all teachers in eligible teaching assignments. This change allows districts that were impacted by the lack of STAAR® testing in 2019-2020 and school closures to submit designations in other teaching assignments.

Based on public comment, a change was made at adoption to §150.1012(c)(2)(C) to limit TEA's administrative discretion to the provisions in the subparagraph and to explicitly state that this discretion applies only in circumstances outside a district's control.

Language was added in subsection (e)(1)(C) to allow TEA administrative discretion to allow districts to submit data if there are extenuating circumstances limiting their ability to collect data for all teachers in eligible teaching assignments. This change allows districts that were impacted by the lack of STAAR® testing in 2019-2020 and school closures to submit designations in other teaching assignments.

Adopted new subsection (e)(2) was added to allow TEA to conduct a review of a local designation system based on annual data submission. This change allows TEA to investigate approved local designation systems to determine if there is appropriate implementation and reporting.

Adopted new subsection (f)(2)(E) was added to specify that approval of a local optional designation system is voidable if a district fails to remove a district employee from the designation determination process who has a conflict of interest and acted in bad faith to influence designations. This change contributes to the validity of district designations by ensuring that designations are not issued in bad faith.

Adopted new subsection (f)(3)(E) was added to specify that approval of an individual teacher designation is voidable if the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest. This change contributes to the validity of district designations by ensuring that designations are not issued in bad faith.

The adopted amendment to subsection (g)(1)(A) clarifies that districts must delay designations to delay funding. This change ensures that funding cannot be generated without active designations. Provisions that applied only to districts that were issued funding in the 2019-2020 school year were removed.

Subsection (g)(1)(C) was modified to specify that funding for a teacher who works at multiple campuses will be calculated and split equally among the campuses where the employee is designated with a role code of 087 (Teacher). This change allows teachers at multiple campuses to generate an allotment that takes into account each campus's socio-economic need and rural status.

Based on public comment, a change was made at adoption to §150.1012(g)(2) to include statutory language that requires that at least 90% of each allotment be spent on compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed.

Adopted new subsection (g)(1)(D) allows TEA administrative discretion to redirect funds to the district where a designated teacher works if a miscoding error is discovered. This change allows coding errors to be easily rectified to ensure appropriate distribution of funds in alignment with TEC, §48.112.

The adopted amendment to subsection (g)(2) removes a redundant provision already addressed by subsection (g)(1)(C).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 15, 2021, and ended February 16, 2021. Following a summary of the public comments received and corresponding agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) recommended the removal of the requirement for a district to demonstrate correlation between student growth and teacher observation in §150.1012(c)(2)(A)(i) because it may be pro-

hibitive to districts seeking approval of a local designation system.

Response: The agency disagrees. In the past three application cycles, this has not been a prohibitive burden for districts to demonstrate at the system application phase.

Comment: The Association of Texas Professional Educators (ATPE) recommended the removal of §150.1012(c)(2)(A)(i) because the association believes correlation may not be the best indicator of effective teaching. ATPE recommended that rubrics that do not require correlation with student growth be allowed.

Response: The agency disagrees. Correlation is one of multiple indicators of a strong teacher observation component. The rule currently allows rubrics that have not demonstrated correlation with student growth to be approved. The rule states that districts must review correlation between student growth and teacher observation as part of their system plan.

Comment: Best in Class and Texas Impact Network commented to provide support for proposed §150.1012(c)(2)(A)(i)(II), stating that it provides congruence across the standards outlined in 19 TAC §149.1001 and all district-created and approved rubrics.

Response: The agency agrees and has determined the change will provide consistency across all local designation systems.

Comment: ATPE requested transparency and specificity on how §150.1012(c)(2)(C) would impact the district application process.

Response: The agency provides the following clarification. A district would be allowed to submit data for all eligible teaching assignments, except for instances that are outside a district's control, and the application would still be considered complete.

Comment: TCTA recommended that the language in §150.1012(c)(2)(C) be amended to state that TEA may only exercise administrative discretion in circumstances out of the district's control for §150.1012(c)(2)(C).

Response: The agency agrees and has amended §150.1012(c)(2)(C) at adoption to state that TEA may only exercise administrative discretion in circumstances out of the district's control.

Comment: Best in Class and Texas Impact Network commented to provide support for §150.1012(e)(1)(C) as it mitigates the impact of COVID-19 on school systems' ability to collect data.

Response: The agency agrees and has adopted the amendment as proposed to account for the impact of the current pandemic.

Comment: ATPE requested transparency and specificity on how §150.1012(e)(1)(C) would impact the district application process.

Response: The agency provides the following clarification. The amendment would not impact a district's application process as this is the data that is required to be submitted for issuing new and higher designations after a district has been approved.

Comment: TCTA recommended that the language in §150.1012(e)(1)(C) be amended to state that TEA may only exercise administrative discretion in circumstances out of the district's control for §150.1012(e)(1)(C).

Response: The agency disagrees. The language is intended for approved districts that have demonstrated the validity and reliability of their system and may now utilize appraisal waivers at their discretion.

Comment: ATPE commented that if a district's local designation system is voided under §150.1012(f)(2), not all designations issued by that system should be removed as stated in §150.1012(f)(3)(B).

Response: The agency disagrees. If a district's local designation system is voided, the designations issued by that system were issued improperly and should be voided.

Comment: TCTA and ATPE recommended that the language in §150.1012(f)(3) be amended to limit the removal of a teacher designation only to the designation that was issued in bad faith.

Response: The agency disagrees. If a district's process in determining designations is found to have been compromised, then all designations may have been issued improperly and should be voided.

Comment: TCTA recommended that the spending requirement found in TEC, §48.112, be included in §150.1012(g)(2).

Response: The agency agrees and has amended §150.1012(g)(2) at adoption to include the statutory requirement that at least 90% of each allotment be used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed.

Comment: Best in Class and Texas Impact Network urged the agency to continue strong implementation guidance and flexibility specific to rural schools.

Response: The agency agrees and will continue to offer technical assistance specific to rural schools.

Comment: The Texas American Federation of Teachers (Texas AFT) commented that local designation systems were too reliant on standardized testing such as the STAAR®.

Response: The agency disagrees and provides the following clarification. A district is required to have a student growth measure as part of its system. The possible student growth measures include portfolios, student learning objectives, pre- and post- tests, and value-added models. The majority of approved step one applications include student growth measures and assessments other than STAAR®.

Comment: Texas AFT commented that district strategic compensation systems hurt the students with the most need.

