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# TEXAS REGISTER

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# TEXAS REGISTER

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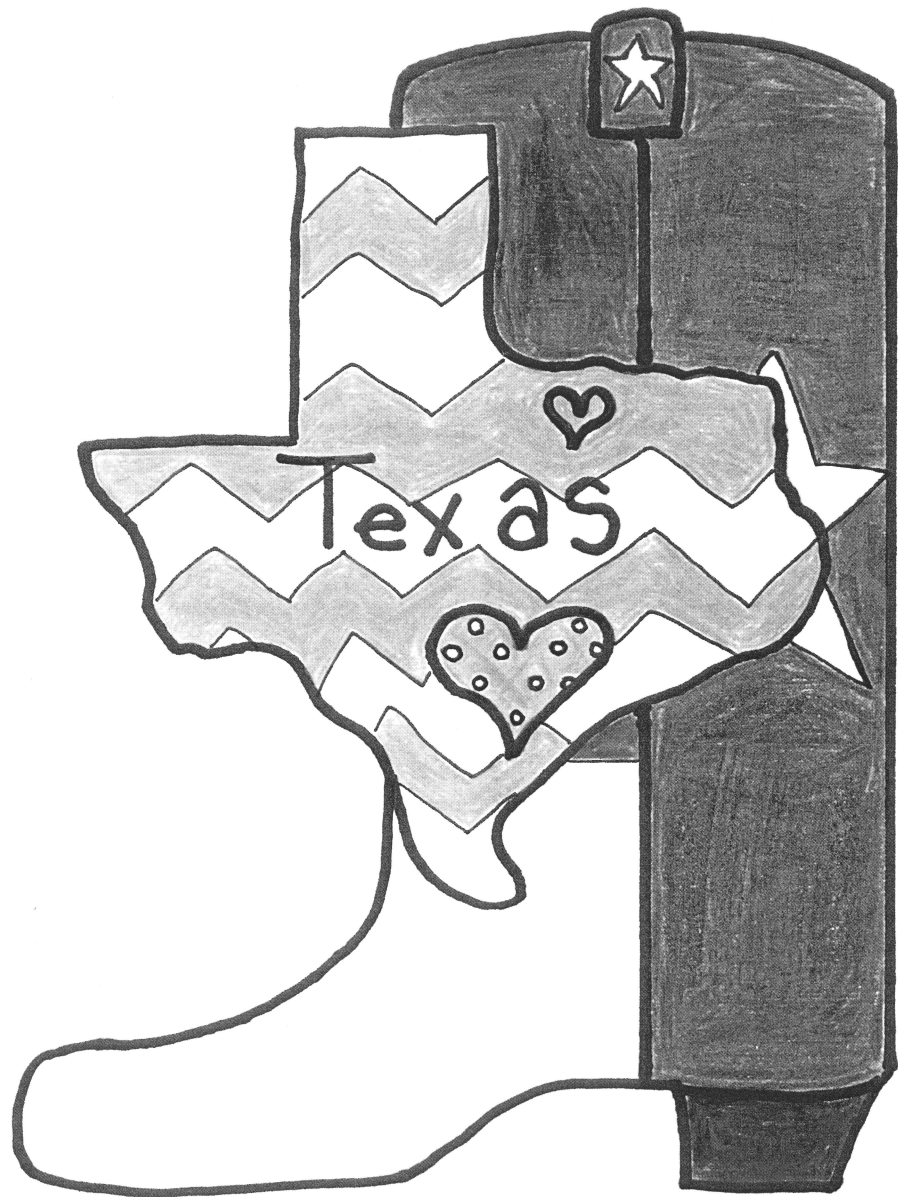
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# THE GOVERNOR

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 April 7, 2021

Appointed to the Commission on Jail Standards, for a term to expire January 31, 2027, Raul P. "Pinky" Gonzales of Refugio, Texas (replacing Bryan D. Weatherford of Woodville, whose term expired).

Appointed to the Commission on Jail Standards, for a term to expire January 31, 2027, Ross G. Reyes of Melissa, Texas (replacing Melinda E. Taylor of Austin, whose term expired).

Appointed to the Commission on Jail Standards, for a term to expire January 31, 2027, Kelly S. Rowe of Lubbock, Texas (Sheriff Rowe is being reappointed).

### Appointments for April 8, 2021

Appointed to the Red River Compact Commission for a term to expire February 1, 2023, Robin L. Phillips of Sherman, Texas (replacing Clyde M. Siebman of Pottsboro, who is deceased).

### Appointments for April 12, 2021

Appointed as the Inspector General for Health and Human Services, for a term to expire February 1, 2022, Sylvia Hernandez Kauffman of Austin, Texas (Ms. Kauffman is being reappointed).

Appointed to the Public Utility Commission of Texas, for a term to expire September 1, 2023, Peter M. Lake of Austin, Texas (replacing Arthur C. D'Andrea of Austin, who resigned).

Appointed to the Texas Board of Respiratory Care, for a term to expire February 1, 2027, Timothy R. "Tim" Chappell, M.D. of Plano, Texas (Dr. Chappell is being reappointed).

Appointed to the Texas Board of Respiratory Care, for a term to expire February 1, 2027, Sam G. "Gregg" Marshall, Ph.D. of Round Rock, Texas (Mr. Marshall is being reappointed).

Appointed to the Texas Board of Respiratory Care, for a term to expire February 1, 2027, Kandace D. "Kandi" Pool of San Angelo, Texas (Ms. Pool is being reappointed).

Greg Abbott, Governor

TRD-202101538



Proclamation 41-3813

## 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, on March 14, 2021, I issued a proclamation renewing the disaster declaration for all Texas counties; 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.

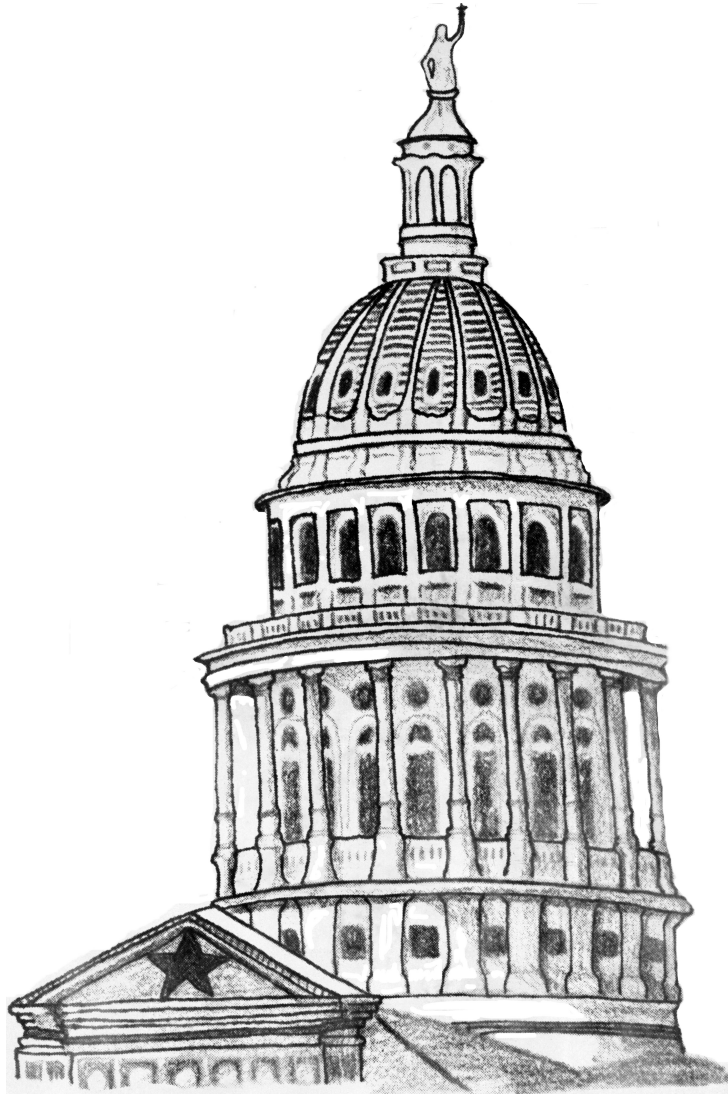
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 13th day of April, 2021.

Greg Abbott, Governor

TRD-202101536







# 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 B. END STAGE RENAL DISEASE FACILITIES

###### 26 TAC §500.21

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.21, concerning an emergency rule in response to COVID-19 in order to update and continue the regulatory requirements for end stage renal disease (ESRD) facilities to reduce barriers to treatment during the COVID-19 pandemic. 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 this rule for ESRD Facility Requirements During the COVID-19 Pandemic.

To protect dialysis patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce barriers to treatment for dialysis patients by updating ESRD facility regulatory guidelines regarding staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff.

###### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and

Safety Code §251.003 and §251.014. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of 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 §251.003 authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §251.003 and §251.014.

*§500.21. ESRD Facility Requirements During the COVID-19 Pandemic.*

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

(b) Notwithstanding 25 TAC §117.43(e), core staff members shall actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month.

(c) Notwithstanding 25 TAC §117.45(c)(3), all verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given.

(d) Notwithstanding 25 TAC §117.45(i)(2)(C), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once per month during the patient's treatment time. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(e) Notwithstanding 25 TAC §117.45(j)(4), the staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 25 patients, or portion thereof.

(f) Notwithstanding 25 TAC §117.45(j)(5)(A), the home dialysis training curriculum shall be conducted by a registered nurse with

at least 12 months clinical experience and three months experience in the specific modality with the responsibility for training the patient and the patient's caregiver.

(g) Notwithstanding 25 TAC §117.45(j)(9)(A), an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home. The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audiovisual interaction between the registered nurse and the patient, the visit must be conducted in the patient's home.

(h) A home patient visit required by 25 TAC §117.45(j)(9)(B) may be conducted using telemedicine medical services.

(i) Notwithstanding 25 TAC §117.46(c)(2), each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program. In addition:

(1) The registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency.

(2) The registered nurse must be certified by the facility's medical director and governing body.

(3) The hemodialysis experience shall be within the last 24 months.

(4) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.

(j) Notwithstanding 25 TAC §117.46(c)(4), if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality shall be responsible for training the patient or family in that modality.

When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated.

(k) Notwithstanding the deadline provision of 25 TAC §117.48(a), a facility shall report an incident listed in 25 TAC §117.48(a)(1) - (5) to HHSC within 20 working days of the incident.

(l) Notwithstanding 25 TAC §117.62(i), for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

(m) To the extent this emergency rule conflicts with 25 TAC Chapter 117, this emergency rule controls.

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

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

Filed with the Office of the Secretary of State on April 8, 2021.

TRD-202101493

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 11, 2021

Expiration date: August 8, 2021

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



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER U. CITRUS CANCER QUARANTINE

##### 4 TAC §19.401

The Texas Department of Agriculture (the Department) proposes amendments to Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §19.401, relating to Quarantined Areas.

The proposed amendments to §19.401 remove the quarantined area in Harris County due to the absence of citrus canker disease in this quarantined area for over 2 years. In addition, the proposed amendments remove all descriptions of quarantined areas in §19.401(b), which the Department will post on an ongoing basis on its website as new detections are identified. Due to ongoing pest surveys, modifications to the citrus canker quarantined areas occurs with high frequency. The Department posts notifications of quarantined area changes on the Department's website in accordance with §19.401(c), which will be redesignated as §19.401(b). The proposed amendments will increase clarity and understanding of the citrus canker quarantined areas in Texas.

Citrus canker is a non-systemic plant disease caused by strains or pathotypes of the bacterium *Xanthomonas citri* subsp. *citri*. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and can predispose fruit to secondary infection by decay organisms. The marketability of symptomatic fresh fruit is greatly reduced compared to non-infected fruit.

The Department takes action to eradicate citrus canker from Texas by conducting pest surveys in residential areas and retail nurseries within and near the citrus canker quarantined areas and by destroying any plant determined to be infected with citrus canker.

The Harris Citrus Canker Quarantined Area (also known as the Houston Quarantined Area or the Braeswood Quarantined Area) has been without citrus canker infestations since the two citrus canker positive trees were removed in 2016. This quarantined area has been comprehensively surveyed twice since the positive trees were discovered and in neither survey were citrus trees found to be infected with citrus canker. The early detection and rapid response to the pest threat in this quarantined area has successfully eradicated the pest.

Since citrus canker is also a federally quarantined pest, the Department requested on December 30, 2020, concurrence with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA-APHIS-PPQ) to remove this quarantined area from the Citrus Canker Quarantined Areas. On February 1, 2021, the USDA-APHIS-PPQ agreed with the Department's determination to remove this quarantined area. This will be the first reduction in the Citrus Canker Quarantined Area since this pest was eradicated from Texas in 1947.

The movement, distribution or sale of citrus plants, and other regulated articles, within, into, through, or out of the Harris Quarantined Area will be not be regulated as a result of the proposed rule amendments.

The Department will continue to monitor this area and respond to any suspect citrus canker detections. The Department will continue to work with the Texas A&M University AgriLife Extension Service, the Texas Citrus Pest and Disease Management Corporation, and the Texas Nursery and Landscape Association for outreach initiatives in the Houston area. This area, along with other areas throughout the Greater Houston region, will continue to be monitored and targeted for outreach and future pest surveys.

Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local governments.

Mr. Cervantes has also determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will be the continued growth of the Texas citrus fruit production industry and the Texas citrus nursery industry. There will be a minimal positive economic impact on small businesses or persons required to comply with the proposed amendments.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposed rule amendments, for the first five years the proposed rule amendments are in effect:

- (1) no new or current government or Department programs will be created or eliminated;
- (2) no employee positions will be created, nor will any existing Department staff positions be eliminated;
- (3) there will not be an increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;

- (5) there will be no new regulations created by the proposal;
- (6) there will be a repeal of existing regulations, specifically the Harris Quarantined Area;
- (7) there will be a decrease in the number of individuals subject to the rule's applicability; and
- (8) the proposal will have a slight positive impact on the Texas economy, as the cost of compliance to landscapers and nurseries in the Harris Quarantined Area will be eliminated.

Written comments on the proposal may be submitted to Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: [RuleComments@Texas-Agriculture.gov](mailto:RuleComments@Texas-Agriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening.

Chapters 71 and 73 of the Texas Agriculture Code are affected by the proposal.

§19.401. *Quarantined Areas.*

(a) Quarantined areas are described [in this section, and as defined] on the Department's website at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov). A map of the quarantined area is also available on the Department's website.

[(b) Quarantined areas include:

[(1) In Fort Bend and Harris Counties: The quarantine boundary is described as, starting at a point described as N29.7166139524 degrees and W95.6013268808 degrees, then South along Shady Breeze Drive to a point described as N29.7142932806 degrees and W95.6011334915 degrees, then East along Westpark Tollway to a point described as N29.7146800592 degrees and W95.5962987587 degrees, then South along Cook Road to a point described as N29.6763889689 degrees and W95.5959119801 degrees, then East along Bissonnet Street to a point described as N29.6655591655 degrees and W95.5885631843 degrees, then South East along Kirkwood Road to a point described as N29.6415788853 degrees and W95.5723184784 degrees, then East along West Airport Boulevard to a point described as N29.6440929481 degrees and W95.5388621218 degrees, then South East along South Loop 8 to a point described as N29.6172118282 degrees and W95.5595547819 degrees, then West along U.S. Highway 90 to a point described as N29.629588746 degrees and W95.5922375822 degrees, then South West along Interstate Highway 69 to a point described as N29.6168250495 degrees and W95.6061616155 degrees, then South East to a point described as N29.611410147 degrees and W95.6030673847 degrees, then South West along Country Club Boulevard to a point described as N29.6048349094 degrees and W95.6104161804 degrees, then North West along William Trace Boulevard to a point described as N29.5974861137 degrees and 95.6222129303 degrees, then South West along Interstate Highway 69 to a point described as N29.6007737338 degrees and 95.6314956191 degrees, then North West along State Highway 6 to a point described as N29.6090894752 degrees and W95.6438725379 degrees, then South West along University Boulevard to a point

described as N29.5936183274 degrees and W95.6492874387 degrees, then West along New Territory Boulevard to a point described as N29.5898513129 degrees and W95.6774894667 degrees, then North West along State Highway 99 to a point described as N29.6573433334 degrees and W95.7154981303 degrees, then North along Harlem Road to a point described as N29.6619612082 degrees and W95.7151429089 degrees, then East along Madden Road to a point described as N29.6620781561 degrees and W95.7057571299 degrees, then North to a point described as N29.6688467839 degrees and W95.7059505183 degrees, then East to a point described as N29.6688467839 degrees and W95.7028562893 degrees, then North to a point described as N29.6702005099 degrees and W95.7024695107 degrees, then East to a point described as N29.6698137304 degrees and W95.694540547 degrees, then North to a point described as N29.6707806779 degrees and W95.694540547 degrees, then East to a point described as N29.6713608449 degrees and W95.6800363467 degrees, then North to a point described as N29.683931153 degrees and W95.6810032933 degrees, then West to a point described as N29.6845113218 degrees and W95.7013091739 degrees, then North along Addicks Clodine Road to a point described as N29.7009494162 degrees and W95.7011157855 degrees, then East along Bellaire Boulevard to a point described as N29.700756026 degrees and W95.6846776911 degrees, then South along Chickory Woods Lane to a point described as N29.6984353533 degrees and W95.6846776911 degrees, then East along Espinosa Drive to a point described as N29.6982419649 degrees and W95.6792627885 degrees, then South along Caracas Drive to a point described as N29.6955345136 degrees and W95.6790693983 degrees, then East along Sinaloa Drive to a point described as N29.6959212931 degrees and W95.6765553373 degrees, then North along San Pablo Drive to a point described as N29.6966948504 degrees and W95.6755883907 degrees, then East along Alamo Drive to a point described as N29.697081629 degrees and W95.6653387553 degrees, then North East along Addicks Clodine Road to a point described as N29.7100387148 degrees and W95.6603106322 degrees, then East along Westpark Tollway to a point described as N29.7104254934 degrees and W95.653348616 degrees, then North along Cedar Gardens Drive to a point described as N29.7140998913 degrees and W95.6529618365 degrees, then East along West Bend Drive to a point described as N29.7144866699 degrees and W95.6444527058 degrees, then South East along Westpark Tollway to a point described as N29.7135197234 degrees and W95.6158310829 degrees, then North on Synott Road to a point described as N29.717000731 degrees and 95.6154443043 degrees, then East along Brant Rock Drive to the starting point.]