Response: The agency disagrees and provides the following clarification. TEC, §48.112, incentivizes designated teachers to teach at high-need campuses.

Comment: Texas AFT asked how districts can demonstrate congruence and correlation where teachers are teaching a variety of instructional settings.

Response: The agency provides the following clarification. TEA has issued guidance for districts on how to adjust their teacher observations to account for the variety of instructional settings while maintaining congruence among appraisers. The agency requires a review of correlation between student growth and teacher observation, not demonstration of correlation.

Comment: Texas AFT commented that there is a lack of transparency about how the allotment is calculated and decisions are made.

Response: The agency disagrees and provides the following clarification. TEC, §48.112, provides the calculations used to determine the allotment for each designated teacher.

Comment: Texas AFT commented that, given the current situation, teacher pay should not be based on teacher performance.

Response: The comment is outside the scope of the proposed rulemaking.

Comment: Texas AFT commented that the funds used for the Teacher Incentive Allotment should be used as part of a retention bonus for all educators and staff throughout Texas.

Response: The comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.3521, which specifies that the commissioner (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment and requires the commissioner to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.3521 and §48.112.

§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

(1) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Active Texas certification--A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The year in which the teacher observation and student growth measure is collected based on the proposed local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(H) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review and/or data validation for further approval.

(I) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(J) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(K) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(L) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(M) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(N) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:

(A) a \$500 fee for each teacher submitted for designation to TEA; or

(B) a system renewal fee to be determined by the commissioner and established in rule.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a Legacy Master Teacher Certificate;

(B) the teacher is employed by the recommending school district in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in the Texas Student Data

System Texas Education Data Standards (TEDS) for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment; and

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation or is in the last year of a teacher designation.

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) and (B) of this subsection.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application within three months of the submission deadline. If no resubmission is timely made, the application will be denied.

(C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system and will be required to complete a new application or resubmit data for validation for the additional four years of approval.

(D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

(E) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teacher and The Danielson Group, or another rubric that is based on observable, job-related behaviors, including alignment

to §149.1001 of this title (relating to Teacher Standards). A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a student growth component that:

(I) if using a student learning objective, is aligned to the standards of the course, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, and includes criteria for scoring;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments; or

(IV) if using vendor-created assessments, is aligned to the standards for the course and contains questions that cover a range of student skill levels;

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year. Multi-year data shall include student growth and observation data from the same year and teaching assignment. Single-year data shall include student growth and observation data from the same teaching assignment. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion and amendments.

(1) School districts must apply for approval for additional eligible teaching assignments with previously unapproved student growth or teacher observation components, new student growth components, or new teacher observation components.

(2) Proposed amendments to other components of the application will be due at the time of annual submission. Additional information and application processes may be requested.

(e) Monitoring and program evaluation of approved local designation systems.

(1) For the annual data submission, approved school districts shall submit the following information regarding a local teacher designation system:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations. TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual data submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of the TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual data submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA and Texas Tech University;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(F) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval if a district decides to delay designations.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in the Texas Student Data System TEDS at each campus.

(D) TEA may exercise administrative discretion to redirect funds to the district where the designated teacher works if a miscoding error is discovered.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed.

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 March 17, 2021.

TRD-202101113

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: April 6, 2021

Proposal publication date: January 15, 2021

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



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.

Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) has concluded its review of Chapter 252, concerning Administration, and readopts the rule in Chapter 252 without changes in accordance with Texas Government Code §2001.039; specifically §§252.1 - 252.9.

CSEC's notice of intent to review the Chapter 252 rules was published in the February 12, 2021, issue of the *Texas Register* (46 TexReg 1071). As a result of the review, CSEC assessed and determined that the original reasons and justification for adopting each rule continue to exist and remain valid.

No comments were received in response to CSEC's notice of review.

Filed with the Office of the Secretary of State on March 17, 2021.

TRD-202101123

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: March 17, 2021



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its rule review of 28 Texas Administrative Code Chapters 140-144, 147-148, 150, 152, and 156 and determined that the reasons for initially adopting the rules in these chapters continue to exist. Notice of the review was published in the *Texas Register* on January 15, 2021 (46 TexReg 475).

DWC received one comment in support of readoption from the Workers' Compensation Professional North Texas Pain Recovery Center. The commenter indicated no rule changes were proposed, so no changes should be made to the reviewed chapters under this rule review. DWC acknowledges the comment.

This review was conducted under the authority of Texas Government Code §2001.039 and Texas Labor Code §402.061.

As a result of the rule review, DWC finds that the reasons for initially adopting the rules in 28 TAC Chapters 140-144, 147-148, 150, 152, and 156 continue to exist and readopts these rules in accordance with the requirements of Government Code §2001.039.

TRD-202101128

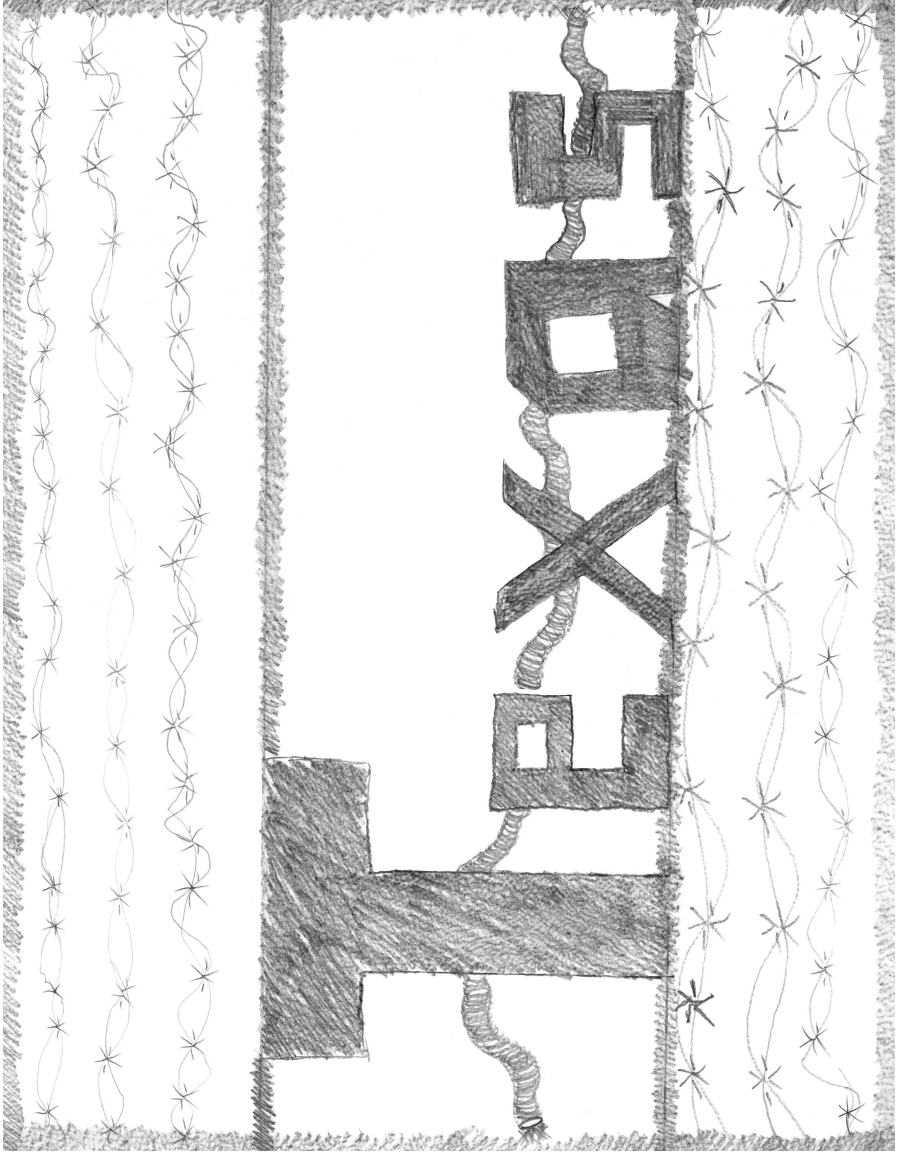
Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: March 18, 2021