[(2) In Harris County: The quarantine boundary is described as, starting at the intersection of Stella Link Road and North Braeswood Boulevard, then westerly along North Braeswood Boulevard to its intersection with Academy Street, then northerly along Academy Street to its intersection with Merriek Street, then easterly along Merriek Street to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Blue Bonnet Boulevard, then easterly along Blue Bonnet Boulevard to its intersection with Sewanee Street, then northerly along Sewanee Street to its intersection with Glen Haven Boulevard, then easterly along Glen Haven Boulevard to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Greenbush Drive, then southerly along Greenbush Drive to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with Durhill Street, then westerly along Durhill Street to its intersection with Latma Drive, then northwesterly along Latma Drive to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Linkwood Drive, then northwesterly along Linkwood Drive

to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Stella Link Road, then northerly along Stella Link Road to the starting point.]

[(3) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.038113 degrees and W97.662765 degrees, then North to a point described as N26.039187 degrees and W97.663173 degrees, then North East to a point described as N26.042238 degrees and W97.661355 degrees, then North West to a point described as N26.043181 degrees and W97.662384 degrees, then North West to a point described as N26.045020 degrees and W97.666146 degrees, then North East to a point described as N26.073659 degrees and W97.640404 degrees, then North West to a point described as N26.077092 degrees and W97.645149 degrees, then North East to a point described as N26.088969 degrees and W97.635552 degrees, then North East to a point described as N26.101460 degrees and W97.627284 degrees, then South East to a point described as N26.094385 degrees and W97.617458 degrees, then South East to a point described as N26.091833 degrees and W97.615076 degrees, then South to a point described as N26.091833 degrees and W97.615076 degrees, then East to a point described as N26.080902 degrees and W97.581814 degrees, then East to a point described as N26.081021 degrees and W97.580814 degrees, then East to a point described as N26.080789 degrees and W97.579106 degrees, then East to a point described as N26.076239 degrees and W97.533750 degrees, then East to a point described as N26.075084 degrees and W97.523935 degrees, then East to a point described as N26.073305 degrees and W97.499314 degrees, then South to a point described as N26.052295 degrees and W97.503192 degrees, then South to a point described as N26.045394 degrees and W97.504870 degrees, then South to a point described as N26.001250 degrees and W97.508846 degrees, then South to a point described as N25.995337 degrees and W97.509319 degrees, then East to a point described as N25.993839 degrees and W97.495641 degrees, then South to a point described as N25.978458 degrees and W97.496850 degrees, then West to a point described as N25.978623 degrees and W97.505980 degrees, then West to a point described as N25.979620 degrees and W97.511963 degrees, then West to a point described as N25.978830 degrees and W97.518034 degrees, then South East to a point described as N25.967162 degrees and W97.512672 degrees, then South West to a point described as N25.966367 degrees and W97.514266 degrees, then South to a point described as N25.965469 degrees and W97.514076 degrees, then South to a point described as N25.945219 degrees and W97.516433 degrees, then South to a point described as N25.926488 degrees and W97.518082 degrees, then West to a point described as N25.926875 degrees and W97.522045 degrees, then North West to a point described as N25.928146 degrees and W97.524315 degrees, then North West to a point described as N25.931213 degrees and W97.526867 degrees, then North West to a point described as N25.933391 degrees and W97.530618 degrees, then South West to a point described as N25.930552 degrees and W97.537073 degrees, then North West along the Rio Grande to the starting point.]

[(4) In Brazoria County and the adjacent area of Harris County: The quarantine boundary is described as, starting at a point described as N29.62598819 degrees and W95.266591998 degrees, then East along Almeda Genoa Road to a point described as N29.627130034 degrees and W95.249026799 degrees, then North East along Clearwood Drive to a point described as N29.632563989 degrees and W95.246256988 degrees, then North along Interstate Highway 45 to a point described as N29.651657784 degrees and W95.251359728 degrees, then East along Marleen Street to a point described as N29.652713805 degrees and W95.226735226 degrees, then South East along State Highway 3 to a point described as N29.637616657 degrees and W95.211540768 degrees, then South

West along South Shaver Street to a point described as N29.626500058 degrees and W95.226619915 degrees, then South East along Interstate Highway 45 to a point described as N29.583976741 degrees and W95.181246397 degrees, then South West along Blue Spruce Vale Way to a point described as N29.571100719 degrees and W95.195038307 degrees, then North West along Beamer Road to a point described as N29.572851511 degrees and W95.199176592 degrees, then South West along Dixie Farm Road to a point described as N29.5488365 degrees and W95.245129139 degrees, then North West along Farm to Market Road 518 to a point described as N29.564863322 degrees and W95.285403451 degrees, then North along State Highway 35 to a point described as N29.581828296 degrees and W95.286188027 degrees, then East along McHard Road to a point described as N29.582386972 degrees and W95.269586196 degrees, then North East along Pearland Parkway to the starting point.]

[(5) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.111754 degrees and W97.629239 degrees, then West to a point described as N26.111876 degrees and W97.631816 degrees, then West to a point described as N26.112673 degrees and W97.638589 degrees, then North West to a point described as N26.119140 degrees and W97.646507 degrees, then North East to a point described as N26.122306 degrees and W97.643733 degrees, then North East to a point described as N26.128848 degrees and W97.637722 degrees, then North East to a point described as N26.129103 degrees and W97.637399 degrees, then South East to a point described as N26.127637 degrees and W97.635541 degrees, then North East to a point described as N26.129075 degrees and W97.634286 degrees, then South East to a point described as N26.120157 degrees and W97.621921 degrees, then South West to the starting point.]

(b) [(e)] The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of citrus canker. The designations will be effective upon the posting of the notification of the quarantined areas on the department's website [(http://www.TexasAgriculture.gov)]. Notification consists of a map and a description of the quarantined areas.

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

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TRD-202101505

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 936-9360



## SUBCHAPTER Z. EMERALD ASH BORER QUARANTINE

### 4 TAC §§19.700 - 19.703

The Texas Department of Agriculture (the Department) proposes new Title 4, Chapter 19, Subchapter Z, Emerald Ash Borer Quarantine, §§19.700 - 19.703, concerning a quarantine for a dangerous plant pest, the emerald ash borer (EAB), *Agrilus planipennis*. The new sections are proposed to establish requirements and restrictions necessary to address dangers posed by the potential

spread of EAB infestations in Texas due to detected infestations in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties.

EAB is a highly destructive invasive wood-boring beetle native to China and other areas of East Asia that targets ash trees (*Fraxinus* spp.). Since its introduction into the United States in 2002, EAB has been detected in 34 states and the District of Columbia. The initial EAB detection in Texas occurred on April 29, 2016, as four adult EAB were discovered in Harrison County, Texas. In 2018, EAB was discovered in Cass, Marion, and Tarrant Counties. On May 19, 2020 new interceptions in Bowie and Denton Counties were confirmed by the United States Department of Agriculture (USDA) as EAB. During the 2020 trapping season, EAB was found in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties.

Intrastate or interstate movement of ash nursery trees, hardwood firewood, and other ash products from quarantined areas present a risk for further spread of this invasive pest into uninfested areas. An EAB infestation could kill Texas ash tree species, such as *F. albicans* (= *F. texensis*) (Texas ash), *F. americana* (American ash or white ash), *F. berlandieriana* (Berlandier ash, or Mexican ash), *F. caroliniana* (Carolina ash, Florida ash, pop ash, swamp ash, or water ash), *F. cuspidata* (fragrant ash), *F. greggii* (Gregg's ash), *F. papillosa* (Chihuahuan ash), *F. pennsylvanica* (green ash or red ash), *F. smallii* (Small's white ash), and *F. velutina* (Arizona ash, desert ash, or velvet ash). In the six affected counties, there are 1,341 licensed nursery floral operations, including 92 nursery plant growers, which are at risk due to EAB infestations. EAB infestations could spread beyond the six affected counties, across Texas and nationwide, in the event quarantine restrictions are not established to prevent the transportation of infested firewood, nursery stock, and other articles in accordance with the proposed rules.

Recent EAB infestations jeopardize the health of ash trees in Texas forests, woodlands, landscapes, nurseries, and urban environments. These proposed regulations mitigate the risk of establishment and spread of this invasive insect pest, thereby protecting the vulnerable forest, landscape, nursery, and firewood industries of the state. The proposed rules are both necessary and appropriate in order to effectively combat and prevent the spread of EAB in Texas.

The Department encourages residents, arborists, and local officials to vigilantly monitor ash trees for signs of EAB infestations and report suspect detections to the Department or the Texas Forest Service. The Department also implores residents, arborists, and local officials in quarantined and non-quarantined counties to make a plan to address the threat posed by EAB, through removal or treatment of infested trees or through discouraging new ash plantings.

Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be minimal fiscal implications for state or local government.

Mr. Cervantes has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the proposed rules will be the reduction in the spread of EAB in Texas resulting in many urban and forested ash trees being saved from infestation. There will be small economic impact on small businesses, municipalities, and persons required to comply with the proposed rules. There will be treatment costs to quarantined article producers, processors, and vendors, including small businesses and micro-busi-

nesses that move quarantined articles within or from quarantined areas, but these depend on many factors and cannot be calculated. However, there will be a small positive economic impact on persons and businesses in non-quarantined areas that ship products interstate, as other states will consider those areas free of EAB and will not require treatment.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

- (1) no new or current government or Department programs will be created or eliminated;
- (2) no employee positions will be created, nor will any existing Department staff positions be eliminated;
- (3) there will not be an increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) new regulations, which have been previously adopted on an emergency basis, will be created;
- (6) there will be no expansion, limitation, or repeal of existing regulations;
- (7) there will be an increase in the number of individuals subject to the rule's applicability; however, most of those individuals were previously subject to these regulations adopted on an emergency basis; and
- (8) the proposal will have a slight negative impact on the Texas economy, as there are minor costs associated with the proposal and its enforcement.

Written comments on the proposal may be submitted to Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: [RuleComments@Texas-Agriculture.gov](mailto:RuleComments@Texas-Agriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §§71.001 and 71.002, which authorizes the Department to establish quarantines against in-state and out-of-state diseases and pests; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles.

Chapter 71 of the Texas Agriculture Code is affected by the proposal.

§19.700. Quarantined Pest.

The quarantined pest is the emerald ash borer, *Agrilus planipennis*, in any life stage.

§19.701. Quarantined Areas.

(a) The quarantined areas are those areas described on the department's website (<http://www.TexasAgriculture.gov>) as quarantined areas under this subchapter.

(b) The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area, based upon the confirmation of the presence or absence of the emerald ash borer.

The designations will be effective upon the posting of the notification of the quarantined areas on the department's website.

§19.702. Quarantined Articles.

The quarantined articles are:

- (1) the quarantined pest;
- (2) firewood of all hardwood (non-coniferous) species;
- (3) ash (*Fraxinus* spp.) nursery stock; and
- (4) any other material living, dead, cut, or fallen, including green lumber, logs, stumps, roots, branches, and composted and un-composted chips of the genus *Fraxinus*.

§19.703. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions.

- (1) Processed lumber that is free of bark or has been kiln dried or fumigated.
- (2) Finished wood products without bark.

(c) Exceptions.

(1) Quarantined articles from quarantined areas are allowed entry into or through the free areas of Texas if:

(A) treated or processed as prescribed by the department; and

(B) accompanied by a phytosanitary certificate, compliance agreement, or other phytosanitary document, issued by an authorized inspector of the state of origin certifying that the article was treated or processed as prescribed and is free of the quarantined pest.

(2) Quarantined articles that originate outside the quarantined area may transit through the quarantined area without a certificate if:

(A) the article is safeguarded in an enclosed vehicle or with adequate covering against infestation;

(B) the points of origin and destination are specified on the waybill accompanying the shipment; and

(C) the article is moved directly through the quarantined area without stopping beyond the time required for simple transit.

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 April 12, 2021.

TRD-202101510

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; and amendments to existing rules at Subchapter C, §84.44 and §84.45; Subchapter D, §84.50; Subchapter L, §84.400; Subchapter M, §§84.500 - 84.506; and Subchapter N, §84.600, regarding the Driver Education and Safety (DES) Program. These proposed changes are referred to as "proposed rules."

### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules complete the implementation of House Bill (HB) 105, 86th Legislature, Regular Session (2019), by requiring the curriculum of a specialized driving safety course to include information relating to methods of safely operating a motor vehicle near an oversize or overweight vehicle. The proposed rules also implement a recommendation by the Curriculum Rules Workgroup of the Driver Training and Traffic Safety Advisory Committee (Workgroup) and Department staff to transfer rule text relevant to the required course content and minimum instruction requirements for driver training courses from 16 TAC, Chapter 84, to Department created and published program guides for use by licensees.

#### HB 105

HB 105 amends Texas Education Code, Chapter 1001, by requiring that information relating to safely operating a vehicle near overweight or oversize vehicles be included in all driver training courses. The proposed rules are necessary to complete the implementation of HB 105 by adding rule text applying this requirement to specialized driving safety courses. This change was inadvertently omitted from a previous rulemaking that applied the requirement of HB 105 to all other types of driver training courses, effective March 15, 2020.

#### Courses and Programs of Instruction

The proposed rules amend 16 TAC, Chapter 84, Subchapters A, C, D, L, M, and N to streamline the rule chapter and efficiently organize and simplify the creation, distribution, and instruction of program curriculum. This rulemaking initiative is the product of the efforts of the Workgroup and staff. Course curriculum for driver training has traditionally been located in the administrative rules for the program but removing them from the rules and relocating the curriculum into respective program guides has long been a goal of the Workgroup and staff. Towards that end, the Workgroup began the drafting of four additional program guides to accompany the existing Program of Organized Instruction (POI-DE) guide for the Minor and Adult Driver Education Courses to transfer existing curriculum rule text into separate driver training publications. The additional program guides include the Program of Organized Instruction for the Adult Six-Hour Driver Education Course (POI-Adult Six-Hour); Course of Organized Instruction for the Driving Safety Course (COI-Driving Safety); Program of Organized Instruction for the Drug and Alcohol Driving Awareness Course (POI-DADAP); and the Course of Organized Instruction for the Specialized Driving Safety Course (COI-Specialized Driving Safety).

The proposed rules were presented to and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on March 10, 2021. The Committee did not make any changes to the proposed rules but did make changes that clarified language in the manuals themselves. The Advisory Committee voted and recommended that the proposed rules with changes to the manuals be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

The proposed rules add new §84.3, Materials Adopted by Reference, to: (1) identify the Department-created program guides containing transferred DES rule text; (2) to adopt these publications by reference, consistent with the requirements of the Secretary of State at 1 TAC §91.40; and (3) provide guidance to licensees in the creation of DES course curriculum that is consistent with existing law and rule.

The proposed rules amend §84.44, Driver Education Instructor License, to update rule subsections to reference DES program guides.

The proposed rules amend §84.45, Student Progress, to update rule subsections to reference DES program guides.

The proposed rules amend §84.50, Parent Taught Driver Education Program Requirements, to update rule subsections to reference DES program guides.

The proposed rules amend §84.400, Administrative Penalties and Sanctions, to state that a licensee's violation of executive orders issued by the Governor pursuant to the declaration of a state of emergency under Chapter 418, Texas Government Code, could result in Department enforcement action.

The proposed rules amend §84.500, Courses of Instruction for Driver Education Schools, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driver education rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

The proposed rules amend §84.501, Driver Education Course Alternative Method of Instruction, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.502, Driver Safety Courses of Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driving safety rule subsections related to minimum curriculum requirements for transfer to the applicable DES program guides; and (3) correct language.

The proposed rules amend §84.503, Specialized Driving Safety Courses of Instruction, to: (1) include information about safe motor vehicle operation near oversize or overweight vehicles in the educational objectives curriculum of specialized driving safety courses, implementing HB 105 bill language; (2) update rule subsections to reference applicable DES program guides; (3) remove specialized driver safety rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (4) correct language.

The proposed rules amend §84.504, Driving Safety Course Alternative Delivery Method, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove drug and alcohol driving awareness rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

The proposed rules amend §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.600, Program of Organized Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driver education rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rule changes allow for the department to more efficiently adapt to legislative mandates regarding changes in curriculum requirements for driver education and traffic safety by removing the curricula from the rules. These changes will also centralize curriculum requirements in easy reference guides by course for ease of curriculum development for licensees and organize curriculum information for licensees and the public.

Moreover, for the bill implementation of HB 105 as it relates to inclusion of instruction in specialized driving safety course curriculum on motor vehicle operation around oversize or overweight vehicles, future drivers and the general public would benefit from specific education on how to operate around such vehicles, which may help reduce the chances of accidents, deaths, personal injury and property damage.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL



Mr. Couvillon has determined that for each year of the first five-year period the proposed rules related to the transfer of curriculum rule text to program guides are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

The courses of instruction of specialized driving safety school providers related to the implementation of HB 105 may have to be minimally altered as to time and content to include information on safely operating a vehicle near oversize or overweight vehicles in the curriculum. However, the cost, if any, to such providers of changing the content of the courses would be de minimis.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules create a new regulation by adopting material by reference. The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by the rules for the various types of driver education and driving safety courses will be incorporated into the standards established in the various Programs of Organized Instruction and Courses of Organized Instruction. The inclusion of such information into the program guides will allow for easy reference and guidance for licensees.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation by removing some course and material requirements from the various types of driver education and driving safety courses, which

will be incorporated into the standards established in the various Programs of Organized Instruction and Courses of Organized Instruction and update all relevant references to the content. Moreover, the proposed rules require specialized driving safety course providers to now include information on safely operating a motor vehicle near oversize or overweight vehicles.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §84.3

##### STATUTORY AUTHORITY

The new rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

##### §84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Driving Safety, (COI-Driving

Safety), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(d) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Specialized Driving Safety, (COI-Specialized Driving Safety), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(e) The minimum requirements for course content and instruction for a Drug and Alcohol Driving Awareness course are the standards established in the Program of Organized Instruction for Drug and Alcohol Driving Awareness Programs, (POI-DADAP), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



## SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

### 16 TAC §84.44, §84.45

#### STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

#### §84.44. *Driver Education Instructor License.*

(a) Application for licensing as a driver education instructor must be made on forms prescribed by the department. A person applying for an original driver education instructor license must:

- (1) have a high school diploma or equivalent;
- (2) hold a valid class A, B, C, or CDL driver's license, other than a learner license or provisional license, for the preceding three years, that has not been revoked or suspended in the preceding three years;[-]
- (3) submit a completed application with non-refundable application fee as prescribed by the department;
- (4) submit the instructor licensing fees;
- (5) submit a national criminal history record information review fee;

(6) submit documentation showing that all applicable educational requirements have been met; and

(7) provide fingerprints to the Texas Department of Public Safety (DPS) through the Fingerprint Application Service of Texas (FAST) or any other method required by the DPS.

(b) Driver education instructor license endorsement qualifications and responsibilities:

(1) Supervising teacher qualifications:

(A) must have a valid driver education teacher instructor license, issued by the department, for at least one year; and

(B) must have an official transcript indicating completion of 15 semester hours of driver and traffic safety education from an accredited college or university; or

(C) must have evidence of completion of a department-approved supervising instructor development course that is equivalent to 15 semester hours of driver and traffic safety education from an accredited college or university.

(2) Supervising teacher responsibilities:

(A) may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour;

(B) may perform instruction of a department-approved supervising driver education instructor development course; or

(C) may perform instruction of a department-approved driver education instructor development course.

(3) Driver education teacher qualifications:

(A) must have an official transcript indicating completion of 9 semester hours of driver and traffic safety education from an accredited college or university; or

(B) evidence of completion of a department-approved instructor development course that is equivalent to 9 semester hours.

(4) A driver education teacher may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour.

(5) Teaching assistant qualifications:

(A) must have an official transcript indicating completion of six semester hours of driver and traffic safety education from an accredited college or university; or

(B) must have evidence of completion of a department-approved instructor development course that is equivalent to six semester hours.

(6) A teaching assistant may teach or provide only in-car instruction, as prescribed in the POI-DE.

(7) Rehabilitative driver education in-car instructor qualifications:

(A) must have evidence of employment from a specific hospital or approved community rehabilitation program; and

(B) must have a valid teaching assistant license issued by the department; or

(C) must have evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours.

(8) Rehabilitative driver education in-car instructor responsibilities:

(A) may only perform in-car instruction, as prescribed in the POI-DE; and

(B) the endorsement will be valid while the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program.

(c) An application for renewal of an instructor license shall be submitted on forms prescribed by the department. A complete application shall include the following:

(1) annual licensing fee; and

(2) evidence of completing continuing education during the individual license renewal period.

(d) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) Instructors may participate in a department-approved driver education continuing education course. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on department forms or the equivalent. The instructor receiving instruction and the facilitator, presenter, or the school owner providing the instruction shall sign the form.

(B) Credit may also be given for any of the following:

(i) successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade;

(ii) successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques;

(iii) successful completion of an approved six-hour driving safety, specialized, or drug and alcohol driving awareness course once every three years if the licensee is not endorsed or has not been endorsed as an instructor in that program for a period of one year previous to class attendance;

(iv) successful completion of an approved continuing education course provided by a licensed driver education school;

(v) successful completion of an eight-hour school bus driver recertification training course; or

(vi) successful completion of a Drug Offender Education Program.

(2) Carryover credit of continuing education hours is not permitted.

(3) A licensee may not receive credit for completing the same course more than once every three years.

(4) A licensed driver education instructor who teaches an approved driver education continuing education course may receive credit for attending continuing education.

(5) A licensed driver education instructor will not receive credit for driver education continuing education by completing or

teaching a driving safety continuing education course approved for driving safety only or by completing a driver education course exclusively for adults.

(6) A licensee may not receive credit for completion of a six-hour driving safety course, specialized, or drug and alcohol driving awareness course, if they have already received credit for one of these courses within the previous three years.

(e) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual licensing fee.

(f) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(g) An instructor must notify the department of a change of address in writing within thirty (30) days of the change. Address changes do not require a fee.

#### §84.45. Student Progress.

Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Progress standards shall meet the requirements of the POI-DE [~~Program of Organized Instruction for Driver Education and Traffic Safety~~] approved by the department.

(2) Each primary school shall ensure that each student who attends the primary school and all branch schools demonstrates an acceptable level of mastery of the POI-DE [~~Program of Organized Instruction for Driver Education and Traffic Safety~~]. Mastery is not related to passing the written examination for a driver's license administered by the Texas Department of Public Safety. Successful completion and mastery are prerequisites to awarding a grade of 70 percent or above.

(3) One or more of the following methods shall determine evidence of successful completion and mastery:

(A) unit tests;

(B) written assignments;

(C) skills performance checklist; and

(D) comprehensive examinations of knowledge and skills.

(4) The instructor must certify that each student successfully mastered all course content before the student is awarded successful completion of a driver education 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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## SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

### 16 TAC §84.50

#### STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

#### §84.50. Parent Taught Driver Education Program Requirements.

(a) Prior to teaching a department-approved parent taught driver education course, a parent or other individual authorized under §1001.112 of the Code, must submit a completed Request for Parent Taught Driver Education Program Guide form with a non-refundable fee to the department.

(b) The person conducting the course must:

(1) Possess a valid license for the preceding three years that has not been suspended, revoked, or forfeited in the past three years for an offense that involves the operation of a motor vehicle;

(2) have not been convicted of:

(A) criminally negligent homicide; or

(B) driving while intoxicated in the past seven years;

and

(3) have not been convicted during the preceding three years of:

(A) three or more moving violations described by Section 542.304, Transportation Code, including violations that resulted in an accident; or

(B) two or more moving violations described by Section 542.304, Transportation Code, that resulted in an accident.

(c) After receiving the Parent Taught Driver Education Program Guide, the instructor must obtain one of the department approved parent taught driver education courses to fulfill program requirements.

(d) The parent taught driver education course provider will provide the appropriate portion of a control-numbered DE-964 only to a person who has completed the objectives found in Module One: Traffic Laws of the POI-DE or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(e) The program includes both classroom and in-car instruction. Classroom instruction is limited to two hours per day and in-car instruction is limited to two hours per day.

(f) The parent, or other individual authorized under §1001.112 of the Code, may teach both or utilize a licensed or public driver education school for either phase.

(g) The fourteen (14) hours of in-car instruction must be taught under one program; either parent taught or a licensed or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(h) The remaining hours of classroom following Module One: Traffic Laws of the POI-DE, must be taught under one program, either parent taught or a licensed or public driver education school.

(i) The additional thirty (30) hours of behind-the-wheel practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(j) A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws of the POI-DE.

(k) Behind-the-wheel driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license on a Texas highway.

(l) Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: seven [7] hours behind the wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; seven [7] hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel instruction, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

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 L. COMPLAINTS AND ENFORCEMENT PROVISIONS

### 16 TAC §84.400

#### STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

#### §84.400. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Education Code, Chapter 1001, Texas Transportation Code, Chapter 521, this chapter, or any rule or order of the executive director or commission, or an executive order issued by the Governor for the State of Texas pursuant to Chapter 418, Texas Government Code, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both

in accordance with the provisions of Texas Education Code, Chapter 1001, Texas Occupations Code, Chapter 51, and any associated rules.

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 M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

### 16 TAC §§84.500 - 84.506

#### STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.500. *Courses of Instruction for Driver Education Schools.*

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials shall be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education school.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over shall consist of:

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel in-

struction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 30 hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours shall not be substituted for these 30 hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the department in the POI-DE [Program of Organized Instruction in Driver Education and Traffic Safety (POI)] and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, safely operating a vehicle near oversize [oversized] or overweight vehicles, leaving children in vehicles unattended, distractions, motorcycle awareness, alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.

(D) Driver education schools that desire to instruct students age 14 and over in a traditional classroom program shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the seventh hour of classroom instruction has begun.

(E) Students shall proceed in the sequence identified by and approved for that school.

(F) Students shall receive classroom instruction from an instructor who is approved and licensed by the department. An instructor shall be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE [POI] may be used as part of the required 32 hours of traditional classroom instruction.

(H) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25 percent of the course and shall be presented to the entire class simultaneously.

(I) Each classroom student shall be provided a driver education textbook designated by the commissioner or access to instructional materials that are in compliance with the POI-DE [POI] approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(J) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(K) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than thirty-six (36) students,

excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(L) When a student changes schools, the school must follow the current transfer policy developed by the department.

(M) All classroom phases of driver education, including makeup work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(N) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract.

(O) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction.

(P) All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

(Q) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

(S) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws of the POI-DE.

(T) Each school owner that teaches driver education courses shall collect adequate student data to enable the department to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The department may determine a level of effectiveness that serves the purposes of the Code.

(U) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner shall sign or stamp all completed classroom instruction records.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher or driver education teacher.

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the minimum course content and instruction requirements contained in the POI-Adult Six-Hour [following topics].

~~[(I) Course introduction—ten minutes. Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.]~~

~~[(II) Your license to drive—minimum of 20 minutes. Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver's license, registering and having a current inspection on a motor vehicle, and obeying the Safety Responsibility Act.]~~

~~[(III) Right-of-way—minimum of 45 minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.]~~

~~[(IV) Traffic control devices—minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.]~~

~~[(V) Controlling traffic flow—minimum of 35 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.]~~

~~[(VI) Alcohol and other drugs—minimum of 40 minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.]~~

~~[(VII) Cooperating with other roadway users—minimum of 50 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations, and safely operating a vehicle near oversized or overweight vehicles.]~~

~~[(VIII) Managing risk—minimum of 40 minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.]~~

~~[(IX) Classroom progress assessment—25 minutes (this shall be the last unit of instruction). The remaining 25 minutes of instruction shall be allocated to the topics included in the minimum course content under subclauses (II)-(VIII) of this clause.]~~

(iv) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(I) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner shall sign or stamp all completed classroom instruction records.

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 150 minutes of instruction. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

(IV) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(V) All classroom instruction, including makeup work, shall be completed within the timelines stated in the original student contract.

(VI) A minimum of 330 minutes of instruction is required.

(VII) The total length of the course shall consist of a minimum of 360 minutes.

(VIII) Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content.

(IX) Students shall not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent on the highway signs examination and at least 70 percent on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) The driver education school shall make a material effort to establish the identity of the student.

(B) Online approval process. The department may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus cross-reference, contract, and instructional records.

(iii) School license required. A person or entity offering an online driver education course exclusively for adults must hold a driver education school license.

(I) The driver education school shall be responsible for the operation of the online course.

(II) Students shall receive classroom instruction from a licensed supervising teacher or driver education teacher.

(iv) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code.

(I) Course topics. The course requirements described in the POI-Adult Six-Hour [subparagraph (A)(iii)] shall be met.

(II) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All

break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(III) Required material. A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(IV) Editing. The material presented in the online course shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(V) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(VI) Minimum content. The online course shall present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course shall use the following methods.

(-a-) Word count. For written material that is read by the student, the course shall contain the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(-b-) Multimedia presentations. For multimedia presentation, the online course shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 minutes.

(-c-) Charts and graphs. The online course may assign one minute for each chart or graph.

(-d-) Time allotment for questions. The online course may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(-e-) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(-f-) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(v) Personal validation. The online course shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(I) School-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student

who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(II) Third party data method. The online course shall ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(vi) Content validation. The online course shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) Timers. The online course shall include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(II) Testing the student's participation in multimedia presentations. The online course shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(-a-) Test bank. For each multimedia presentation that exceeds 180 seconds, the online course shall have a test bank of at least four questions.

(-b-) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(-c-) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course shall then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(-d-) Answer identification. The online course shall not identify the correct answer to the multimedia question.

(III) Course participation questions. The online course shall test the student's course participation by asking at least two questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six Hour [from each of the seven topics listed in subparagraph (A)(v)(II)-(VIII)].

(-a-) Test bank. The test bank for course participation questions shall include at least ten questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six-Hour [from each of the seven topics identified in subparagraph (A)(v)(II)-(VIII)].

(-b-) Placement of questions. The course participation questions shall be asked at the end of the major unit or section in which the topic is covered.

(-c-) Question difficulty. Course participation questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(IV) Comprehension of course content. The online course shall test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(-a-) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(-b-) Placement of questions. The mastery of course content questions shall be asked at the end of the course (comprehensive final examination).

(-c-) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(vii) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the online course shall retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student shall fail the course.

(viii) Student records. The online course shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall also ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records shall contain the following information:

(I) the student's first, middle, and last name;

(II) the student's date of birth and gender;

(III) a record of all questions asked and the student's responses;

(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the school for a student who inadvertently missed a question; and

(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(ix) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.161, and signing the ADE-1317 driver education completion certificate.

(x) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(xi) Issuance of certificate. Not later than the 15th working day after the course completion date, the school shall issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(xii) Access to instructor and technical assistance. The school must establish hours that the student may access the instruc-



tor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(xiii) Additional requirements for online courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(I) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(II) Navigation. The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(III) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(IV) Course identification. All online courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(V) Domain names. Each school offering an online course must offer that online course from a single domain.

(VI) A driver education school offering an online course may accept students redirected from a website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the online course. This information shall be visible before and during the student registration and course payment processes.

(3) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(4) Issuance of certificate. A licensed school or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

(c) This subsection contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, including current reference to the law, driving procedures, current instructor application and renewal processes, then the department may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from the department. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to six semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) Driver Education I--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the Highway Transportation System (HTS) in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

- (I) overview of Driver Education I;
- (II) minor and adult driver education curriculum overview and course goals;
- (III) school and instructor liability and responsibility;
- (IV) student evaluation and assessment;
- (V) instructor conduct, including professionalism and public relations;
- (VI) rules, codes, and standards for driver education programs; and
- (VII) classroom progress examination for Driver Education I.

(ii) Driver Education II--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for in-car instruction. Instruction shall address the following topics:

- (I) overview of Driver Education II;
- (II) minor and adult driver education in-car curriculum overview;
- (III) commentary driving techniques;
- (IV) factors that influence learning and habit formation;
- (V) in-car lesson planning, including scheduling and designing;
- (VI) vocabulary and communication;
- (VII) risk management;
- (VIII) general guidelines for conducting behind-the-wheel and in-car observation;
- (IX) in-car debriefing techniques;
- (X) proper record keeping and maintenance;
- (XI) classroom progress examination for Driver Education II; and
- (XII) in-car laboratory, including:
  - (-a-) initial assessment of trainee's driving skills by instructor trainer;
  - (-b-) observation of in-car teaching techniques as given by a licensed instructor;
  - (-c-) practice of instructor risk-management and emergency procedures, including taking control of the vehicle under the supervision and observation of a licensed instructor;
  - (-d-) in-car trainee student teaching under the supervision and observation of a licensed instructor; and

(-e-) trainee in-car student teaching final progress assessment under the supervision and observation of a licensed instructor.

(B) Nine-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to nine semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

(i) all requirements set forth in subparagraph (A); and

(ii) Driver Education III--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for classroom instruction. Instruction shall address the following topics:

- (I) overview of Driver Education III;
- (II) classroom delivery, including the Code, rules, standards, and school administrative procedures;
- (III) student learning styles;
- (IV) classroom management and student discipline;
- (V) classroom lesson planning and designing;
- (VI) scheduling driver education programs;
- (VII) proper record keeping and maintenance;
- (VIII) simulation theory and multicar range instruction;
- (IX) instructor professional growth;
- (X) classroom progress examination for Driver Education III; and
- (XI) classroom laboratory, including:
  - (-a-) observation of classroom teaching techniques as given by a licensed instructor; and
  - (-b-) classroom practice student teaching under the supervision and observation of a licensed instructor.

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to six semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

- (i) training in administering driver education programs and supervising and administering traffic safety education;
- (ii) Supervising Instructor I--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

- (I) overview of Supervising Instructor I;
- (II) minor and adult driver education curriculum overview and course goals;
- (III) rules, codes, and standards for driver education programs;
- (IV) learning styles;

(V) factors that influence learning and habit formation;

- (VI) vocabulary and communication;
- (VII) lesson plan development;
- (VIII) classroom management and student discipline; and
- (IX) classroom progress examination for Supervising Instructor I.

(iii) Supervising Instructor II--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

- (I) overview of Supervising Instructor II;
- (II) student evaluation and assessment;
- (III) commentary driving techniques;
- (IV) in-car debriefing techniques;
- (V) scheduling driver education programs;
- (VI) proper record keeping and maintenance;
- (VII) school and instructor liability and responsibility;
- (VIII) instructor conduct, including professionalism and public relations;
- (IX) risk management;
- (X) simulation theory and multicar range;
- (XI) professional growth;
- (XII) classroom progress examination for Supervising Instructor II; and
- (XIII) classroom laboratory, including:
  - (-a-) observation of nine-semester-hour driver education instructor development course classroom teaching techniques as given by a licensed instructor; and
  - (-b-) classroom practice student teaching of a nine-semester-hour driver education instructor development course under the supervision and observation of a licensed instructor.

(2) Prior to enrolling as a trainee in a driver education instructor development course, the school owner or representative must obtain proof that the enrollee has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate the current official driving record from the enrollee for the preceding 36-month period prior to enrollment. The school must use the standards set forth in §84.50(b)(3) when determining the qualifications for a trainee's enrollment.

(3) Instruction records shall be maintained by the school for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the

supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All instructor trainee instruction records submitted for the approved instructor development courses shall be original documents.

(5) A licensed supervising teacher shall teach the instructor development courses. The supervising teacher may allow a driver education teacher, or teaching assistant to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure.

(6) The supervising teacher is responsible for certifying all independent study and research assignments that shall not exceed 25 percent of the total training program time.

(d) This subsection contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;

(B) the subject of each unit;

(C) the educational objectives of each unit;

(D) time to be dedicated to each unit;

(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if the department determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The department may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to the department for approval.

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the department with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes.

An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(i) The department may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) Information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no instructors or equipment.

(4) The school has been found to be in violation of TEC, Chapter 1001, and/or this chapter.

§84.501. *Driver Education Course Alternative Method of Instruction.*

(a) Approval process. The department may approve an alternative method whereby a driver education school is approved to teach all or part of the classroom portion of a driver education course by an alternative method of instruction (AMI) that does not require students to be present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education school to teach all or part of the classroom portion of a driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the department determines are at least as secure as the measures available in the usual classroom setting;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations for a majority of the student's instructional period;

(D) the AMI instructional activities are integral to the academic program; and

(E) extensive communication between a student and instructor and among students is emphasized.

(2) Application. The school shall submit a completed AMI application along with the appropriate fee. The application for AMI approval shall be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the curriculum as aligned with POI-DE [Program of Organized Instruction for Driver Education and Traffic Safety].

(3) School license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education school license. The driver education school is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, sequence, and course content as the school's approved traditional driver education course as established by the department in the POI-DE.

(1) Course topics. The time requirements for the course content described in §84.500 [(a) and] (b)(1)(C) [~~relating to Courses of Instruction~~] shall be met.

(2) Editing. The material presented in the AMI shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(4) Student breaks. The AMI is allowed five minutes of break per instructional hour for all phases, for a total of 160 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(5) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 32 hours (1,920 minutes) to complete the course. A course that demonstrates that it contains 1,760 minutes of instructional content shall mandate that students take 160 minutes of break time or provide additional educational content for a total of 1,920 minutes (32 hours). In order to demonstrate that the AMI contains sufficient content, the AMI shall use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course shall be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 120 minutes of multimedia presentation. The school owner shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 640 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Examinations. The school owner may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts, graphs, and breaks equals or exceeds the minimum 1,920 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 32-hour requirement.