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.



INDIRECT COST RATE GUIDANCE HANDBOOK

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Version 2.0 (07/2021)

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INTRODUCTION

This handbook provides information and guidance on the issuance of indirect cost rates by the Texas Education Agency (TEA). The US Department of Education (USDE) authorizes TEA, as the cognizant agency for indirect costs, to establish indirect cost rates for Texas local educational agencies (LEAs).

TEA negotiates, approves, and issues indirect cost rates to the following LEAs in the state: independent school districts (ISDs), educational service centers (ESCs), open-enrollment charter schools (charter schools), and other governmental agencies (OGAs).

INDIRECT COST RATE – GENERAL INFORMATION

TEA's procedure is based on the requirement outlined in Title 2 of the Code of Federal Regulations (CFR) Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (subsequently referred to as the Uniform Guidance) and 34 CFR Parts 75 and 76.

The Uniform Guidance (2 CFR Part 200) establishes the standard that is responsible for the review, negotiation, and approval of indirect cost rate proposals.

Definition of Indirect Cost

Indirect costs (2 CFR 200.56) are costs that have been incurred for common or joint purposes. Indirect costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective.

Indirect cost rate is a method for determining, in a reasonable manner, the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

Indirect cost rate proposal (2 CFR 200.57) is documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate.

Rate Types

TEA issues two indirect cost rates: the restricted rate and the unrestricted rate.

Unrestricted Rates

Unrestricted rates are applied to grants not subject to the federal supplement, not supplant requirement.

Restricted Rates

Restricted rates are used for grant programs where the supplement, not supplant requirement applies.

Supplement, Not Supplant

The supplement, not supplant requirement means grant funds must be used only to enhance and support existing state or locally funded activities. The grant funds must not be used to replace state or locally funded activities. Most of the federal grants that TEA administers are subject to this requirement, and the restricted indirect cost rate is applied to them. The unrestricted and restricted indirect cost rates for each LEA (including charter schools) in Texas can be found on the [Indirect Cost Rates](#) page of the TEA website.

INDIRECT COST RATE ISSUANCE FOR ISDs/ESCs/OGAs

To recover any indirect costs, LEAs must request and receive a new indirect cost rate for every school year. TEA uses the direct allocation method to determine an indirect cost rate. When calculating the indirect cost rate, TEA uses the three most current years of auditable financial data and a discount rate factor of 10.0 percent.

Indirect Cost Rates for ISDs

ISDs request indirect cost rates each year by completing and submitting the Indirect Cost Rate Proposal (ICRP) Additional Costs Workbook (ACW). Submission of the ICRP ACW serves as an ISD's request for indirect cost rates. Rates will be calculated only for ISDs that submit a completed workbook.

- ICRP ACW is made available via the [Indirect Cost Rates](#) webpage and the secure GFFC Reports and Data Collections application, accessible through [TEAL](#).
- ISDs submit the ICRP ACW requesting indirect cost rates.
- TEA reviews all submitted ICRP ACWs and combines with TSDS-PEIMS financial data.
- TEA provides complete ICRPs to ISDs for review and certification.

- ISDs submit ICRP Certification in GFFC Reports and Data Collections.
- TEA publishes Notification Letters in GFFC Reports and Data Collections, and rates become effective from July 1 of the year the rate is issued through June 30 of the year the rate is due to expire (July 1 through June 30).

Indirect Cost Rates Timeline for ISDs

November	TEA publishes ICRP Additional Costs Workbook (ACW). The ACW collects the 10% of data TEA needs to calculate an indirect cost rate that is not available via TSDS-PEIMS.
January	ICRP ACW due to TEA.
April	TEA publishes completed ICRPs that combine both ACW and TSDS-PEIMS data.
May	Certified and signed ICRPs due to TEA.
July	Indirect cost rates will be effective for a one-year period from July 1 to June 30. A new indirect cost rate must be requested each year.

Open-Enrollment Charter Schools

For charter schools, the indirect cost rate is based on an average of the indirect cost rates of the resident public school districts reported in TSDS-PEIMS. Because the indirect cost rates are based on the average of the indirect cost rates of the resident public school districts, the indirect cost rates of the charter schools are calculated each year after the ISDs' indirect cost rates have been negotiated, reviewed, and finalized.

TEA issues indirect cost rates to charter schools upon request through the charter schools' submission of the *Request for an Indirect Cost Rate for Charter Schools Survey*. TEA will notify charter schools of the survey and the March deadline to submit the survey requesting to receive indirect cost rates for the upcoming school year.

Indirect Cost Rates Timeline for Charter Schools

February	TEA publishes online survey to collect data from charter schools on whether or not they are requesting an indirect cost rate for the upcoming July 1 to June 30 period.
March	Charter schools submit survey responses.
July	Indirect cost rates will be effective for a one-year period from July 1 to June 30. A new indirect cost rate must be requested each year.

Indirect Cost Rates for ESCs/OGAs

Education service centers (ESCs) and other governmental agencies (OGAs) must request indirect cost rates each year by completing and submitting the Indirect Cost Rate Proposal (ICRP) Workbook.

TEA will not pull TSDS-PEIMS data and prepopulate an ICRP for these entities. Instead, ESCs/OGAs will enter their own financial and additional costs data and submit to TEA. The submission of the ICRP Workbook serves as the ESCs'/OGAs' initial request for indirect cost rates. Rates will be calculated only for ESCs/OGAs that submit a completed ICRP Workbook.

Indirect Cost Rates Timeline for ESCs/OGAs

November	TEA creates and distributes partially pre-populated indirect cost rate proposals (ICRPs).
January	Certified and signed ICRPs due to TEA.
July	Indirect cost rates will be effective for a one-year period from July 1 to June 30. A new indirect cost rate must be requested each year.

OTHER ENTITIES

IHEs, NPOs, and other governmental entities receive their approved indirect cost rate from their cognizant federal agency, the agency from whom they receive the majority of their federal funds. If a grantee does not have a current, approved rate, the grantee must immediately contact its cognizant agency to determine a rate. These grantees should then e-mail a copy of their current indirect cost rate notification letter to compliance@tea.texas.gov. If it is determined that TEA is the cognizant agency, the grantee must immediately contact TEA's Federal Fiscal Compliance and Reporting (FFCR) Division to begin the process of determining a rate.

Figure: 25 TAC §289.226(v)(1)

	Name of Records/Documents	Rule Cross Reference	Time Interval for Keeping Records/Documents
(A)	Records of training and experience	§289.226(j)(8)	Until termination of registration or 5 years after the individual terminates employment with the facility
(B)	Inventory of radiation machines	§289.226(m)(9)	Until next routine on-site inspection [3 years]
(C)	Receipt, transfer, and disposal of radiation machines	§289.226(m)(10)	Until termination of registration
(D)	Radiation machine log for providers of equipment	§289.226(m)(12)(B)	10 years
(E)	Demonstration and sale log for radiation machines	§289.226(m)(13)(B)	10 years
(F)	RSO annual review of operating and safety procedures	§289.226(n)(1)(A)	3 years
(G)	Assemble, installation, and repair log for radiation machines	§289.226(o)(4)(D)	10 years
(H)	<u>Equipment performance evaluations and corrections</u>		
	(i) <u>Healing Arts</u>	§289.227(o)(3) and (o)(4)(B)	<u>10 years</u>
	(ii) <u>Dental</u>	§289.232(j)(5)(J)(iii)	<u>10 years</u>
	(iii) <u>Veterinary</u>	§289.233(j)(5)(N)(ii)	<u>10 years</u>
	(iv) <u>Service Companies</u>	§289.226(o)(7)(F)	<u>10 years</u>

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 - February 2021

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 February 2021 is \$33.36 per barrel for the three-month period beginning on November 1, 2020, and ending January 31, 2021. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of February 2021, from a qualified low-producing oil lease, is not eligible for 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 February 2021 is \$1.49 per mcf for the three-month period beginning on November 1, 2020, and ending January 31, 2021. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2021, 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 February 2021 is \$59.06 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 February 2021, 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 February 2021 is \$2.92 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 February 2021, 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-202101294

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Filed: March 24, 2021



Local Sales Tax Rate Changes Effective April 1, 2021

A 2 percent local sales and use tax will become effective April 1, 2021 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Highland Haven (Burnet Co)	2027081	.020000	.082500
Novice (Coleman Co)	2042046	.020000	.082500

The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2021 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
La Villa (Hidalgo Co)	2108118	.020000	.082500
Palmview (Hidalgo Co)	2108163	.020000	.082500

The city sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2021 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Anton (Hockley Co)	2110025	.020000	.082500
Follett (Lipscomb Co)	2148049	.020000	.082500
Tenaha (Shelby Co)	2210042	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective April 1, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Arlington (Tarrant Co)	2220095	.020000	.082500

An additional 3/8 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be increased to 1/2 percent effective April 1, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Port Arthur (Jefferson Co)	2123020	.020000	.082500
Port Arthur (Orange Co)	2123020	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective March 31, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Argyle (Denton Co)	2061104	.020000	.082500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Oakwood (Leon Co)	2145051	.017500	.080000

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Asherton (Dimmit Co)	2064030	.020000	.082500

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective March 31, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gustine (Comanche Co)	2047032	.015000	.077500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective March 31, 2021 and the 1 percent city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2021 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Buffalo Gap (Taylor Co)	2221067	.020000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective March 31, 2021 and the 1 percent city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2021 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
New Berlin (Guadalupe Co)	2094052	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent effective March 31, 2021 and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2021 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Alvarado (Johnson Co)	2126054	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations

(4A) will be abolished effective March 31, 2021 and an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective April 1, 2021 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Memphis (Hall Co)	2096014	.020000	.082500

A 1/2 percent special purpose district sales and use tax will be abolished effective March 31, 2021 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Palmview Crime Control and Prevention District	5108528	.000000	.062500

A 1 percent special purpose district sales and use tax will be abolished effective March 31, 2021 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Town Center Economic Development District Zone No. 2	5170530	.000000	.062500
Town Center Economic Development District Zone No. 3	5170549	.000000	.062500
Town Center Economic Development District Zone No. 4	5170601	.000000	.062500

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2021 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Argyle Municipal Development District	5061710	.002500	SEE NOTE 1
Corinth Fire Control, Prevention and EMS District	5061701	.002500	SEE NOTE 2
Holland Municipal Development District	5014521	.002500	SEE NOTE 3

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2021 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Jasper County Emergency Services District No. 4-B	5121549	.005000	SEE NOTE 4

A 1 percent special purpose district sales and use tax will become effective April 1, 2021 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Waller-Harris Emergency Services District No. 200	5237513	.010000	SEE NOTE 5
Wilson County Emergency Services District No. 3	5247539	.010000	SEE NOTE 6

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2021 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Austin County Emergency Services District No. 2	5008510	.015000	SEE NOTE 7
Brazos County Emergency Services District No. 2	5021504	.015000	SEE NOTE 8
Jasper County Emergency Services District No. 4-A	5121530	.015000	SEE NOTE 9

A 2 percent special purpose district sales and use tax will become effective April 1, 2021 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Burnet County Emergency Services District No. 2	5027571	.020000	SEE NOTE 10
Burnet County Emergency Services District No. 5	5027562	.020000	SEE NOTE 11
Fort Bend County Assistance District No. 17	5079685	.020000	SEE NOTE 12
Fort Bend County Assistance District No. 18	5079694	.020000	SEE NOTE 13
Fort Bend County Assistance District No. 21	5079701	.020000	SEE NOTE 14
Jasper County Emergency Services District No. 4	5121521	.020000	SEE NOTE 15
Kaufman County Assistance District No. 3	5129541	.020000	SEE NOTE 16
Williamson County Emergency Services District No. 7-A	5246594	.020000	SEE NOTE 17

NOTE 1: The Argyle Municipal Development District has the same boundaries as the Argyle Extra-Territorial Jurisdiction, which includes the city of Argyle. Contact the district representative at 940-464-7273 for additional boundary information.