(6) Academic integrity. The academic integrity of the AMI for a classroom driver education course shall include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are of sufficient rigor, depth, and breadth to teach the standards being addressed;

(D) literacy and communication skills that are incorporated and taught as an integral part of the AMI;

(E) sufficient learning resources and materials to increase student success available to students before the AMI begins;

(F) instruction requirements that are consistent with course goals, representative of the scope of the course, and clearly stated;

(G) communication processes that are provided to students, parents, and mentors on how to communicate with the school and instructor, including information on the process for these communications and for timely and frequent feedback about student progress;

(H) information addressing issues associated with the use of copyrighted materials; and

(I) if online, clearly stated academic integrity and Internet etiquette expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(7) Instructional design. Instructional design of AMI for classroom driver education shall:

(A) include a clear understanding of student needs and incorporate varied ways to learn and multiple levels of mastery of the curriculum;

(B) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(C) include concepts and skills that students will retain over time;

(D) include activities that engage students in active learning;

(E) include the instructor engaging students in learning activities that address a variety of learning styles and preferences to master course content;

(F) include instruction that provides opportunities for students to engage in higher-order thinking, critical-reasoning activities, and thinking in increasingly complex ways;

(G) include a statement that notifies the student of the school owner's security and privacy policy regarding student data, including personal and financial data; and

(H) include assessment and assignment answers and explanations.

(c) Personal validation. The AMI shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(1) School initiated method. Upon approval by the department, the AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course shall ask a minimum of 60 personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(d) Content validation. The AMI shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The AMI shall include built-in timers to ensure that 1,920 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the AMI shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI shall either require the student to view the multimedia clip again or the AMI shall fail the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI shall present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI shall test the student's mastery of the course content by asking questions from each of

the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions shall include at least:

(i) 20 questions each from modules 1 and 8 listed in the POI-DE [program of organized instruction for driver education and traffic safety]; and

(ii) 10 questions each from the remaining modules.

(B) Placement of questions. The mastery of course content questions shall be asked at the end of each module.

(C) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30 percent of the questions asked on a module examination, the AMI shall require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI shall again test the student's mastery of the material. The AMI shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30 percent of the questions asked on the final examination, the AMI shall retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The AMI shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall ensure that the student record is readily, securely, and reliably available for inspection by a department-authorized representative. The student records shall contain all information required in §84.81 (relating to Recordkeeping Requirements) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the school for a student who inadvertently missed a question, the school shall provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for AMI courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(1) Course identification. All AMI courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by

the student to pay any monies, provide any personal information, and enroll.

(2) A driver education school offering an AMI course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the AMI course. This information shall be visible before and during the student registration and course payment processes.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. The video course shall include between 60 and 640 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,760 minutes of required instruction shall be video material that is relevant to required course instruction content.

(A) A video AMI shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds.

(B) A video AMI shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. Except as provided by paragraph (1), a change to a previously approved AMI shall not be made without the prior approval of the department. The licensed school for the approved course on which the AMI is based shall ensure that any modification to the AMI is implemented by all schools endorsed to offer the AMI.

(1) A school may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or AMI in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the school making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five (5) working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed school for the approved course on which the AMI is based shall ensure that the change is implemented.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an AMI that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department.

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the AMI change is not in compliance; and

(ii) a reasonable date by which the AMI must be brought into compliance;

(B) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or AMI based on the change; and

(C) is not required to specify the method or manner by which the school alters the AMI to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1), and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(B) does not apply.

(7) A school who immediately implements a change pursuant to paragraph (1) and fails to bring the AMI into compliance prior to the date allowed under paragraph (5)(A)(ii) may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A school that immediately implements a change under paragraph (1) assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the AMI to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to the department within five days of termination.

(k) Renewal of AMI approval. The AMI approval must be renewed and updated to ensure timeliness every even-numbered year.

(1) For approval, the school shall update all the statistical data, references to law, and traffic safety methodology with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved AMI six months notice. The department may alter the due date in order to ensure that the AMI is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(m) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 to under 25 years of age shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(n) Required training. The instructor must meet the professional teaching standard established by a state licensing agency or have academic credentials in the field in which he or she is teaching and must have been trained to teach the AMI classroom driver education course. Each instructor of an AMI classroom driver education course offered by a driver education school must:

(1) have a ST, or DET driver education instructor license; and

(2) successfully complete the appropriate professional development course before teaching an AMI classroom driver education course.

#### §84.502. *Driving Safety Courses of Instruction.*

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); the proper use of child passenger safety seat systems; safely operating a vehicle near oversize [oversized] or overweight vehicles; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the tech-

niques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a driver safety course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 165 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The department may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in Chapter Four of the COI-Driving Safety [subparagraph (D)]. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety to assure student mastery of the subject matter. [A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following:]

~~{(i) Course introduction—minimum of ten minutes (instructional objective—to orient students to the class). Instruction shall address the following topics:}~~

~~{(I) purpose and benefits of the course;}~~

~~{(II) course and facilities orientation;}~~

~~{(III) requirements for receiving course credit;}~~

~~{(IV) student course evaluation procedures; and}~~

~~{(I) Department-provided information on course content.}~~

~~{(ii) The traffic safety problem—minimum of 10 minutes (instructional objectives—to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:}~~

~~{(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;}~~

~~{(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and}~~

~~{(III) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation.}~~

~~{(iii) Factors influencing driver performance—minimum of 10 minutes (instructional objective—to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:}~~

~~{(I) attitudes, habits, feelings, and emotions (aggressive driving, etc.);}~~

~~{(II) alcohol and other drugs;}~~

~~{(III) physical condition (drowsy driving, etc.);}~~

~~{(IV) knowledge of driving laws and procedures; and}~~

~~{(V) understanding the driving task.}~~

~~{(iv) Traffic laws and procedures—minimum of 50 minutes (instructional objectives—to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:}~~

~~{(I) passing;}~~

~~{(II) right-of-way;}~~

~~{(III) turns;}~~

~~{(IV) stops;}~~

~~{(V) speed limits;}~~

~~{(VI) railroad crossings safety, including statistics, causes, and evasive actions;}~~

~~{(VII) categories of traffic signs, signals, and highway markings;}~~

~~{(VIII) pedestrians;}~~

~~{(IX) improved shoulders;}~~

~~{(X) intersections;}~~

~~{(XI) occupant restraints;}~~

~~{(XII) anatomical gifts;}~~

~~{(XIII) litter prevention;}~~

~~{(XIV) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the Department of Public Safety on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer);}~~



*{(XI)}* law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); and]

*{(XVI)}* other laws as applicable (i.e., financial responsibility/compulsory insurance).]

*{(v)}* Special skills for difficult driving environments—minimum of 15 minutes (instructional objectives—to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:]

*{(I)}* inclement weather;]

*{(II)}* traffic congestion;]

*{(III)}* city, urban, rural, and expressway environments;]

*{(IV)}* reduced visibility conditions—hills, fog, curves, light conditions (darkness, glare, etc.); etc.; and]

*{(V)}* roadway conditions.]

*{(vi)}* Physical forces that influence driver control—minimum of 10 minutes (instructional objective—to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

*{(I)}* speed control (acceleration, deceleration, etc.);]

*{(II)}* traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and]

*{(III)}* force of impact (momentum, kinetic energy, inertia, etc.);]

*{(vii)}* Perceptual skills needed for driving—minimum of 20 minutes (instructional objective—to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:]

*{(I)}* visual interpretations;]

*{(II)}* hearing;]

*{(III)}* touch;]

*{(IV)}* smell;]

*{(V)}* reaction abilities (simple and complex); and]

*{(VI)}* judging speed and distance.]

*{(viii)}* Defensive driving strategies—minimum of 30 minutes (instructional objective—to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:]

*{(I)}* trip planning;]

*{(II)}* evaluating the traffic environment;]

*{(III)}* anticipating the actions of others;]

*{(IV)}* decision making;]

*{(V)}* implementing necessary maneuvers;]

*{(VI)}* compensating for the mistakes of other drivers;]

*{(VII)}* avoiding common driving errors;]

*{(VIII)}* interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.);]

*{(IX)}* safely operating a vehicle near oversized or overweight vehicles;]

*{(X)}* motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist; and]

*{(XI)}* distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle.]

*{(ix)}* Driving emergencies—minimum of 20 minutes (instructional objective—to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:]

*{(I)}* collision traps (front, rear, and sides);]

*{(II)}* off-road recovery, paths of least resistance; and]

*{(III)}* mechanical malfunctions (tires, brakes, steering, power, lights, etc.).]

*{(x)}* Occupant restraints and protective equipment—minimum of 15 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:]

*{(I)}* legal aspects;]

*{(II)}* vehicle control;]

*{(III)}* crash protection;]

*{(IV)}* operational principles (active and passive);]

*{(V)}* helmets and other protective equipment;]

*{(VI)}* proper use of child passenger safety seat systems; and]

*{(VII)}* dangers involved in locking or leaving children in vehicles unattended.]

*{(xi)}* Alcohol and traffic safety—minimum of 40 minutes (instructional objective—to identify the effects of alcohol on roadway users). Instruction shall not address methods to drink and drive but shall address the following topics related to the effects of alcohol on roadway users:]

*{(I)}* physiological effects;]

*{(II)}* psychological effects;]

*{(III)}* legal aspects; and]

*{(IV)}* synergistic effects.]

*{(xii)}* Comprehensive examination—minimum of five minutes (this shall be the last unit of instruction).]

*{(xiii)}* The remaining 65 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.]

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit, as part of the

application, an instructor training guide that has a table of contents and is submitted in the format or manner as prescribed by the department. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Eleven of the COI-Driving Safety <sup>subparagraph (D)(ii)-(xi)</sup>, for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without

completing the actual instruction. Instructors shall not assist students in answering the final examination questions but may facilitate alternative testing. Instructors may not be certified, or students given credit for the driving safety course unless they score 70 percent or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course materials shall be written by individuals or organizations with recognized experience in writing instructional materials.

(H) Renewal of course approval. The course approval must be renewed every even-numbered year.

(i) For approval, the course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The department may alter the due date of the renewal documents by giving the approved course six months' notice. The department may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) If the alternative instructor training in §84.64 (relating to Driving Safety Instructor License Requirements) is not applicable, driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for driving safety instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor trainer shall present the course.

(E) Applicants shall complete 28 hours of training in the driving safety curriculum that shall be taught. Of the 28 hours, 16 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 16 hours have been completed.

(3) Continuing education course.

(A) For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the department may grant an approval. Course providers desiring to provide a driving safety continuing education course shall provide an application for approval that shall be in compliance with this section.

(B) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(C) The request for course approval shall contain the following:

- (i) a description of the plan by which the course will be presented;
- (ii) the subject of each unit;
- (iii) the instructional objectives of each unit;
- (iv) time to be dedicated to each unit;
- (v) instructional resources for each unit, including names or titles of presenters and facilitators;
- (vi) any information that the department mandates to promote the quality of the education being provided; and
- (vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructors within the guidelines set forth in the course.

(D) A continuing education course may be approved if the department determines that:

- (i) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;
- (ii) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;
- (iii) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division;
- (iv) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and
- (v) any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original

approval has been granted. The documents shall be designated by the department and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

- (1) Any information contained in the application for the course approval is found to be untrue.
- (2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.
- (3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.
- (4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

§84.503. *Specialized Driving Safety Courses of Instruction.*

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504 (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to improving the student's knowledge and use of, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems, safe operation of a motor vehicle near oversize or overweight vehicles, and educating the student on the proper law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature).

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a written declaration affirming that the translation of the

course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a specialized driver safety course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of makeup work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [subparagraph (D)]. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) Specialized driving safety classrooms must have sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction, as shown in the COI-Specialized Driving Safety, that encourages the use of child passenger safety seat systems and the wearing of seat belts, etc., and materials adequate to assure [the] student mastery of the subject matter. [masters the following.]

~~(i) Course introduction—minimum of ten minutes (instructional objective—to orient students to the class). Instruction shall address the following topics:]~~

~~(I) purpose and benefits of the course;]~~

~~(II) course and facilities orientation;]~~

and] ~~(III)~~ requirements for receiving course credit;

~~(IV)~~ student course evaluation procedures.]

~~(ii)~~ The occupant protection problem—minimum of 15 minutes (instructional objectives—to develop an understanding of Texas occupant protection laws and the national and state goals regarding occupant protection). Instruction shall address the following topics:]

~~(I)~~ identification of Texas Occupant Protection Laws;]

~~(II)~~ deaths, injuries, and economic losses related to improper use of occupant restraint systems; and]

~~(III)~~ national and state goals regarding occupant protection.]

~~(iii)~~ Factors influencing driver performance—minimum of 25 minutes (instructional objective—to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:]

~~(I)~~ attitudes, habits, feelings, and emotions;]

~~(II)~~ alcohol and other drugs;]

~~(III)~~ physical condition;]

~~(IV)~~ knowledge of driving laws and procedures including law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); and]

~~(V)~~ understanding the driving task.]

~~(iv)~~ Physical forces that influence driver control—minimum of 10 minutes (instructional objective—to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:]

~~(I)~~ speed control (acceleration, deceleration, etc.);]

~~(II)~~ traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and]

~~(III)~~ force of impact (momentum, kinetic energy, inertia, etc.);]

~~(v)~~ Perceptual skills needed for driving—minimum of 10 minutes (instructional objective—to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:]

~~(I)~~ visual interpretations;]

~~(II)~~ hearing;]

~~(III)~~ touch;]

~~(IV)~~ smell;]

~~(V)~~ reaction abilities (simple and complex); and]

~~(VI)~~ judging speed and distance.]

~~(vi)~~ Occupant protection equipment—minimum of 35 minutes (instructional objective—to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:]

~~(I)~~ anti-lock brakes;]

~~(II)~~ traction control devices;]

~~(III)~~ suspension control devices;]

~~(IV)~~ electronic stability/active handling systems;]

~~(V)~~ crumple zones;]

~~(VI)~~ door latch improvements;]

~~(VII)~~ tempered or safety glass;]

~~(VIII)~~ headlights; and]

~~(IX)~~ visibility enhancements.]

~~(vii)~~ Occupant restraint systems—minimum of 60 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:]

~~(I)~~ safety belts, airbags, and other protective equipment;]

~~(II)~~ proper usage and necessary precautions;]

~~(III)~~ vehicle control and driver stability;]

~~(IV)~~ crash dynamics and protection; and]

~~(V)~~ operational principles (active versus passive).]

~~(viii)~~ Child passenger safety—minimum of 120 minutes (instructional objective—to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:]

~~(I)~~ misconceptions or mistaken ideas regarding child passenger safety;]

~~(II)~~ purpose of child safety seats;]

~~(III)~~ how to secure the child properly and factors to consider;]

~~(IV)~~ child safety seat types and parts;]

~~(V)~~ precautions regarding child safety seats;]

~~(VI)~~ correct installation of a child safety restraint system;]

~~(VII)~~ tips regarding child safety restraint systems; and]

~~(VIII)~~ dangers involved in locking or leaving children in vehicles unattended.]

~~(ix)~~ The remaining 10 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course.]

~~(x)~~ Comprehensive examination—minimum of five minutes (this shall be the last unit of instruction).]

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved specialized driving safety course described in the applicant's specialized driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70 percent or more on the final test. The course content guide

shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course shall be authored by an individual who possesses a current or past National Highway Traffic Safety Association Child Passenger Safety technician or instructor certificate.

(2) Specialized driving safety instructor development courses.

(A) If the alternative instructor training in §84.64 [of this chapter (relating to Driving Safety Instructor License Requirements)] is not applicable, specialized driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for the instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor trainer shall present the course.

(E) Applicants shall complete 28 hours of training in the specialized driving safety curriculum that shall be taught. Of the 28 hours, 16 hours shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(3) Continuing education courses.

(A) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must at-

tend the approved continuing education course conducted by the course provider.

(B) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to ensure quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructors within the guidelines set forth in the course.

(C) A continuing education course may be approved if the department determines that:

(i) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety or specialized safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the department;

(iv) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) the department determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

*§84.504. Driving Safety Course Alternative Delivery Method.*

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The department may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h), shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new course and the ADM must deliver the course provider's approved curriculum as delineated in the course content guide required by §84.502 (relating to Driving Safety Courses of Instruction) and §84.503 (relating to Specialized Driving Safety Courses of Instruction), and the COI-Driving Safety and COI-Specialized Driving Safety.

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a driving safety course or a specialized driving course to Texas students by an alternative delivery method must hold a driving safety school license. The driving safety school is responsible for the operation of the ADM.

(5) Course provider endorsement required. The driving safety school must have an endorsement from a licensed course provider.

(b) Course content. The ADM must deliver the same topics and course content as the approved course established by the department in the COI-Driving Safety and COI-Specialized Driving Safety.

(1) Course topics. The time requirements for each unit and the course as a whole described in §84.502(a)(1)(C) and (D) and §84.503(a)(1)(C) and (D) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional course as long as the sequencing does not detract from educational value of the course. The ADM owner shall provide a key showing the topic sequence of the traditional course and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the course.

(2) Third party data sources. The personal validation questions shall be drawn equally from at least two different databases.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(5) Exclusion from the course. The ADM shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record

shall include a record of both answers and an explanation of the reasons that the school corrected the answer.

(7) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the department the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM shall test the student's mastery of the course content by asking at least two questions from each of the topics listed in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)-(xi) and §84.503(a)(1)(D)(ii)-(viii)].

(A) Test bank. The test bank for course content mastery questions shall include at least ten questions from each of the topics identified in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)-(xi) and §84.503(a)(1)(D)(ii)-(viii)].

(B) Placement of questions. The mastery of course content questions shall be asked either at the end of the major unit or section in which the topic identified in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)-(xi) and §84.503(a)(1)(D)(ii)-(viii)] is covered



(unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30 percent of the questions asked on an examination, the ADM shall require that the student take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The student records shall contain the following information.

- (1) The student's name and driver's license number.
- (2) A record of which personal validation questions were asked and the student's responses.
- (3) A record of which multimedia participation questions were asked and the student's responses.
- (4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.
- (5) If any answer to a question is changed by the school or course provider for a student who inadvertently missed a question, the school or course provider shall provide both answers and a reasonable explanation for the change.
- (6) A record of the course content mastery questions asked and the answers given.
- (7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.
- (8) The school shall also ensure that the student record is readily, securely, and reliably available for inspection by the department.