NOTE 2: The boundaries of the Corinth Fire Control, Prevention and EMS District are the same boundaries as the city of Corinth.

NOTE 3: The boundaries of the Holland Municipal Development District are the same boundaries as the city of Holland.

NOTE 4: The Jasper County Emergency Services District No. 4-B is the portion of the district located in the city of Browndell. Contact the district representative at 409-489-3215 for additional boundary information.

NOTE 5: The Waller-Harris Emergency Services District No. 200 is located in the northwestern portion of Harris County and all of Waller County excluding the cities of Waller, Hempstead, Brookshire, Pine Island, Pattison, Prairie View, Fulshear, Katy and the Katy Extra-Territorial Jurisdiction. The portion of the district in Harris County overlaps portions of the Houston MTA, which has a transit sales and use tax. The unincorporated areas of Harris and Waller counties in ZIP codes 77355, 77363, 77418, 77423, 77445, 77446, 77447, 77466, 77473, 77474, 77484, 77493 and 77494 are partially located in the district. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 6: The Wilson County Emergency Services District No. 3 is located in the northern portion of Wilson County. The district excludes any area within the cities of La Vernia and Stockdale. The district partially overlaps Wilson County Emergency Services District No. 1, which has a special purpose district sales and use tax. The unincorporated areas of Wilson County in ZIP codes 78101, 78113, 78114, 78121, 78140, 78143, 78160 and 78161 are partially located in the Wilson County Emergency Services District No. 3. Contact the district representative at 830-996-3087 for additional boundary information.

NOTE 7: The Austin County Emergency Services District No. 2 is located in the central portion of Austin County, which has a county sales and use tax. The district excludes, for sales tax purposes, the city of Sealy. The unincorporated areas of Austin County in ZIP code 77474 are partially located within Austin County

Emergency Services District No. 2. Contact the district representative at 979-885-2222 for additional boundary information.

NOTE 8: The Brazos County Emergency Services District No. 2 is located in the northern portion of Brazos County, which has a county sales and use tax. The district excludes the cities of Bryan, College Station and Kurten and excludes, for sales tax purposes, the city of Wixon Valley. The unincorporated areas of Brazos County in ZIP codes 77808 and 77859 are partially located within Brazos County Emergency Services District No. 2. Contact the district representative at 979-589-3263 for additional boundary information.

NOTE 9: The Jasper County Emergency Services District No. 4-A is the portion of the district located in the unincorporated portion of Jasper County that overlaps the Jasper County Development District No. 1, which has a special purpose district sales and use tax. Contact the district at 409-489-3215 for additional boundary information.

NOTE 10: The Burnet County Emergency Services District No. 2 is located in the western portion of Burnet County. The unincorporated area of Burnet County in ZIP code 78611 is partially located within the Burnet County Emergency Services District No. 2. Contact the district representative at 512-755-0653 for additional boundary information.

NOTE 11: The Burnet County Emergency Services District No. 5 is located in the western portion of Burnet County. The unincorporated area of Burnet County in ZIP code 78611 is partially located within the Burnet County Emergency Services District No. 5. Contact the district representative at 469-441-4064 for additional boundary information.

NOTE 12: The Fort Bend County Assistance District No. 17 is located in the east central portion of Fort Bend County. The district excludes the city of Thompsons or any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP codes 77469 and 77481 are partially located within Fort Bend County Assistance District No. 17. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 13: The Fort Bend County Assistance District No. 18 is located in the east central portion of Fort Bend County. The district excludes the city of Beasley or any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP codes 77417 and 77471 are partially located within Fort Bend County Assistance District No. 18. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 14: The Fort Bend County Assistance District No. 21 is located in the southwest portion of Fort Bend County. The district excludes the city of Kendleton or any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP codes 77417 and 77451 are partially located within Fort Bend County Assistance District No. 21. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 15: The Jasper County Emergency Services District No. 4 is located in the northern portion of Jasper County. The district excludes for sales tax purposes, the city of Jasper. The unincorporated areas of Jasper County in ZIP codes 75931, 75951 and 75956 are partially located within the Jasper County Emergency Services District No. 4. Contact the district representative at 409-489-3215 for additional boundary information.

NOTE 16: The Kaufman County Assistance District No. 3 is located in the southwestern portion of Kaufman County. The unincorporated areas of Kaufman County in ZIP code 75158 are partially located within the Kaufman County Assistance District No. 3. Contact the district representative at 214-729-8923 for additional boundary information.

NOTE 17: The Williamson County Emergency Services District No. 7-A is located in the northern portion of Williamson County. The district excludes the city of Florence. The unincorporated areas of Williamson County in ZIP codes 76527 and 78633 are partially located within Williamson County Emergency Services District 7-A. Contact the district representative at 254-793-2591 for additional boundary information.

TRD-202101297
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: March 24, 2021

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 03/29/21 - 04/04/21 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/29/21 - 04/04/21 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 4/01/21 - 04/30/21 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/21 - 04/30/21 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-202101232
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 23, 2021

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 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 com-

mission'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 **May 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: Baker Septic Service, LLC; DOCKET NUMBER: 2020-0889-SLG-E; IDENTIFIER: RN109805341; LOCATION: Canyon Lake, Comal County; TYPE OF FACILITY: sludge transportation; RULES VIOLATED: 30 TAC §312.142(f)(3), by failing to notify the executive director (ED), by letter, within 15 days after a transporter plans to handle a waste not included in the existing registration; 30 TAC §312.143(a), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the (Texas) facility has written authorization by permit or registration issued by the ED to receive wastes; and 30 TAC §312.145(a)(3), by failing to properly record all required information on trip tickets; PENALTY: \$9,938; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Cabinetworks Group Michigan LLC f/k/a Masco Cabinetry LLC; DOCKET NUMBER: 2020-1216-AIR-E; IDENTIFIER: RN102593894; LOCATION: Duncanville, Dallas County; TYPE OF FACILITY: cabinet manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1127, General Terms and Conditions and Special Terms and Conditions Number 11, and TWC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$6,075; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Anton; DOCKET NUMBER: 2020-1353-PWS-E; IDENTIFIER: RN101202448; LOCATION: Anton, Hockley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and TWC, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on June 9, 2020, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the five active groundwater sources in use at the time the distribution coliform-positive samples were collected; PENALTY: \$9,150; ENFORCEMENT COORDINATOR:

Amanda Conner, (512) 676-7487; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: City of Bardwell; DOCKET NUMBER: 2020-1229-PWS-E; IDENTIFIER: RN101238608; LOCATION: Bardwell, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and TWC, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; PENALTY: \$300; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Como; DOCKET NUMBER: 2020-0250-MWD-E; IDENTIFIER: RN101917367; LOCATION: Como, Hopkins 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 WQ0011313001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$14,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,200; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2020-1231-MWD-E; IDENTIFIER: RN101610327; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), 40 Code of Federal Regulations §403.8(f)(2) and (5), and Texas Pollutant Discharge Elimination System Permit Number WQ0010401004 Contributing Industries and Pretreatment Requirements Number 1, by failing to develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program, and failing to develop and implement an enforcement response plan; PENALTY: \$8,550; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: City of Gorman; DOCKET NUMBER: 2020-1116-PWS-E; IDENTIFIER: RN101198794; LOCATION: Gorman, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and TWC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$1,177; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Shepherd; DOCKET NUMBER: 2020-0954-PWS-E; IDENTIFIER: RN101213718; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Numbers 2, 3, and 4; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (iv) and (B)(iii) and (v), by failing to maintain water works operation

and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant and at a central location; PENALTY: \$10,627; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: City of Wills Point; DOCKET NUMBER: 2020-0936-PWS-E; IDENTIFIER: RN101388973; LOCATION: Wills Point, Van Zandt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly (BPA), as identified in 30 TAC §290.47(f); 30 TAC §290.44(h)(4), by failing to have all BPAs tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; and 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: EAST TEXAS BRIDGE, INCORPORATED; DOCKET NUMBER: 2020-1357-WQ-E; IDENTIFIER: RN109513622; LOCATION: Carthage, Panola County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXG111946, Part III, Section A, Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Gary Glazier and Jo Deene Glazier; DOCKET NUMBER: 2020-0633-MLM-E; IDENTIFIER: RN111021028; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: commercial 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; and 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing and Recharge Zones; PENALTY: \$4,313; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: Lonestar Operating, LLC; DOCKET NUMBER: 2020-1208-AIR-E; IDENTIFIER: RN110409430; LOCATION: Gillett, Karnes County; TYPE OF FACILITY: oil and gas production facility; RULES VIOLATED: 30 TAC §101.201(b)(2)(J) and (K) and §122.143(4), Federal Operating Permit (FOP) Number O4091/ General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(42)(F), and TWC, §382.085(b), by failing to identify all required information on the final record for a non-reportable emissions event; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O4091/GOP

Number 514, Site-wide Requirements (b)(2), and TWC, §382.085(b), by failing to report any corrective actions or preventative measures taken for each emission unit; 30 TAC §122.143(4) and §122.145(2)(A) - (C), FOP Number O4091/GOP Number 514, Site-wide Requirements (b)(2), and TWC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, failing to submit a deviation report no later than 30 days after the end of each reporting period, and failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O4091/GOP Number 514, Site-wide Requirements (b)(2), and TWC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$4,726; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Randy Corbin; DOCKET NUMBER: 2020-1058-MSW-E; IDENTIFIER: RN111067864; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: Reliable Groceries Investment Inc dba 7 Eagle Food Mart; DOCKET NUMBER: 2020-1296-PST-E; IDENTIFIER: RN102353406; LOCATION: Fort Worth, Tarrant 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 tanks (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTS in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: \$4,275; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: SANTA FE CHEVRON, INCORPORATED; DOCKET NUMBER: 2020-1112-PST-E; IDENTIFIER: RN102010865; LOCATION: Santa Fe, 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 recordkeeping requirements are met; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.74, by failing to investigate and confirm a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.606, by failing to maintain required Class A/B operator training certification documentation on-site and make it available upon request by agency personnel; PENALTY: \$14,877; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: SECURITY AIRPARK, INCORPORATED; DOCKET NUMBER: 2020-1250-PST-E; IDENTIFIER: RN102452232; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aircraft refueling facility; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$21,052; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: SHRESTHA INVESTMENT INCORPORATED dba Gateway 30; DOCKET NUMBER: 2020-1354-PST-E; IDENTIFIER: RN101544401; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and (4) and TWC, §26.3475(d), by failing to ensure that corrosion protection is provided to all underground and/or totally or partially submerged metal components of the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: SOUTHWEST UNIVERSAL, INCORPORATED dba Unique Food Mart; DOCKET NUMBER: 2020-1023-PST-E; IDENTIFIER: RN103023230; LOCATION: Galveston, 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 for releases at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Two Seventy Seven Limited; DOCKET NUMBER: 2020-0895-EAQ-E; IDENTIFIER: RN107297533; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.23(i) and Edwards Aquifer Contributing Zone Plan (CZP) Permit Number 130000666, Standard Conditions Number 5, by failing to obtain approval of a modification to an approved Edwards Aquifer CZP prior to commencing new construction; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Yara Freeport LLC; DOCKET NUMBER: 2020-1014-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: ammonia production plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 118239 and N200, Special Conditions Number 17.A, Federal Operating Permit Number O3826, General Terms and Conditions and Special Terms and Conditions Number 6, and TWC, §382.085(b), by failing to limit intermittent events sending emissions to the flare up to three times during any rolling 12-month period; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202101234

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 23, 2021



Enforcement Orders

An agreed order was adopted regarding PENDLETON WATER SUPPLY CORPORATION, Docket No. 2019-1479-PWS-E on March 23, 2021 assessing \$100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202101291
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 24, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 163770

APPLICATION. Lauren Concrete Inc, 2001 Picadilly Drive, Round Rock, Texas 78664-9511 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 163770 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 100 County Road 258, Liberty Hill, Williamson County, Texas 78642. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.663324&lng=-97.878155&zoom=13&type=r>. This application was submitted to the TCEQ on January 11, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 10, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/epic/eComment/. 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.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, May 3, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 967-788-779. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (562) 247-8422 and enter access code 442-125-988.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry PE, Engineer at (512) 281-6555.