(f) Additional requirements for ADM courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the driving safety school name, course provider name and license numbers for each assigned by the department on the entity's website and the

registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

(3) Domain names. Each school offering an ADM must offer that ADM from a single domain.

(g) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. In order to meet the video requirement of §84.502(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to the required topics and produced specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of the department. The licensed course provider for the approved course on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

- (A) a complete description of the proposed change;
- (B) the reason for the change;
- (C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and
- (D) an explanation of how the change will maintain the course or ADM in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the course provider making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed course provider for the approved course on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1) and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1), assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to the department within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year.

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

*§84.505. Drug and Alcohol Driving Awareness Programs of Instruction.*

(a) This section contains requirements for drug and alcohol driving awareness programs and instructor development programs. For each program, the following curriculum documents and materials are required to be submitted as part of the application for approval. All program content shall be delivered under the direct observation of a licensed instructor. Programs of instruction shall not be approved which contain language that a reasonable person would consider inappropriate. Any changes and updates to a program shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness programs.

(A) Educational objectives. The educational objectives of drug and alcohol driving awareness programs shall include, but not be limited to: educating participants on the risks associated with alcohol or other drug use/abuse and problems associated with such use; providing information on the physiological and psychological effects of alcohol and drugs, legal aspects of alcohol and drug use; the effects of alcohol and drugs on the driving task; signs of abuse; and assisting participants in developing a plan to reduce the probability that they will be involved in alcohol/drugs and driving situations.

(B) Drug and alcohol driving awareness program content guides. A program content guide is a description of the content of the program and the techniques of instruction that will be used to present the program. For programs offered in languages other than English, the course provider shall provide a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a drug and alcohol driving awareness course. To be approved, each course provider shall submit as part of the application a program content guide that includes the following:

(i) a statement of the program's drug and alcohol driving awareness program goal and philosophy. The program must

not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The following policies and administrative provisions shall be used by each school that offers the program and include the following requirements:

(I) progress standards that meet the requirements of subsection (a)(1)(F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the program must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(IV) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the program; and the furniture deemed necessary to accommodate the students in the program, such as tables, chairs, and other furnishings. The program shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 180 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) a clear identification of the order in which the units of instruction will be presented, and for each student, the program shall be taught in the order identified in the approved application;

(vii) written or printed materials that shall be provided for use by each student as a guide to the program. The executive director may make exceptions to this requirement on an individual basis;

(viii) units of instruction sufficient to present the topics identified in subsection (a)(1)(B) and any additional topics unique to the program. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the program content guide. The evaluative technique may be used throughout the unit or at the end; and

(ix) a document that identifies the instructional units and topics and the order in which they are provided.

(C) Program and time management. Approved drug and alcohol driving awareness programs shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the program shall consist of a minimum of 360 minutes.

(iii) 60 minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum program content. All break periods shall be provided after instruction has begun and before the post-program exam.

(iv) Programs conducted in a single day shall allow a minimum of 30 minutes for lunch.

(v) Programs taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day programs. However, all breaks shall be provided prior to the last unit of the instructional day or the post-program exam, whichever is appropriate.

(vi) The order of topics shall be approved by the department as part of the program approval, and for each student, the program shall be taught in the order identified in the approved application.

(vii) Students shall not receive a certificate of program completion unless that student received a grade of at least 70 percent on the post-program exam.

(viii) The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when provided to minors.

(ix) No more than 50 students per class are permitted in drug and alcohol driving awareness programs, unless the class size is limited by a restriction under another law or rule. In a traditional classroom setting, there must be sufficient seating for the number of students arranged so that all students are able to view, hear, and comprehend all instruction aids.

(x) The drug and alcohol driving awareness school shall make a material effort to establish the identity of the student.

(D) Minimum program content. A drug and alcohol driving awareness program shall include the minimum course content and instruction requirements as shown in the POI-DADAP; ~~as a minimum, materials adequate to address the following topics and instructional objectives and the program as a whole~~.

~~{(i) Program administration. The objective is to enable the instructor to handle any basic in-class administrative details that are necessary prior to beginning instruction. This unit shall be limited to 15 minutes.}~~

~~{(ii) Program introduction, pre-program exam, and background. The objective is to present an overview of the program and to demonstrate the nature of the problem as it relates to the use of alcohol or other drugs.}~~

~~{(iii) Texas laws. The objective is to provide basic information about laws related to alcohol/drug use in Texas.}~~

~~{(iv) Physiological and psychological effects of alcohol/drugs. The objective is to provide basic information about the physiological and psychological effects of alcohol and other drugs on humans.}~~

~~{(v) Effects of alcohol/drugs on the driving task. The objective is to explain the relationship of alcohol and other drugs to driving task abilities.}~~

~~{(vi) Signs of a problem. The objective is to help participants recognize and understand the warning signs of a potential alcohol/drug problem.}~~

~~{(vii) Decision making. The objective is to help participants make quality decisions about alcohol/drug use that will prevent future problems.}~~

~~{(viii) Post-program exam.}~~

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved drug and alcohol driving awareness program described in the applicant's drug and alcohol driving awareness program guide. Each course provider shall submit as part of the application an instructor training guide. The guide shall include a table of contents and the following:

(i) a statement of the philosophy and instructional goals of the training program. The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the program curriculum;

(II) training the trainee in the techniques of instruction that will be used in the program;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the program curriculum by the trainee under the observation of the instructor trainer as part of the basic training program; and

(VI) time to be dedicated to each training lesson;

and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions,

workbook activities, written and oral discussion questions). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations [Exams]. Each course provider shall submit for approval, as part of the application, pre- and post-program exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness program. The post-program exam for each drug and alcohol driving awareness program must contain at least 20 questions. A minimum of two questions shall be drawn from the required units set forth in Chapter Four, Topics Three through Seven of the POI-DADAP [subparagraph (D)(iii)-(vii) of this paragraph]. The post-program final exam questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the post-program exam questions but may facilitate alternative testing. Instructors may not certify or give students credit for the drug and alcohol driving awareness program unless they score 70 percent or more on the post-program exam. The program content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the post-program exam. The course provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Exam questions may be short answer, multiple choice, essay, or a combination of these forms.

(2) Instructor development programs.

(A) Drug and alcohol driving awareness program instructors shall successfully complete 24 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development program for the drug and alcohol driving awareness program to be taught, under the supervision of a licensed drug and alcohol driving awareness instructor who is designated by the course provider. Supervision is considered to have occurred when the licensed instructor is present and personally provides the 24 clock hours of training for drug and alcohol driving awareness instructors, excluding clock hours approved by the department that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and licensed instructor for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-program exam grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training program, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee's application for licensing.

(C) The course provider shall sign all student instruction records submitted for the department-approved instructor development program. Original documents shall be submitted.

(D) Instructor development programs including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor shall present the program.

(b) Schools applying for approval of additional drug and alcohol driving awareness programs after the original approval has been granted shall submit the documents designated by the department with the appropriate fee. Programs shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional program shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved program is discontinued, the department shall be notified within five working days of discontinuance. Any program discontinued shall be removed from the list of approved programs.

(d) If, upon review and consideration of an original, renewal, or amended application for drug and alcohol driving awareness program approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any drug and alcohol driving awareness program given to a course provider or school under any of the following circumstances.

(1) A statement contained in the application for the program approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or programs of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this subchapter.

(4) The program has been found to be ineffective in carrying out the purpose of the Code.

*§84.506. Drug and Alcohol Driving Awareness Programs Alternative Delivery Method.*

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved drug and alcohol driving awareness program and meets the following requirements.

(1) Standards for approval. The department may approve an ADM for an approved drug and alcohol driving awareness program and waive any rules to accomplish this approval if the ADM delivers an approved program in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h), shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new program, and the ADM must deliver the course provider's approved curriculum as delineated in the program content guide required by §84.505(a)(1)(B) (relating to Drug and Alcohol Driving Awareness Programs of Instruction), and the POI-DADAP.

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a drug and alcohol driving awareness program to Texas students by an ADM must hold a drug and alcohol driving awareness school license.

(5) Course provider endorsement required. The drug and alcohol driving awareness school must have an endorsement from a licensed course provider.

(6) Course provider responsibility. The day-to-day operations of an ADM are the responsibility of the course provider that owns the curriculum. A course provider may offer an ADM through a school that is not owned and operated by the course provider only with approval of the executive director. By accepting such approval, the course provider that offers the curriculum through a licensed drug and alcohol driving awareness school also accepts responsibility for all compliance issues that arise as a result of the operation of the ADM.

(b) Program content. The ADM must deliver the same topics and program content as the approved course established by the department in the POI-DADAP.

(1) Course topics. The time requirements for each unit and the program as a whole described in §84.505(a)(1)(B)(v), (C), and (D) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional program as long as the sequencing does not detract from educational value of the program. The ADM owner shall provide a key showing the topic sequence of the traditional program and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the program. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the program.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the program. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the program. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Exams. The course provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written program material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A program that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the program. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the program.

(2) Data sources. The personal validation questions shall be drawn equally from at least two different databases. Alternatively, the data may be drawn from student-solicited question/answer pairs obtained during enrollment.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the post-program exam.

(5) Exclusion from the course. The ADM shall exclude the student from the program after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question drawn from a third-party database. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation.

(7) Student affidavits. A student enrolled in a program that uses third-party database validation questions and for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a certificate of program completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour drug and alcohol driving awareness program for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the department the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Program validation. The ADM shall incorporate a program content validation process that verifies student participation and comprehension of program material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one program validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the program. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of program content. The ADM shall test the student's mastery of the program content by asking at least two questions from each of the five substantive topics listed in Chapter Four, Topics Three through Seven of the POI-DADAP [§84.505(a)(1)(D)(iii)-(vii)].

(A) Test bank. The test bank for program content mastery questions shall include at least two questions from each of the five substantive topics identified in Chapter Four, Topics Three through Seven of the POI-DADAP [§84.505(a)(1)(D)(iii)-(vii)]. For each question in a substantive topic, the test bank shall contain four alternative questions covering the same topic, for a total of at least 100 questions.

(B) Placement of questions. The mastery of program content questions shall be asked at the end of the program (post-program exam).

(C) Question difficulty. Program content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(D) Retest. If the student misses more than 30 percent of the questions asked on the post-program exam, the ADM shall retest the student in the same manner as the failed exam, using different questions from its test bank. The student is not required to repeat the failed program, but may be allowed to do so prior to retaking the exam. If the student fails the post-program exam three times, the student shall fail the program.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the program material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The school and/or course provider shall also ensure that the student record is readily, securely, and reliably available for inspection by the department. The student records shall contain the following information:

(1) the student's name and driver's license number;

(2) a record of which personal validation questions were asked and the student's responses;

(3) a record of which multimedia participation questions were asked and the student's responses;

(4) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(5) if any answer to a question is changed by the school or course provider for a student who inadvertently missed a third-party database question, the school or course provider shall maintain both an-

swers and a reasonable explanation for the change. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation;

(6) a record of the program content mastery questions asked and the answers given; and

(7) a record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the program.

(f) Additional requirements for ADM programs. Programs delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the drug and alcohol driving awareness school name, course provider name and license numbers for each assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A drug and alcohol driving awareness school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

(3) Domain names. Each school offering an ADM must offer that ADM from a single domain.

(4) ADM identification. All ADMs presented over the Internet shall display the school name and school number assigned by the department as well as the course provider name and course provider number assigned by the department on the homepage and the registration page of the entity to which the student pays any monies, provides any personal information, and in which the student enrolls.

(g) Additional requirements for video programs.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and program materials may only be made available through a process that is approved by the department.

(2) Video requirement. In order to meet the video requirement of §84.505(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the five substantive required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one program validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the program can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1), a change to a previously approved ADM shall not be made without the prior approval of the department. The licensed course provider for the approved program on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the program or ADM in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the course provider making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted the requestor may immediately implement the change. The licensed course provider for the approved program on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a program or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1) and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii), may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1), assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, a school shall deliver any missing student data to the department within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year.

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. With the exception of circumstances beyond the control of the school, the student shall have adequate access to both a licensed instructor and technical assistance (help desk) throughout the program such that the flow of instructional information is not delayed.

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

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



## SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE

## CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

### 16 TAC §84.600

#### STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

#### §84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan shall include one or more of the following course programs.

(1) Core program. This program shall consist of at least 32 hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program shall consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program shall consist of at least 32 hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 shall be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 shall be given when all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction shall not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students shall proceed in a uniform sequence. Students shall be enrolled and in class before the seventh hour of classroom instruction in a 32-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25 percent of the course and shall be presented to the entire class simultaneously.



(7) The driver education course shall be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This shall not circumvent attendance or progress. Variances to the established timelines shall be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public Schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) A student shall not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student shall be limited to a maximum of:

- (A) two hours of classroom instruction;
- (B) four hours of observation time;
- (C) two hours of multicar range driving;
- (D) three hours of simulation instruction; and
- (E) one hour of behind-the-wheel instruction.

(10) Driver education training verified by the parent is limited to one hour per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize [oversized] or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing six hours of instruction as specified in Module One of the POI-DE. [The minor and adult driver education program instructional objectives shall include:]

{(1) Module One: Traffic Laws. The student legally and responsibly performs reduced-risk driving practices in the Highway Transportation System (HTS) by:]

{(A) accepting driving as a privilege with responsibilities, obligations, and potential consequences; and]

{(B) applying knowledge and understanding of Texas traffic laws, including traffic control devices, right-of-way laws and law enforcement procedures for traffic stops in accordance with the

provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature).]

{(2) Module Two: Driver Preparation. The student legally and responsibly performs reduced-risk driving practices in the HTS by:]

{(A) employing pre-drive tasks;]

{(B) using and requiring passengers to use occupant protection and restraint systems, including the proper use of child passenger safety seat systems;]

{(C) using vehicle symbols and devices;]

{(D) employing starting tasks;]

{(E) performing vehicle operation and control tasks;]

{(F) employing post-drive tasks;]

{(G) using baseline and progress assessment tools to evaluate and improve behind-the-wheel skill level; and]

{(H) formulating a driving plan.}]

{(3) Module Three: Vehicle Movements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:]

{(A) sustaining visual attention and communication;]

{(B) using reference points;]

{(C) safely operating a vehicle near oversized or overweight vehicles;]

{(D) managing vehicle balance; and]

{(E) executing vehicle maneuvers.}]

{(4) Module Four: Driver Readiness. The student legally and responsibly performs reduced-risk driving practices in the HTS by:]

and] { (A) employing legal and responsible driving practices;

and] { (B) limiting and managing fatigue and aggressive driving.}]

{(5) Module Five: Risk Management. The student legally and responsibly performs reduced-risk driving practices in the HTS by:]

{(A) predicting, analyzing, and minimizing risk factors, including the dangers of failing to yield the right-of-way to a motorcycle and the need to share the road with motorcycles; and]

{(B) employing a space management system.}]

{(6) Module Six: Environmental Factors. The student legally and responsibly performs reduced-risk driving practices in the HTS by:]

and] { (A) identifying and analyzing driving environments;

{(B) minimizing environmental risk.}]

{(7) Module Seven: Distractions. The student legally and responsibly performs reduced-risk driving practices in the HTS by limiting and managing distractions, including the use of a wireless communication device that includes texting, and multi-task performances.}]

{(8) Module Eight: Alcohol and Other Drugs. The student legally and responsibly performs reduced-risk driving practices in the HTS by adopting zero-tolerance practices related to the use of alcohol

and other drugs by applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences to licensing, driving, and lifestyles.}]

[(9) Module Nine: Adverse Conditions. The student legally and responsibly performs reduced-risk driving practices in the HTS by managing adverse conditions resulting from weather, reduced-visibility, traction loss, and emergencies.}]

[(10) Module Ten: Vehicle Requirements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:}]

[(A) assessing and managing vehicle malfunctions;}]

[(B) performing preventative maintenance; and}]

[(C) planning trips.}]

[(11) Module Eleven: Consumer Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by:}]

[(A) attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership;}]

[(B) vehicle insurance;}]

[(C) environmental protection and litter prevention;}]

[(D) anatomical gifts; and}]

[(E) recreational water safety.}]

[(12) Module Twelve: Personal Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by:}]

[(A) using the knowledge, skills, and experiences of the Driver Education and Traffic Safety Program;}]

[(B) obtaining and using a driver license; and}]

[(C) continuing the lifelong learning process of reduced-risk driving practices.}]

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons shall consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., shall not be counted for behind-the-wheel instruction. The instructor shall be in the vehicle with the student the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs shall include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total classroom phase.

(3) Each classroom student shall be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" published by DPS shall be furnished to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction is not provided. In each case when only one student is instructed:

(A) the school shall obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver shall specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver shall be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults shall submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the 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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TRD-202101516



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 403. GENERAL ADMINISTRATION

#### 16 TAC §§403.101, 403.110, 403.301, 403.600, 403.800

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.101 (Open Records), §403.110 (Petition for Adoption of Rule Changes), §403.301 (Historically Underutilized Businesses), §403.600 (Complaint Review Process), and §403.800 (Savings Incentive Program). The proposed rule amendments are a result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039.

The proposed amendments to §403.101 (Open Records) make minor, non-substantive changes to terminology from "open records" to "public information".

The proposed amendments to §403.110 (Petition for Adoption of Rule Changes) add language regarding the residency requirement for the petitioner as amended by the 84th Legislature, R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015.

The proposed amendments to §403.301 (Historically Underutilized Businesses) make minor, non-substantive changes to update a citation to the Texas Comptroller's administrative rules.

The proposed amendments to §403.600 (Complaint Review Process) address the availability of a dedicated voicemail system for the reporting and investigation of complaints without the requisite complaint information when the facts involve a significant risk to the public or to the integrity of lottery or bingo games.

The proposed amendments to §403.800 (Savings Incentive Program) will address the statement that the Commission has no appropriated undedicated general revenue. The Charitable Bingo Operations Division currently is funded by general revenue. The Charitable Bingo program is supported only as required by bingo fees and the Commission does not foresee retaining any general revenue savings.

Finally, these amendments also include non-substantive stylistic changes including "agency" to "commission" and "Commission" to "commission."

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Bob Biard, General Counsel, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is improved clarity and greater understanding of agency practices and procedures based on the removal of obsolete language and the use of updated and consistent terminology.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

These amendments are proposed under the authority of Texas Government Code §552.230, which authorizes a state agency to promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapters 466, 467, 552, 2001, 2108, and 2161.

#### *§403.101. Public Information. [Open Records.]*

(a) Charges for Copies of Public Records. The charges to any person requesting reproductions of any readily available record of the Texas Lottery Commission will be the charges established by rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter 552, Subchapter F.