Notice Issuance Date: March 16, 2021

TRD-202101127
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2021



Notice of Public Meeting for Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 163381

Application. Buendia Concrete, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 163381, which would authorize construction of a permanent concrete batch plant located at 1301 Superior Road, Magnolia, Montgomery County, Texas 77354. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.235374&lng=-95.638899&zoom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, April 22, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 938-128-283. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (914) 614-3221 and enter access code 378-624-131. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Montgomery County Memorial Library System- Central Library, 104 I-45 North, Conroe, Montgomery County, Texas. The facility's compliance

file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Buendia Concrete LLC, 32731 Egypt Lane, Suite 401, Magnolia, Texas 77354-3662 or by calling Mrs. Lactetia White, Project Manager, Elm Creek Environmental, LLC at (972) 768-9093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: March 19, 2021

TRD-202101155

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 19, 2021



Notice of Water Rights Application

Notices Issued March 19, 2021

APPLICATION NO. 12-4106D; The City of Cleburne, 10 N. Robinson, Cleburne, Texas 76033, Applicant, seeks to amend Certificate of Adjudication No. 12-4106 to use the bed and banks of the Nolan River (Lake Pat Cleburne), Brazos River Basin, to convey 6,739 acre-feet of surface water-based return flows authorized by TPDES Permit No. WQ0010006001 for subsequent diversion and use for municipal, industrial, recreation, mining, and agricultural purposes in Johnson County, Texas. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 15, 2016. Additional information and fees were received on September 7, 2016, and May 18, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 9, 2017. 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 accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: Pending Water Rights Applications at Notice - Texas Commission on Environmental Quality - www.tceq.texas.gov. 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 April 21, 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 April 21, 2021. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 21, 2021.

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://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice by entering ADJ 4106 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. 13675; City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469, (Applicant), seeks a water use permit to authorize the diversion and use of not to exceed 186,295 acre-feet of water per year, at a maximum diversion rate of 257 cfs (115,349.31 gpm), from a diversion reach on La Quinta Channel (Corpus Christi Bay), San Antonio-Nueces Coastal Basin, for municipal and industrial purposes in San Patricio, Nueces and Aransas counties. Applicant also seeks an exempt interbasin transfer to the portion of San Patricio County in the Nueces River Basin and the portion of Nueces County in the Nueces-Rio Grande Coastal Basin within the City's wholesale water service area. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 22, 2020. Additional information was received on March 16, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 5, 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, installation of measuring devices. 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 at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. 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 representa-

tive), 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 13675 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. 13743; Alamo Concrete Products Company, P.O. Box 34210, San Antonio, Texas 78265, Applicant, has applied for a Temporary Water Use Permit to divert and use not to exceed 105 acre-feet of water within a period of three years from a point on the South Fork San Gabriel River, Brazos River Basin at a maximum diversion rate of 4.01 cfs (1,800 gpm) for mining purposes in Williamson County. More information on the application and how to participate in the permitting process is given below. The application was received on October 21, 2020. Additional information was received on November 30 and December 8, 2020 and fees were received on November 30, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 8, 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 stream-flow restrictions. 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, by April 6, 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 April 6, 2021. The Executive Director may approve the application unless a written request for a contested case hearing is filed by April 6, 2021.

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 WRTP 13743 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-202101227

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 22, 2021

General Land Office

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 15, 2021 to March 19, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, March 26, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, April 25, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Jefferson County Drainage District #7

Location: The project site is located in Taylors Bayou Turning Basin, approximately 1.17 miles south-southwest of the intersection of State Highway 87 and West Levee Road, in Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): Project Site Latitude: 29.850176, -93.972344; Mitigation Site 29.960417, -94.29737

Project Description: The applicant received permission via an emergency procedure request to discharge fill material into waters of the United States (WOUS) during the rehabilitation of an existing flood-wall in 2017. Impacts included the installation of sheet pile walls, the

discharge of 5 tons of riprap material and sand bags (1,150 cubic yards) to repair a scour hole, and installation of an additional 1,000-linear-foot of sheet pile wall. The project impacted 0.71 acres of tidal wetlands, 0.04 acres of non-tidal wetlands, and 0.26 acres of tidal open water.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2017-00555. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1234-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialelegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202101293

Mark A. Havens

Chief Clerk

General Land Office

Filed: March 24, 2021

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendments effective June 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective June 1, 2021.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting a fee for service reimbursement rate for Non-Emergency Medical Transportation (NEMT) Services.

The proposed amendments are estimated to result in an annual aggregate expenditure of \$323,402 for federal fiscal year (FFY) 2021, consisting of \$219,946 in federal funds and \$103,456 in state general revenue. For FFY 2022, the estimated result is an annual aggregate expenditure of \$910,610, consisting of \$567,765 in federal funds and \$342,845 in state general revenue. For FFY 2023, the estimated result is an annual aggregate expenditure of \$894,946, consisting of \$544,127 in federal funds and \$350,819 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

Rate Hearing. To address the proposed rate changes, we will have a hearing to be held online prior to the effective date. Once available, information about the proposed rate changes and the hearing will be published in a subsequent issue of the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC, (which were

formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendments 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, 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, 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 at (512) 730-7475

Email

PFDAcuteCare@hhsc.state.tx.us

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 quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

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-202101296
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 24, 2021

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Mainsail Insurance Company, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for admission to the state of Texas for USA Underwriters, a foreign fire and/or casualty company. The home office is in Royal Oak, Michigan.

Application for GuideOne Mutual Insurance Company, a foreign fire and/or casualty company, to change its name to GuideOne Insurance Company. The home office is in Des Moines, Iowa.

Application for GuideOne Specialty Mutual Insurance Company, a foreign fire and/or casualty company, to change its name to GuideOne Specialty Insurance Company. The home office is in Des Moines, Iowa.

Application for Maiden Reinsurance North America, Inc., a foreign fire and/or casualty company, to change its name to Fletcher Reinsurance Company. The home office is in Jefferson City, Missouri.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202101295
James Person
General Counsel
Texas Department of Insurance
Filed: March 24, 2021

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2309 "\$100 MILLION CASH PAYOUT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2309 is "\$100 MILLION CASH PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2309 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2309.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, MONEY BAG SYMBOL, 20X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$75.00, \$150, \$300, \$1,000, \$30,000 and \$250,000.

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. 2309 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWTV

26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO

53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
MONEY BAG SYMBOL	WIN\$
20X SYMBOL	WINX20
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$150	ONFF
\$300	THHN
\$1,000	ONTH
\$30,000	30TH
\$250,000	250TH

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 (2309), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 050 within each Pack. The format will be: 2309-000001-001.

H. Pack - A Pack of the "\$100 MILLION CASH PAYOUT" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$100 MILLION CASH PAYOUT" Scratch Ticket Game No. 2309.

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 "\$100 MILLION CASH PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-eight (78) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly! If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-eight (78) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-eight (78) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-eight (78) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-eight (78) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. 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., 10 and \$10).

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 five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "MONEY BAG" (WIN\$) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100 MILLION CASH PAYOUT" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$75.00, \$150 or \$300, 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 \$30.00, \$50.00, \$75.00, \$150 or \$300 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 "\$100 MILLION CASH PAYOUT" Scratch Ticket Game prize of \$1,000, \$30,000 or \$250,000, 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 "\$100 MILLION CASH PAYOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$100 MILLION CASH PAYOUT" 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 "\$100 MILLION CASH PAYOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 15,600,000 Scratch Tickets in Scratch Ticket Game No. 2309. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2309 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	1,872,000	8.33
\$20.00	1,248,000	12.50
\$30.00	312,000	50.00
\$50.00	156,000	100.00
\$75.00	393,120	39.68
\$150	102,960	151.52
\$300	4,680	3,333.33
\$1,000	10	1,560,000.00
\$30,000	8	1,950,000.00
\$250,000	8	1,950,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. 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. 2309 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2309, 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-202101200
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 22, 2021



Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking to procure items for workforce training provided to students in the area of welding.

Copies of the Invitation for Bids (IFB) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Contracts Coordinator at (806) 372-3381 or lhardin@thep-rpc.org. Responses must be received at PRPC by 3:00 p.m. on Friday, April 9, 2021.

PRPC, as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter network, is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-202101129
 Leslie Hardin
 Workforce Development Contracts Coordinator
 Panhandle Regional Planning Commission
 Filed: March 18, 2021



Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The Village of Salado has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb up to 5,682 cubic yards of sedimentary material within Salado Creek in the Village of Salado, Bell County. The purpose of the disturbance is to remove sedimentary material deposits adjacent to the South Ridge Road crossing in Salado. The location is immediately upstream of the South Ridge Road crossing and approximately 5,000 feet downstream from the Main Street (FM 2268) Bridge. Notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on April 30, 2021. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, remote participation is required for the public comment hearing. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in

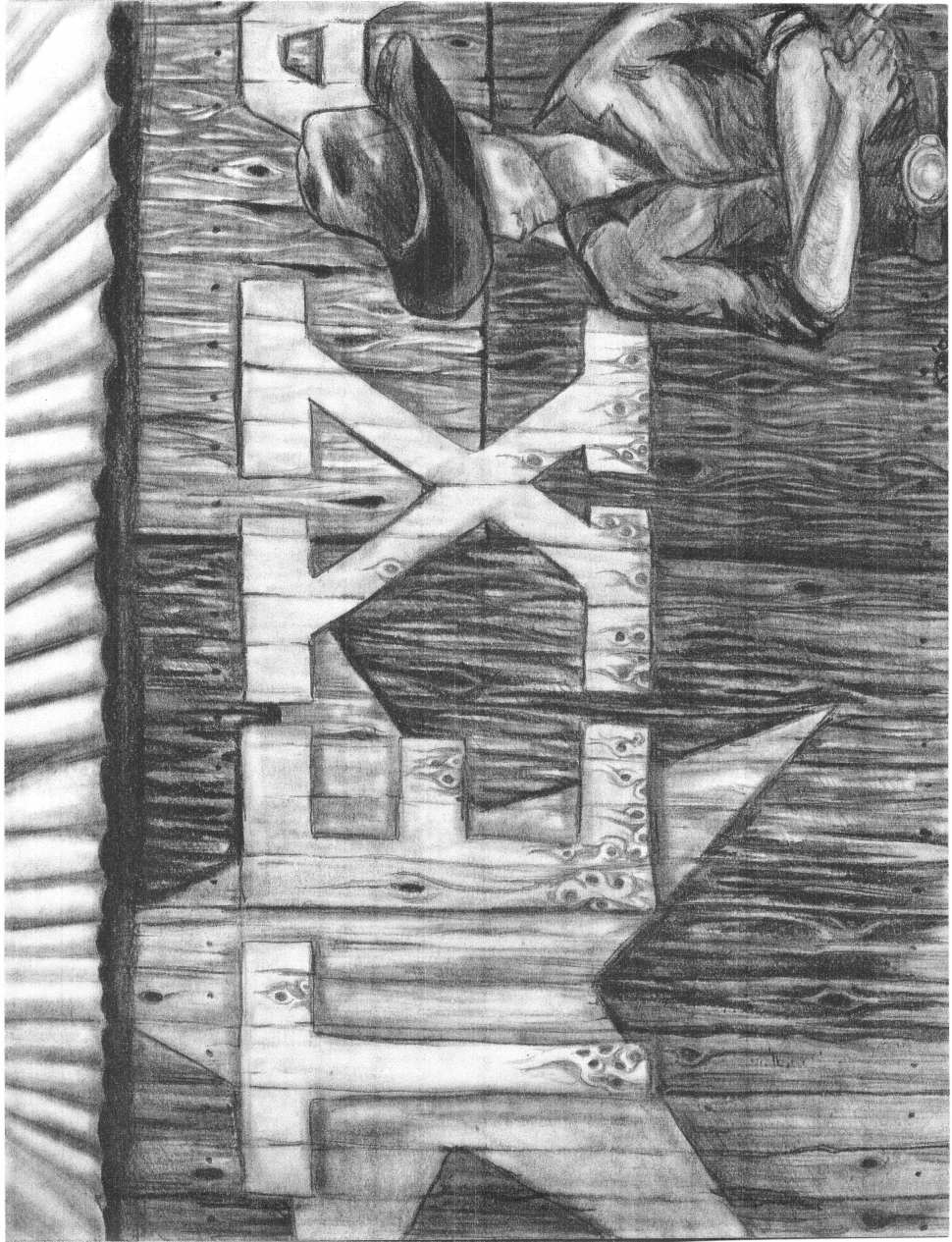
the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or email tom.heger@tpwd.texas.gov.

TRD-202101292

James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: March 24, 2021





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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