- (1) Pursuant to Texas Government Code §552.275, the commission [~~Commission~~] has established a limit of 36 hours per fiscal year as the maximum amount of time commission [~~agency~~] personnel

are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the commission [agency] recovering costs attributable to that personnel time.

(2) The commission [agency] will provide each requestor a written statement of the amount of personnel time spent complying with each request for public information from the requestor and the cumulative amount of time spent complying with requests for public information from the requestor during the fiscal year. Subject to the provisions of §552.275 when the 36-hour limit is met or exceeded, the commission [agency] will require a requestor to pay costs attributable to cost of materials, overhead, and personnel time necessary to comply with the request.

(b) The commission [agency] may furnish public records without charge or at a reduced charge if it [the agency] determines that waiver or reduction of the fees is in the public interest.

(c) Public Information [Open Records] Requests. The following guidelines apply to requests for records under the Public Information Act, Texas Government Code, Chapter 552.

(1) Requests must be in writing and reasonably identify the records requested. All requests must be submitted to the commission's [agency's] Public Information Coordinator by one of the methods indicated on the commission's [agency's] website.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the commission [agency].

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.

(7) All public information [open records] requests appointments will be referred to the commission's [agency's] Public Information Coordinator before complying with a request.

#### §403.110. *Petition for Adoption of Rule Changes.*

(a) Any interested person or agency may petition the commission [Commission] requesting adoption of a rule. Petitions shall be in writing, should be filed with the general counsel, and shall comply with the following requirements.

(1) Each petition must state the name and address of the petitioner.

(2) Each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is proposed to be promulgated; and

(D) a justification for adoption of the rule.

(3) For the purposes of this section, an interested person must be:

(A) a resident of this state;

(B) a business entity located in this state;

(C) a governmental subdivision located in this state; or

(D) a public or private organization located in this state that is not a state agency.

(b) The general counsel or the general counsel's designee shall review all petitions for compliance with this section. The petitioner shall have the right to file a corrected petition which complies with the requirements of this section.

(c) Upon receipt of a petition which complies with the requirements of this section, the general counsel or the general counsel's designee will consult with the persons in the commission [Commission] who are responsible for the area with which the rule is concerned to evaluate the merits of the proposal. Not later than the 60th day after the date of receipt of a petition, the general counsel or the general counsel's designee shall present the petition to the commission with a recommendation on whether a rulemaking proceeding should be initiated.

(d) The commission shall deny the petition or initiate rulemaking proceedings in accordance with the Administrative Procedure Act (APA) and these rules. The commission may modify any proposed rule to ensure that it conforms to the format of commission rules, adequately addresses the perceived problem or other subject matter, and conforms to the filing requirements of the *Texas Register*.

#### §403.301. *Historically Underutilized Businesses.*

The Texas Lottery Commission adopts by reference the rules administered by the Office of the Comptroller of Public Accounts regarding historically underutilized businesses, which are set forth in the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, §§20.281 - 20.298.

#### §403.600. *Complaint Review Process.*

(a) Purpose. This section implements §467.111 of the Texas Government Code, which requires the commission [Texas Lottery Commission (Commission)] to maintain a system to promptly and efficiently act on each complaint filed with the commission [Commission] and by rule adopt and publish procedures governing the entire complaint process from submission to disposition. The Lottery Operations Division shall manage the process for all complaints relating to any commission [Commission] activities, regardless of the affected commission [Commission] division or subject matter. The Lottery Operations Division may adopt written procedures to further implement the requirements of §467.111 and this section.

(b) Complaint Intake. Complaints must be submitted by mail, email, voice mail on a dedicated voice mailbox, in person, or fax.

(1) All complaints shall be monitored through the complaint tracking system and all jurisdictional complaints will be tracked, from initial intake or discovery of the complaint to final disposition. A jurisdictional complaint is a complaint which alleges a violation of the State Lottery Act (Government Code, Chapter 466), the Bingo Enabling Act (Occupations Code, Chapter 2001), commission [Commission] rules, or any other applicable provisions of the Texas Government Code or the Texas Administrative Code under which the commission [Commission] has the authority to interpret and apply the law.

(2) The commission [Commission] shall make available information on how to file a complaint on the commission's

[Commission's] internet website [web site], intranet, at commission [Commission] claim centers, Bingo regional offices, licensed lottery retail locations, bingo playing locations, and the commission [Commission] headquarters.

(3) Commission staff shall maintain and monitor a toll-free telephone number during normal working hours to assist complainants. Commission staff may also maintain and monitor a dedicated voice mailbox to assist with complaint intake.

(c) Complaint Processing. The commission [Commission] requires specific information to process and investigate a complaint. Commission staff will review all complaints to ensure they are jurisdictional [; in writing;] and include the complainant's name, mailing address, and contact phone number. If a complaint is received without all necessary information, the staff will make reasonable efforts to contact the complainant and obtain the necessary information. Non-jurisdictional complaints will be entered in the complaint tracking system as contacts along with an explanation why the complaint is non-jurisdictional, but will not be referred for investigation or follow-up. Staff will notify the complainant verbally or in writing that the complaint is non-jurisdictional.

(d) If the complaint is jurisdictional and contains the required information, the complaint will be entered in the complaint tracking system and referred to the appropriate commission [Commission] division or department for investigation or follow-up. Commission staff will provide an acknowledgement notification verbally or in writing to the complainant after the complaint is processed. Commission staff will provide periodic ongoing complaint status updates verbally or in writing. A closing notification will be provided to the complainant verbally or in writing when the complaint is closed.

(e) Complaint Analysis and Reports. The commission [Commission] staff will maintain a comprehensive database of complaints in order to identify trends or issues related to violations of state laws under the commission's [Commission's] jurisdiction.

(1) At least once each biennium, designated commission [Commission] staff will generate a trend analysis report. The report will:

(A) categorize complaints based on the type of violation alleged;

(B) track each complaint from submission to disposition;

(C) evaluate the effectiveness of the [of the] commission's [Commission's] enforcement process; and

(D) include any additional information the commission [Commission] considers necessary.

(2) The trend analysis report shall be made available to the public.

(f) Americans with Disabilities Act Complaints. Notwithstanding the foregoing, all complaints to the commission [Commission] regarding Americans with Disabilities Act violations are governed by the provisions of §401.407 of this title (relating to Complaints Relating to Non-accessibility), and not this section.

*§403.800. Savings Incentive Program.*

(a) Purpose. This section implements Chapter 2108 of the Texas Government Code, which requires state agencies to provide notice to the comptroller of savings realized from appropriated undedicated general revenue and to retain a portion of the amounts verified by the comptroller. The Charitable Bingo Operations Division is funded by general revenue. However, the Bingo program is supported by fees

and the commission does not foresee retaining any general revenue savings at this time. [Currently, the Commission has no appropriated undedicated general revenue and therefore may not retain any savings.] However, consistent with the statute, this section will govern any potential future savings realized from appropriated undedicated general revenue.

(b) Retention of Funds. The commission will retain one-half of the amount of savings verified by the comptroller.

(c) Use of Funds. Of the savings retained by the commission [Commission], one-half:

(1) must be used to make additional principal payments for general obligation bonds issued by the commission [Commission] or on behalf of the commission [Commission] by the Texas Public Finance Authority; or

(2) if there are no outstanding general obligation bonds issued by the commission [Commission] or on behalf of the commission [Commission] by the Texas Public Finance Authority, may be used to provide bonuses, distributed equally, to each commission [Commission] employee who:

(A) is a current full-time equivalent employee of the commission [Commission];

(B) worked for the commission [Commission] as a full-time equivalent employee for the entire fiscal year in which the savings were realized; and

(C) is directly responsible for or worked in a department, office, or other division within the commission [Commission] that is responsible for the savings realized.

(3) If the amount of savings verified by the comptroller, expressed as a percentage of the total amount of undedicated general revenue derived from nonfederal sources appropriated to the commission [Commission] for the fiscal year in which the savings were realized, is:

(A) less than three percent, a bonus described by subsection (c)(2) of this section may not exceed \$250;

(B) at least three percent but less than five percent, a bonus described by subsection (c)(2) of this section may not exceed \$500;

(C) at least five percent but less than 10 percent, a bonus described by subsection (c)(2) of this section may not exceed \$750; and

(D) 10 percent or more, a bonus described by subsection (c)(2) of this section may not exceed \$1,000.

(4) The commission [Commission] may not provide a bonus under subsection (c)(2) of this section to a [an] commission employee [of the Commission] who serves in a director-level position, including the executive director.

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 April 9, 2021.

TRD-202101506

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 344-5392



# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

##### 19 TAC §61.1007

The Texas Education Agency (TEA) proposes new §61.1007, concerning the definition of tax levy and tax collection. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, that transferred rulemaking authority related to the definition of tax levy and tax collection for the Foundation School Program (FSP) from the State Board of Education (SBOE) to the commissioner.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Rule-making authority for the definition of tax levy and tax collection previously resided with the SBOE under Texas Education Code (TEC), §42.004. The SBOE adopted 19 TAC §105.1, Rules for the Definition of Tax Levy and Tax Collection, effective September 1, 1996, and last amended the rule effective October 15, 2017.

HB 3, 86th Texas Legislature, 2019, renumbered TEC, §42.004, to §48.004. The renumbered statute was amended to transfer rulemaking authority from the SBOE to the commissioner of education.

TEC, §48.004, directs the commissioner to adopt rules and take action as necessary to implement and administer the FSP. Proposed new §61.1007 would implement TEC, §48.004, by defining tax levy and tax collection for purposes of determining state aid and excess local revenue under TEC, Chapters 46 and 48. The proposed new rule is substantially similar to existing §105.1 with updates that would reflect renumbered statute and align with current school finance formulas as amended by HB 3.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school 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 beyond what the authorizing statute requires.

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

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

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

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

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

would be in effect, it would create a new regulation by establishing the definition of tax levy and tax collection under the authority of the commissioner.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez 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 updated statutory references and implementation of legislation that transferred rulemaking authority to the commissioner. 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 and reporting impact.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 23, 2021, and ends May 24, 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 23, 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 new section is proposed under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

##### §61.1007. Rules for the Definition of Tax Levy and Tax Collection.

(a) General provisions. For the purpose of determining state aid and excess local revenue under the Texas Education Code (TEC), Chapter 46 and Chapter 48, calculations that include tax collections as a data element shall reference subsection (b) of this section.

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

(1) Total levy. The sum of the maintenance and operation and debt service levies generated by applying a school district's adopted tax rates to its locally assessed valuation of property for the current tax year.

(2) Tax collection.

(A) For school districts with a fiscal year that begins on July 1, total taxes collected between July 1 and June 30 for the current and all prior years' levies.

(B) For school districts with a fiscal year that begins on September 1, total taxes collected between September 1 and August 31 for the current and all prior years' levies.

(C) For a school district that has been awarded a property value adjustment for a major taxpayer protest pursuant to TEC, §48.267, the district may petition the commissioner of education to attribute taxes that had been withheld due to the protest of valuation to the year in which the taxes were originally levied.

(3) Types of tax collections.

(A) Maintenance and operations taxes are those taxes collected during the fiscal year that are associated with the levy of local maintenance and operations tax rates, including current and delinquent taxes and any delinquent taxes related to former county education districts, but not including penalties and interest that accrue on delinquent maintenance and operations tax levies or the tax credits authorized by the Texas Tax Code, Chapter 313.

(B) Interest and sinking fund taxes are those associated with the levy of local interest and sinking fund taxes, not including penalties and interest that accrue on delinquent interest and sinking funds tax levies.

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) 475-1497



CHAPTER 153. SCHOOL DISTRICT  
PERSONNEL  
SUBCHAPTER BB. COMMISSIONER'S  
RULES CONCERNING PROFESSIONAL  
DEVELOPMENT

**19 TAC §153.1011**

The Texas Education Agency (TEA) proposes an amendment to §153.1011, concerning the Mentor Program Allotment. The proposed amendment would update provisions related to the application process, consequences for failure to comply with statute, and the frequency of data collection.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 153.1011 describes the requirements for the Mentor Program Allotment, an optional, grant-funded program to support eligible districts that implement a mentorship program in accordance with Texas Education Code (TEC), §21.458. The allotment is authorized under TEC, §48.114.

The proposed amendment to §153.1011(c) would remove language specifying that an application and approval process will occur each year. This change would allow for greater flexibility

in the frequency and cadence of the application and approval process, which would allow for district mentoring programs to be implemented over multiple consecutive years.

The proposed amendment to §153.1011(d)(2) would add specific consequences for districts that fail to comply with statute by stating that TEA may rescind eligibility of a district's current or future mentor program allotment funding. This change would implement the commissioner's authority to require districts to comply with authorizing statute and rule, including the uses of funding outlined in TEC, §48.114.

The proposed amendment to §153.1011(f) would allow for an increased frequency with which information may be requested from TEA yearly. This change would allow for greater flexibility in the collection of periodic activity/progress reports, which would allow for district mentoring programs to be implemented over multiple consecutive years.

**FISCAL IMPACT:** Tim Regal, associate commissioner for instructional support, 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 expand an existing regulation by specifying that failure to comply with program requirements may result in rescission of a district's current funding and allow an increase in the number of times TEA may request activity/progress reports.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Regal 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 providing school districts with the require-

ments and process to apply for funding from the Mentor Program Allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data 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 23, 2021, and ends May 24, 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 23, 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 amendment is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements around mentor program design and delivery. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer the section; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.458 and §48.114.

§153.1011. *Mentor Program Allotment.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beginning teacher--A classroom teacher in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas 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. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. To qualify as a mentor teacher, a classroom teacher must:

(A) complete a research-based mentor and induction training program approved by the commissioner;

(B) complete a mentor training program provided by the district;

(C) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; and

(D) demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, six hours per instructional day; or

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than six hours per instructional day.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, such as principals, assistant principals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.



(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. The Texas Education Agency (TEA) [~~Each year, TEA~~] will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114. The survey will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in TEA rescinding eligibility of a district's current or [negative impact on a district's] future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur at least [not more than] once per year [yearly]. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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, Rulemaking

Texas Education Agency

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



## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §601.2, §601.3

The Texas Medical Disclosure Panel (Panel) proposes amendments to §601.2, concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A and to §601.3, concerning Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.

#### BACKGROUND AND PURPOSE

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which requires the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring disclosure of specific risks and hazards to patients before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required.

#### SECTION-BY-SECTION SUMMARY

Proposed amendments to §601.2 modify the list of procedures and risks and hazards in subsection (b) regarding the cardiovas-

cular system and subsection (o) regarding respiratory system treatments and procedures.

Proposed amendment to §601.3 removes one procedure in subsection (o) regarding respiratory system from the list of procedures requiring no disclosure of specific risks and hazards because that procedure has been moved from List B to List A.

#### FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Panel has determined that during the first five years that the sections 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 employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Chairman Appel has also determined that there will be no anticipated economic costs to small businesses, micro-businesses, or rural communities required to comply with the amendments as proposed because physicians and health care providers already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendments will not add additional costs.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

#### 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 do not impose a cost on regulated persons.

#### PUBLIC BENEFIT

In addition, Chairman Appel also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering these amended disclosure rules will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering.

#### REGULATORY ANALYSIS

The Panel has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment 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

The Panel 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

Comments on the proposal may be submitted to Kayla Cates-Brown, Program Manager II, Advisory Committee Coordination Office, Chief Policy and Rules, Health and Human Services Commission, 701 West 51st Street, Suite. 216A, Austin, Texas, 78751; Mail Code 0223, P.O. Box 13247, Austin, Texas, 78711; fax (512) 206-3984; office (512) 438-2889, or by email to HHSC\_TMDP@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or 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" in the subject line.

#### STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

§601.2. *Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

- (a) (No change.)
- (b) Cardiovascular system.
  - (1) Cardiac.
    - (A) [~~Surgical.~~]
      - ~~ii~~ Coronary artery bypass[, valve replacement].
      - (i) [(H)] Acute myocardial infarction (heart attack).
      - (ii) [(H)] Hemorrhage (severe bleeding).
      - (iii) [(H)] Kidney failure.

(iv) [(IV)] Stroke.

(v) [(V)] Sudden death.

(vi) [(VI)] Infection of chest wall/chest cavity.

~~[(VII) Valve related delayed onset infection.]~~

(B) Heart valve replacement by open surgery, structural heart surgery.

(i) Acute myocardial infarction (heart attack).

(ii) Hemorrhage (severe bleeding).

(iii) Kidney failure.

(iv) Stroke.

(v) Sudden death.

(vi) Infection of chest wall/chest cavity.

(vii) Valve related delayed onset infection.

(viii) Malfunction of new valve.

(ix) Persistence of problem for which surgery was performed, including need for repeat surgery.

(C) [(H)] Heart transplant.

(i) [(H)] Infection.

(ii) [(H)] Rejection.

(iii) [(H)] Death.

(D) [(B) Non-Surgical--] Coronary angiography (Injection of contrast material into arteries of the heart), coronary angioplasty (opening narrowing in heart vessel), and coronary stent insertion (placement of permanent tube into heart blood vessel to open it)[; pacemaker insertion; AICD insertion; and cardioversion].

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening [Acute myocardial infarction (heart attack)].

(iii) Hemorrhage (severe bleeding) [Rupture of myocardium (hole in wall of heart)].

(iv) Myocardial infarction (heart attack) [Life threatening arrhythmias (irregular heart rhythm)].

(v) Worsening of the condition for which the procedure is being done [Need for emergency open heart surgery].

(vi) Sudden death.

(vii) Stroke [Device related delayed onset infection (infection related to the device that happens sometime after surgery)].

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(E) Percutaneous (through the skin) or minimally invasive heart valve insertion/replacement.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Malfunction of new valve.

(xi) Need for permanent pacemaker implantation.

(F) Left atrial appendage closure (closing of small pouch on left side of heart) - percutaneous (through the skin) or minimally invasive.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Device embolization (device moves from intended location).

(xi) Pericardial effusion (development of fluid in the sack around the heart) and cardiac tamponade (fluid around heart causing too much pressure for heart to pump properly).

(G) Patent foramen ovale/atrial septal defect/ventricular septal defect closure by percutaneous (through the skin) or minimally invasive procedure (closing of abnormal hole between the chambers of the heart).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Atrial fibrillation (irregular heart rhythm).

(xi) Pulmonary embolus (development of blood clot that travels to blood vessels in lungs).

(xii) Device embolization (device moves from where it is placed).

(xiii) Cardiac perforation (creation of hole in wall of heart).

~~[(C) Diagnostic.]~~

~~[(i) Cardiac catheterization.]~~

~~[(t) All associated risks as listed under paragraph (2)(B) of this subsection.]~~

~~[(H) Acute myocardial infarction (heart attack).]~~

~~[(III) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure).]~~

~~[(IV) Heart arrhythmias (irregular heart rhythm), possibly life threatening.]~~

~~[(V) Need for emergency open heart surgery.]~~

(H) [(ii) Electrophysiology [Electrophysiologie] studies (exams of heart rhythm), arrhythmia ablation (procedure to control or stop abnormal heart rhythms).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Pulmonary vein stenosis (narrowing of blood vessel going from lung to heart).

~~[(t) Cardiac perforation.]~~

~~[(H) Life threatening arrhythmias.]~~

~~[(III) Injury to vessels that may require immediate surgical intervention.]~~

(I) Pacemaker insertion, AICD insertion (implanted device to shock the heart out of an abnormal rhythm).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Device related delayed onset infection (infection related to the device that happens at some time after surgery).

(J) Electrical cardioversion (shocking the heart out of an abnormal rhythm).

(i) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(ii) Skin burns on chest.

~~[(K) [(iii)] Stress testing. [--]]~~

(i) Acute myocardial infarction (heart attack).

(ii) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(L) [(iv)] Transesophageal echocardiography[--] (ultrasound exam of the heart from inside the throat).

(i) Sore throat.

(ii) Vocal cord damage.

(iii) Esophageal perforation (hole or tear in tube from mouth to stomach).

(M) Circulatory assist devices (devices to help heart pump blood).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Hemorrhage (severe bleeding) possibly leading to sudden death.

(xi) Hemolysis (blood cells get broken apart).

(xii) Right heart failure (poor functioning of the side of heart not assisted by device).

(xiii) Acquired von Willebrand syndrome (platelets do not work).

(xiv) Arrhythmia (irregular or abnormal heart rhythm).

(xv) Cardiac or vascular injury or perforation (hole in heart or blood vessel).

(xvi) Limb ischemia (lack of blood flow or oxygen to limb that device placed through).

(xvi) Device migration or malfunction.

(xvii) Exposure of device/wound break down with need for surgery to cover/reimplant.

(N) Extracorporeal Membrane Oxygenation (ECMO).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Thrombocytopenia (low platelets) or other coagulopathy (blood thinning).

(xi) Vascular or cardiac perforation (hole in blood vessel or heart).

(xii) Seizure.

(xiii) Device migration or malfunction.

(xiv) Ischemia to limb (lack of blood flow or oxygen to limb that device placed through).

(xv) Thromboembolism (blood clots in blood vessels or heart and possibly traveling to blood vessels in lungs).

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, [and] iliac, or other artery aneurysms or occlusions, arterial or venous bypass or other vascular surgery [and renal artery bypass].

(i) Hemorrhage (severe bleeding).

(ii) Paraplegia (unable to move limbs) (for surgery involving the aorta or other blood vessels to the spine).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part)[Kidney damage].

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke (for surgery involving blood vessels supplying the neck or head).

(vi) Kidney damage.

(vii) [(+)] Myocardial [Acute myocardial] infarction (heart attack).

(viii) [(+)] Infection of graft (material used to repair blood vessel).

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(C) Angioplasty (intravascular dilatation technique).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention[All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) [(ii)] Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Change in procedure to open surgical procedure].

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part)[Failure to place stent/endoluminal graft (stent with fabric covering it)].

(iv) Worsening of the condition for which the procedure is being done[Stent migration (stent moves from location in which it was placed)].

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head)[Vessel occlusion (blocking)].

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain)[Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures)].

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(xi) Change in procedure to open surgical procedure.

(xii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(xiii) Stent migration (stent moves from location in which it was placed).

(xiv) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (through the skin) (mechanical or chemical).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention[All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding)[Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots)].

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part)[For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue)].

(iv) Worsening of the condition for which the procedure is being done[For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening)].

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head)[Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices)].

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain)[Need for emergency surgery].

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(x) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere

(xi) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(xii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(xiii) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(xiv) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations/sclerosis: [embolizations.]

(I) Injury to or occlusion (blocking) of blood vessel other than the one intended which may require immediate surgery or other intervention. [Angiography risks (inclusive of aortography, arteriography, venography) --injection of contrast material into blood vessels.]

{(-a-) Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.}

(II) [(-b-)] Hemorrhage (severe bleeding).

(III) [(-e-)] Damage to parts of the body supplied or drained by the vessel [by the artery] with resulting loss of use or amputation (removal of body part).

(IV) [~~(H)~~] Worsening of the condition for which the procedure is being done.

(V) [~~(E)~~] Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(VI) [~~(F)~~] Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(VII) [(H)] Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(VIII) [(HH)] Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IX) [(HV)] Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves (for procedures involving blood vessels supplying the spine).

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph: [-]

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph: [-]

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph: [-]

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure (when more than small volumes are utilized).

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding)[Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities)].

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part)[Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain)].

(iv) Worsening of the condition for which the procedure is being done.

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(viii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Injury to the inferior vena cava (main vein in the abdomen)].

(iii) Worsening of the condition for which the procedure is being done [Filter migration or fracture (filter could break and/or move from where it was placed)].

(iv) Contrast nephropathy (kidney damage due to the contrast agent used during procedure)[Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs)].

(v) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere including caval thrombosis (clotting of main vein in abdomen and episodes of swelling of legs).

(vi) Injury to the inferior vena cava (main vein in abdomen).

(vii) Filter migration or fracture (filter could break and/or move from where it was placed).

(viii) [(+)] Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in lungs despite filter).

(ix) [(+)] Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating)].

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part) [Cardiac injury/perforation (heart injury)].

(iv) Worsening of the condition for which the procedure is being done [Death].

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(viii) Cardiac injury/perforation (heart injury).

(ix) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection through the skin versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous (through the skin), via laser, radiofrequency ablation (RFA), chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) - (n) (No change.)

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision (removal) of lesion of larynx, vocal cords, trachea.

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty (surgery to change the shape of the nose) or nasal reconstruction with or without nasal septoplasty (surgical procedure to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty (surgery to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in the bone and/or cartilage dividing the space between the right and left halves of the nose) [wall between the right and left halves of the nose] with dryness and crusting.

(C) External deformity of the nose.

(4) Sinus surgery/endoscopic sinus surgery.

(A) Spinal fluid leak.

(B) Visual loss or other eye injury.

(C) Numbness in front teeth and palate (top of mouth).

(D) Loss or reduction in sense of taste or smell.

(E) Recurrence of disease.

(F) Empty Nose Syndrome (sensation of nasal congestion, sensation of not being able to take in adequate air through nose).

(G) Injury to tear duct causing drainage of tears down the cheek.

(H) Brain injury and/or infection.

(I) Injury to nasal septum (the bone and cartilage dividing the space between the two nostrils).

(J) Nasal obstruction.



(5) [(4)] Lung biopsy (removal of small piece of tissue from inside of lung).

(A) Air leak with pneumothorax (leak of air from lung to inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Pneumothorax (collapsed lung)].

(B) Hemothorax (blood in the chest around the lung) possibly requiring additional procedures.

(6) [(5)] Segmental resection of lung (removal of a portion of a lung).

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Insertion of tube into space between lung and chest wall or repeat surgery].

(D) Need for additional surgery.

(7) [(6)] Thoracotomy (surgery to reach the inside of the chest).

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Pneumothorax (collapsed lung)].

(D) Need for additional surgery.

[(7) Thoracotomy with drainage.]

[(A) Hemothorax (blood in the chest around the lung).]

[(B) Abscess (infected fluid collection) in chest.]

[(C) Pneumothorax (collapsed lung).]

[(D) Need for additional surgery.]

(8) VATS - video-assisted thoracoscopic surgery (camera-assisted surgery to reach the inside of the chest through small incisions)

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(E) Need to convert to open surgery.

(9) [(8)] Percutaneous (puncture through the skin instead of incision) or Open (surgical incision) tracheostomy [Open Tracheostomy].

(A) Loss of voice.

(B) Breathing difficulties.

(C) Pneumothorax (collapsed lung) with possible need for insertion of chest drainage tube into space between lung and chest wall or additional surgery.

(D) Hemothorax (blood in the chest around the lung).

(E) Scarring in trachea (windpipe).

(F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

[(9) Respiratory tract/tracheobronchial balloon dilatation/stenting].

[(A) Stent migration (stent moves from position in which it was placed).]

[(B) Pneumomediastinum (air enters the space around the airways including the space around] the heart).

[(C) Mucosal injury (injury to lining of airways).]

(10) Bronchoscopy (insertion of a camera into the airways of the neck and chest).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(11) Endobronchial valve placement (device inserted into airways in the lung that controls air movement into and out of abnormal portions of a lung).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(E) Migration (movement) of the stent from its original position.

(F) Airway blockage, potentially life threatening.

(G) Stent blockage.

(H) Worsening of chronic obstructive pulmonary disease (worsening of emphysema).

(I) Respiratory failure (need for breathing tube placement with ventilator support).

(12) Endobronchial balloon dilatation with or without stent placement (placement of tube to keep airway open).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(E) Migration (movement) of the stent from its original position.

(F) Airway blockage, potentially life threatening.

(G) Stent blockage.

(H) Stent fracture (broken stent).

(I) Recurrent infections.

(J) Stent erosion into adjacent structures (stent wears a hole through the airway and injures nearby tissues).

(13) Mediastinoscopy (insertion of a camera into the space behind the breastbone and between the lungs) with or without biopsy (removal of tissue).

(A) Hemorrhage (severe bleeding) requiring open surgery.

(B) Nerve injury causing vocal cord paralysis or poor function.

(C) Pneumothorax (collapsed lung).

(D) Tracheal injury (damage to the airway/windpipe).

(14) Pleurodesis (procedure to prevent fluid build-up in space between the lung and chest wall).

(A) Respiratory failure (need for breathing tube placement).

(B) Empyema (infection/pus in the space around the lung).

(p) - (v) (No change.)

*§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.*

(a) - (n) (No change.)

(o) Respiratory system.

(1) Aspiration of bronchus.

(2) Reduction of nasal fracture.

~~[(3) Percutaneous tracheostomy.]~~

(p) - (u) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2021.

TRD-202101508

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 497-1339



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

### SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

#### DIVISION 7. EXPERIENCE CALL

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.5701, concerning statistical data and annual experience calls, and to repeal 28 TAC §3.2702, concerning instructions for preparing forms.

EXPLANATION. The current credit call rules found in 28 TAC §3.5701 and §3.5702 require insurers writing credit life insurance and accident and health insurance in Texas to send statistical and experience data to the TDI Life & Health Actuarial Office (LHAO) on an annual basis. However, there is no further administrative or statutory requirement that LHAO use the data.

The amendments to §3.5701 and the repeal of §3.5702 would change the requirement to provide that credit call data instead be kept by each company and simply be made available upon TDI's request. So rather than imposing an annual data reporting requirement, TDI will only request the data if the Commissioner needs it to determine whether rates are reasonable in relation to benefits afforded by a given policy contract together with appropriate expenses.

The amendments and repeal would (1) streamline TDI resources and data management and (2) remove a reporting burden on companies, while still providing a process to preserve relevant data.

The following paragraphs describe the proposed amendments and repeal.

Section 3.5701. The amendments to §3.5701 add language to specify that insurers writing credit life insurance and accident and health insurance in Texas must keep statistical data for no less than five years and provide it to TDI upon request in a format specified by the Commissioner when requested, remove references to TDI's mailing address and required forms, and remove the word "annual" when describing calls for credit call reports. The amendments add a new subsection (c), regarding calculations and work papers, stating that calculations and work papers will now be retained and made available upon the Commissioner's request in the same manner as other credit life and accident and health insurance experience data. Proposed new subsection (c) is similar to current §3.5702(b), which is proposed for repeal. The amendments also capitalize "Commissioner" and change "if" to "whether" to adhere to current agency style.

Section 3.5702. The repeal of §3.5702 removes a section made obsolete by the amendments in §3.5701. The forms, filing instructions, and calculations described in §3.5702(a) and (b) are unnecessary, because any data will now be retained and made available upon the Commissioner's request in the same manner as other credit life and accident and health insurance experience data. Figure: 28 TAC §3.5702(a) is unnecessary, because it lists the reporting forms, which will no longer be used. Finally, subsection (c) is unnecessary, because it details requirements to submit experience data that will be addressed under proposed amendments to §3.5701.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Barbara Snyder, chief actuary of the Life & Health Division, has determined that during each year of the first five years

the proposed amendments and repeal are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Snyder made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Snyder does not anticipate measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments and repeal are in effect, Ms. Snyder expects that administering the proposed amendments and repeal will have the public benefit of conserving agency resources and alleviating the regulatory burden on companies of aggregating and submitting data to TDI.

Ms. Snyder expects that the proposed amendments and repeal will impose a cost on stakeholders to implement the retention responsibility for this data. The cost could involve some small data storage expenses associated with the proposed record retention requirement. However, those costs are expected to be minimal and, overall, they will be offset by companies' savings from no longer being required to annually aggregate and send TDI credit call data.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments and repeal will not have an adverse economic effect on small or micro businesses, or on rural communities, because the amendments result in a net savings for stakeholders. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not result in costs for regulated persons. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments and repeal are in effect, the proposal:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government

action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 24, 2021. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on May 24, 2021. If TDI holds a public hearing, TDI will consider comments presented at the hearing.

## **28 TAC §3.5701**

**STATUTORY AUTHORITY.** TDI proposes §3.5701 under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 1153 regarding credit life insurance and credit accident and health insurance.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.5701 implements Insurance Code Chapter 1153, which authorizes the Commissioner to adopt premium presumptive rates for various classes of business and terms of coverage.

*§3.5701. Statistical Data [and Annual Experience Calls].*

(a) Insurers writing credit life insurance and accident and health insurance in Texas must [shall] keep statistical data for a period of no less than five years [in such form and manner as necessary] to enable the Commissioner [commissioner] to determine whether [if] rates are reasonable in relation to the benefits afforded by the various policy contracts together with appropriate expenses. Each such insurer must retain the statistical data relevant to their credit insurance business and provide it to the Commissioner upon request in a format specified by the Commissioner. [shall submit experience reports as shall be required by specific annual call of the commissioner upon reporting forms supplied by such call. Each insurer shall complete each of the forms in accordance with the instructions that the department provides with the forms. Additional copies of the forms can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104. The forms can also be obtained from the department's internet web site at <http://www.tdi.state.tx.us>]

(b) The retention of data [experience reports] required by subsection (a) of this section does [shall] not replace other annual reports of credit insurance experience. That data is [and are] separate and distinct from the NAIC annual statement and from the deviation request permitted by §3.5601 of this title (relating to Deviation by Case Allowed) and is [are] not used in any manner to determine the financial condition of the company.

(c) Copies of all calculations, work papers, and other data used in documenting the credit insurance experience must also be maintained for no less than five years at the home office of the company and be available for examination by the Commissioner.

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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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



## 28 TAC §3.5702

STATUTORY AUTHORITY. TDI proposes the repeal of §3.5702 under Insurance Code §§1153.005 and §36.001.

Insurance Code §1153.005 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 1153 regarding credit life insurance and credit accident and health insurance.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §3.5702 implements Insurance Code Chapter 1153, which authorizes the Commissioner to adopt rules regarding credit life insurance and credit health insurance and to adopt premium presumptive rates for various classes of business and terms of coverage

§3.5702. *Instructions for Preparing Forms.*

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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James Person

General Counsel

Texas Department of Insurance

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## SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

### 28 TAC §3.3307

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.3307, concerning loss ratio standards and refund or credit of premiums.

EXPLANATION. The current Medicare Supplement Data Call rule in 28 TAC §3.3307(f) requires Medicare supplement individual or group policy issuers to annually submit to TDI their refund

or credit calculations on Medicare supplement insurance policies, to document the calculations they must make each year in determining any need to refund premiums to policyholders. TDI's Actuarial Data Team currently collects this calculation data; however, there is no further requirement on the team to subsequently use it. This results in a depletion of TDI manpower and resources to create a large repository of frequently unused data.

Amendments to §3.3307 would change the requirement to provide the data to TDI, to simply provide that issuers keep the data and make it available to TDI upon request. This change will ease this potentially costly burden on issuers, as they would no longer be required to annually file their calculations with TDI, while maintaining TDI's access to that data when needed. Insurers would keep the calculations on file and make them available should the Commissioner need that information to review trends in loss ratio standards and refund or credit of premiums in the interest of consumer protection and market fairness.

The amendments to §3.3307(f) remove the reporting requirement to submit an issuer's refund or credit calculation to TDI by May 31 each year. The amendments replace this with a requirement that issuers retain documentation supporting their refund or credit calculations for five years and that they provide the information to TDI upon request and in the manner prescribed by the Commissioner. An amendment is also proposed for Figure: 28 TAC §3.3307(f), to remove the final page of the Medicare Supplement Refund Calculation Form. This page is used only for reporting data under the section, and it is no longer necessary because issuers will no longer be required to report that data to TDI.

In addition to the previously described amendments, for consistency with current agency style, TDI proposes to change the word "percent" to the percent symbol in §3.3307(a)(1) and (2); (c)(1) and (2); and (d)(1)(F), (3), and (4)(B) and (C).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Barbara Snyder, chief actuary of the Life and Health Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Snyder made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Snyder does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Snyder expects that administering the proposed amendments will have the public benefit of conserving agency resources and alleviating the regulatory burden on companies of aggregating and submitting data to TDI.

Ms. Snyder expects that the proposed amendments will impose a cost on stakeholders to implement the retention responsibility for this data. The cost could involve some small data storage expenses associated with the proposed record retention requirement. However, those costs are expected to be minimal and, overall, they will be offset by companies' savings from no longer being required to annually aggregate and send TDI data.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities, because the amendments result in a net savings for stakeholders. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal results in a net savings for regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 24, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on May 24, 2021. If TDI holds a public hearing, TDI will consider comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §3.3307 under Insurance Code §1652.103 and §36.001.

Insurance Code §1652.103 provides that the Commissioner may adopt rules that provide for a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicaid Supplement Benefit Plan.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.3307 implements Insurance Code Chapter 1652, which requires the Commissioner to establish minimum loss ratio standards for Medicare supplement benefit plans.

§3.3307. *Loss Ratio Standards and Refund or Credit of Premiums.*

(a) Minimum aggregate loss ratio standard. A Medicare supplement individual or group policy form may not be delivered or issued for delivery unless the individual or group policy form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregated benefits (not including anticipated refunds or credits) provided under the individual policy form or group policy form, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by an HMO on a service, rather than reimbursement, basis and earned premiums for the applicable period, not including any changes in additional reserves and in accordance with generally accepted actuarial principles and practices:

(1) at least 75% [percent] of the aggregate amount of premiums earned in the case of group policies; or

(2) at least 65% [percent] of the aggregate amount of premiums earned in the case of individual policies.

(b) HMO loss ratio standard. An HMO loss ratio, where coverage is provided on a service rather than reimbursement basis, must be calculated on the basis of incurred claims experience or incurred health care expenses and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by an HMO may not include:

- (1) home office and overhead costs;
- (2) advertising costs;
- (3) commissions and other acquisition costs;
- (4) taxes;
- (5) capital costs;
- (6) administrative costs; and
- (7) claims processing costs.

(c) Calendar-year experience loss ratio standard. For the most recent calendar year, the ratio of incurred losses to earned premiums for all policies or certificates that have been in force for three years or more, as of December 31st of the most recent year, must be equal to or greater than:

- (1) at least 75% [percent] in the case of group policies; and
- (2) at least 65% [percent] in the case of individual policies.

(d) Filing of rates and rating schedules. All filings of rates and rating schedules must demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions must also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards. For individual or group policies issued before March 1, 1992, the provisions of paragraph (3) of this subsection must be met with respect to expected claims in relation to premiums. For purposes of submitting a rate filing under this section, policy forms, whether for open or closed blocks of business, providing for similar benefits must be combined. But for purposes of the required combination set out in this section, issuers may

distinguish between policy forms providing for similar benefits for individuals 65 years of age or over and policy forms providing for similar benefits for individuals under age 65. Once policy forms have been combined, they remain so for all rating purposes. When forms have been combined, a rate revision request must not differentiate between the experience of the individual forms. Where significant inconsistencies between rate levels exist among forms providing similar benefits, some deviation in rate revision must be allowed to reduce the significant inconsistencies.

(1) Each Medicare supplement policy or certificate form must be accompanied, on submission for approval, by an actuarial memorandum. The memorandum must be prepared and signed by a qualified actuary in accordance with generally accepted actuarial principles and practices, and must contain the information listed in the following subparagraphs:

- (A) the form number that the actuarial memorandum addresses;
- (B) a brief description of benefits provided;
- (C) a schedule of rates to be used;
- (D) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;
- (E) a statement of what experience base will be used in future rate adjustments;
- (F) a certification that the anticipated aggregate loss ratio is at least 65% [percent] (for individual coverage) or at least 75% [percent] (for group coverage), which should include a statement of the period over which the aggregate loss ratio is expected to be realized;
- (G) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period during which the aggregate loss ratio is to be realized; and
- (H) a certification that the premiums are reasonable in relation to the benefits provided.

(2) Subsequent rate adjustment filings, except for those rates filed solely due to a change in the Part A calendar year deductible, must also provide an actuarial memorandum, prepared by a qualified actuary in accordance with generally accepted actuarial principles and practices, which must contain the following information:

- (A) the form number addressed by the actuarial memorandum;
- (B) a brief description of benefits provided;
- (C) a schedule of rates before and after the rate change;
- (D) a statement of the reason and basis for the rate change;
- (E) a demonstration and certification by the qualified actuary to show that the past plus future expected experience after the rate change, will result in an aggregate loss ratio equal to, or greater than, the required minimum aggregate loss ratio;

(i) this rate change and demonstration must be based on the experience of the named form in Texas only, if that experience is fully credible, as set out in paragraph (3) of this subsection;

(ii) this rate change and demonstration must be based on experience of the named form nationwide, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used nationwide and the Texas experience is not fully credible;

(iii) this rate change and demonstration must be based on experience of the named form in Texas only, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used in Texas only and the Texas experience is not fully credible;

(F) for policies or certificates in force less than three years, a demonstration to show that the third-year loss ratio is expected to be equal to or greater than the applicable percentage; and

(G) a certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided.

(3) For purposes of this subsection, if a group or individual policy form has 2,000 or more policies in force, then full credibility (100% [percent]) must be given to the experience. If fewer than 500 policies are in force, then no credibility (0% [percent]) must be given to the experience. The principle of linear interpolation must be used for in force numbers between 500 and 2,000. For group policy forms, the reference in this paragraph to the number of in force policies means the number of in force certificates under group policies. For purposes of this section, "in force" means either the average number of policies in force for the experience period used to support the need for a rate revision, or the number of policies in force as of the ending date of the experience period used to support the need for a rate revision. Once an issuer makes a decision as to which definition it will apply to a particular policy form, the decision is irrevocable. An issuer may submit specific alternate credibility standards to the department for consideration. In order for an alternate standard of credibility to be acceptable for application, the issuer must demonstrate that the standards are based on sound actuarial principles, and that the resulting loss ratios are in substantial compliance with the requirements of subsections (a), (b), and (c) of this section.

(4) For individual policies issued before March 1, 1992, the expected claims in relation to premiums must meet:

- (A) the originally filed anticipated loss ratio when combined with the actual experience since inception;
- (B) a loss ratio of at least 65% [percent] when combined with actual experience beginning with June 1, 1996, to date; and
- (C) a loss ratio of at least 65% [percent] over the entire future period for which the rates are computed to provide coverage.

(e) Annual filing of premium rates required. Every issuer of Medicare supplement policies and certificates issued before or after March 1, 1992, in this state must file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums, for the most recent calendar year broken down by calendar year of issue or by policy duration, for purposes of demonstrating that the issuer is in compliance with the loss ratio standards and for approval by the department in accordance with the filing requirements of this section and the requirements of §3.3323 of this title (relating to Increases to Premium Rates). The supporting documentation must also demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration must exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage must be demonstrated for policies or certificates in force less than three years. The annual filing requirements in this subsection must be as follows:

(1) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each individual form with business in force in Texas;

(2) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each group form with business in force in Texas;

(3) rates and rating schedules for each form with business in force in Texas;

(4) a certification by the qualified actuary that the policies or certificates in force less than three years are anticipated to produce a third-year loss ratio that is greater than or equal to the applicable loss ratio percentage; and

(5) a certification by the qualified actuary that the expected losses in relation to premiums over the entire period for which the policy is rated comply with the required minimum aggregate loss ratio standard.

(f) Refund or credit calculation. An issuer must perform the refund or credit calculation consistent with the instructions [use the online reporting form found on the department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov) and electronically submit the data required by this section, which is] contained in Figure: 28 TAC §3.3307(f) of this section. Issuers must retain documentation supporting the calculations required by this subsection for a period of five years and provide the calculations and supporting documentation to the Commissioner on request and in the manner prescribed by the Commissioner. [submit the report to the department no later than May 31 of each year.] Figure: 28 TAC §3.3307(f)  
[Figure: 28 TAC §3.3307(f)]

(1) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation must be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year must be excluded.

(2) A refund or credit will be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund must include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event may it be less than the average rate of interest for 13-week treasury notes. A refund or credit against premiums due must be made by September 30 following the experience year on which the refund or credit is based.

(3) For an individual or group policy or certificate issued before March 1, 1992, the issuer, for purposes of complying with this subsection, must make the refund or credit calculation separately for all individual policies combined and all group policies combined for experience after June 1, 1996.

(g) Premium adjustments to conform with minimum standards for loss ratios. As soon as practicable, but before the effective date of enhancements to Medicare benefits, every issuer of Medicare supplement insurance policies, contracts, or coverage in this state must file with the Commissioner, in accordance with the applicable filing procedures of this state, the items required in paragraphs (1) and (2) of this subsection.

(1) Issuers must file the appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or contracts. Documents necessary to justify the adjustment must accompany the filing.

(A) Every issuer of Medicare supplement insurance or benefits to a resident of this state under Insurance Code Chapter 1652 must make premium adjustments:

(i) necessary to produce an expected loss ratio under the policy or contract that will conform with the minimum loss ratio standards for Medicare supplement policies; and

(ii) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premium by the issuer for the Medicare supplement insurance policies or contracts.

(B) No premium adjustment that would modify the loss ratio experience under the policy, other than the adjustments described in this subsection, should be made with respect to a policy at any time other than on its renewal date or anniversary date.

(C) If an issuer fails to make premium adjustments that are acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare must be filed. The riders, endorsements, or policy forms must provide a clear description of the Medicare supplement benefits provided by the policy or contract.

(h) Maintenance of data. Incurred claims and earned premium experience must be maintained for each policy form with business in force in Texas, by calendar year of issue, and must be made available to the department.

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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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 57. FISHERIES**

**SUBCHAPTER D. COMMERCIALY PROTECTED FINFISH**

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §57.371 and the repeal of 31 TAC §§57.372 - 57.374, concerning Commercially Protected Finfish. The proposed amendment and repeals would eliminate regulatory language that is explicitly and implicitly duplicative of the statutory provisions of Parks and Wildlife Code, Chapter 47, and replaces that language with succinct references to specific statutory pro-

visions. The proposed amendment also would add a reference to the statutory provisions regarding punishments for a violation of the rules.

Jarret Barker, Assistant Commander, Law Enforcement Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Barker also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer regulations and the elimination of duplication.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the rules do not impose any requirement that is not already imposed by statute, there will be no adverse economic effect on small businesses or microbusinesses as a result of the rules. The proposed rules do not affect rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create or expand a regulation, but will eliminate duplicative regulations; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Jarret Barker, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650; email: jarret.barker@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

31 TAC §57.371

The amendment and repeals are proposed under Parks and Wildlife Code, §66.020, which authorizes the commission to require by proclamation that fish imported under a finfish import license be tagged, packaged, and labeled and accompanied by an invoice as prescribed by rule of the commission.

The proposed amendment and repeals affect Parks and Wildlife Code, Chapter 66.

§57.371. *Applicability: Commercially Protected Finfish.*

(a) A commercially protected finfish is any fish listed in Parks and Wildlife Code, §66.020(a). [The finfish in this subsection may be imported only by the holder of a finfish import license. To be lawfully imported, sold or purchased in Texas bass of the genus *Micropterus*, crappie, flathead catfish, red drum, striped bass, white bass or a hybrid of any of these fish must be farm raised and fed a prepared feed containing 20% or more of plant protein or grain by-products as a primary food source.]

(b) The provisions of Parks and Wildlife Code, §§47.0181-47.0183, apply to the possession and transportation of commercial finfish under a valid finfish import license issued by the department. [Except as provided in Parks and Wildlife Code, §66.020, it is unlawful for any person to buy, offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange the species listed in this subsection:]

- {(1) Bass of the genus *Micropterus*;}
- {(2) Bass, striped;}
- {(3) Bass, white;}
- {(4) Bass, yellow;}
- {(5) Catfish, flathead;}
- {(6) Crappie, black;}
- {(7) Crappie, white;}
- {(8) Drum, red;}
- {(9) Grouper, goliath (formerly called jewfish);}
- {(10) Marlin, blue;}
- {(11) Marlin, white;}
- {(12) Muskellunge;}
- {(13) Pike, northern;}
- {(14) Sailfish;}
- {(15) Sauger;}
- {(16) Seatrout, spotted;}
- {(17) Snook;}
- {(18) Spearfish, longbill;}
- {(19) Tarpon;}
- {(20) Walleye; and}
- {(21) Hybrids of any of these fish.}

(c) A person who violates a provision of this subchapter is subject to the penalties prescribed by Parks and Wildlife Code, §66.012.

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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James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
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For further information, please call: (512) 389-4775



### 31 TAC §§57.372 - 57.374

The repeals are proposed under Parks and Wildlife Code, §66.020, which authorizes the commission to require by proclamation that fish imported under a finfish import license to be tagged, packaged, and labeled and to be accompanied by an invoice as prescribed by rule of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapter 66.

§57.372. *Packaging Requirements.*

§57.373. *Package Labels.*

§57.374. *Delegation of Authority.*

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

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Texas Parks and Wildlife Department  
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## CHAPTER 65. WILDLIFE

### SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

#### 31 TAC §65.154

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §65.154, concerning Issuance of Permit, Amendment and Renewal. The proposed amendment would add violations of state and federal laws governing wildlife management from aircraft to the list of predicate offenses for which the department could refuse to issue or renew a permit for the management of wildlife and exotic species (referred to hereafter as the Aerial Management Permit or AMP).

Under federal law (16 U.S.C. §742j-1, commonly referred as the Airborne Hunting Act, or AHA) it is unlawful to shoot or attempt to shoot or intentionally harass any bird, fish, or other animal from aircraft except for certain specified reasons, including protection of wildlife, livestock, and human health, except as may be provided by state law pursuant to federal authority. Parks and Wildlife Code, Chapter 43, Subchapter G, is the statutory authority for regulating airborne wildlife management in Texas; under §43.109, the Parks and Wildlife Commission is authorized to promulgate regulations governing the management of wildlife by the use of aircraft.

In 2016, the commission promulgated regulations to set forth the circumstances under which the department could choose to refuse AMP issuance or renewal on the basis of criminal history (41 TexReg 4037). That rulemaking provided for department refusal to issue or renew an AMP for any applicant who has a final conviction or has been assessed an administrative penalty for a list of enumerated violations, including violations of Chapter 43, Subchapter C, E, L, R, or R-1 (various deer management and other permits authorizing the possession of live wildlife); violations of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1 that are punishable as a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002 (unlawful possession of live game animals or game birds); or the Lacey Act (16 U.S.C. §§3371-3378), a federal law governing international trade involving endangered species. The department reasoned that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources, and especially for personal benefit, to persons who exhibit a demonstrable disregard for laws and regulations governing wildlife. Similarly, it is appropriate to deny such privileges to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

In promulgating the rules, the department inadvertently overlooked the inclusion of violations of state and federal airborne hunting laws in the list of predicate offenses for which the department could refuse to issue or renew an AMP. The department believes it is intuitively obvious that rules regarding the refusal of issuance or renewal of AMPs should include provisions regarding violations of either or both the state and federal law governing the management of wildlife from aircraft. The proposed amendment would remedy that oversight.

The department notes that in all cases the denial of AMP issuance or renewal as a result of an adjudicative status listed in the rule is not automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to issue or renew an AMP based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

Stormy King, Assistant Commander, Law Enforcement Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. King also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule

will be more effective oversight of persons authorized to manage a public resource and the benefits to public resources occurring as a result of sound management activities.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule regulates a permit that privileges individual persons to manage wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. The department additionally notes that the rule does not impose a requirement, but rather makes a potential action available to the department predicated on the adjudicated criminal behavior of persons seeking issuance or renewal of a permit. There will be no adverse economic effect on small businesses or micro-businesses as a result of the rules. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Stormy King, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4627; email: stormy.king@tpwd.texas.gov or via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The amendment is proposed under Parks and Wildlife Code, §43.109, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft under this subchapter, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; es-

tablishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.154. *Issuance of Permit; Amendment and Renewal.*

(a) - (c) (No change.)

(d) The department may refuse to issue to or renew an AWMP for any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;

(2) (No change.)

(3) Parks and Wildlife Code, §63.002; [øf]

(4) the Lacey Act (16 U.S.C. §§3371-3378); or

(5) 16 U.S.C. §742j-1 (commonly referred as the Airborne Hunting Act, or AHA).

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State on April 8, 2021.

TRD-202101490

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 389-4775



## SUBCHAPTER H. PUBLIC HUNTING [LANDS] PROCLAMATION

### 31 TAC §65.191, §65.202

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.191 and §65.202, concerning the Public Lands Proclamation. The proposed amendments would alter the title of the subchapter, changing it to "Public Hunting Proclamation" to more accurately reflect the subject material addressed by the subchapter. The proposed amendment to §65.191, concerning Definitions, would alter the definition of "loaded firearm" to include modern firearms that are loaded through the muzzle but utilize a propellant cartridge rather than the traditional methods employing priming charges or loose powder, and to include an additional type of traditional muzzleloader.

The proposed amendment to §65.202, concerning the Public Lands Proclamation, would eliminate a provision regarding the minimum age for participation in youth-only waterfowl hunting during the federal youth waterfowl season. Current rules define a youth as any person less than 17 years of age; however, federal youth-only waterfowl season rules have until recently limited participation in the federal youth-only season to persons 15 years of age and younger. Recent federal action allows individual states to establish any minimum age for participation, pro-

vided it is less than 18. Removing the current provision will allow the department to have a uniform standard for participation in public hunting opportunities for youth. Finally, the proposed amendments would alter the title of the subchapter, changing it to "Public Hunting Proclamation" to more accurately reflect the subject material addressed by the subchapter.

Justin Dreibelbis, Director of the Private Lands and Public Hunting Program, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed amendments.

Mr. Dreibelbis also has determined that for each of the first five years that the rules as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clear regulations governing public hunting activities.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on such entities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses, micro-businesses, or rural communities. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; will not effectively expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Justin Dreibelbis, e-mail: [justin.dreibelbis@tpwd.texas.gov](mailto:justin.dreibelbis@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

The amendments are proposed under the authority of Parks and Wildlife Code, §81.006, which prohibits the take, attempted take, or possession of any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Chapter 81, Subchapter E, and under Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands, authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands, and authorizes the commission to adopt rules governing recreational activities in wildlife management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

*§65.191. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

(1) - (24) (No change.)

(25) Loaded firearm--A firearm containing:

(A) a live round of ammunition within the chamber and/or the magazine; or

(B) a round in the muzzle and a propellant charge or propellant cartridge in the breech; or

(C) [~~;~~ ~~or~~] if the firearm is a muzzleloader, [~~muzzleloading, one which has~~] a cap on the nipple, [~~or~~] a priming charge in the pan, or a primer charge in the primer well.

(26) - (49) (No change.)

*§65.202. Youth Hunting on Public Hunting Lands.*

(a) - (b) (No change.)

~~[(e) Youth participating in a youth waterfowl hunt during the federal youth waterfowl hunting season must be 15 years of age or younger.]~~

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 April 8, 2021.

TRD-202101487

James Murphy  
General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

## SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

### 34 TAC §9.419

The Comptroller of Public Accounts proposes amendments to §9.419, concerning procedures for determining property tax exemptions for motor vehicles leased for personal use. The comptroller proposes amendments to implement statutory requirements and new legislation.

The proposed amendments change the heading of §9.419 from "Procedures for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use" to "Property Tax Exemption for Certain Leased Motor Vehicles".

The proposed amendments §9.419 delete subsection (a) prescribing the effective date of the rule as redundant with the legislation enacting Tax Code, §11.252 and unnecessary as the subsection states the section is effective for motor vehicles leased on or after January 2, 2001, approximately nineteen years ago.

The proposed amendments re-letter subsequent subsections.

The proposed language of re-lettered subsection (a)(1), prescribing the definition of a lease, complies with Tax Code, §11.252(h) and conforms to the definition of a lease in Tax Code, §152.001(6).

The proposed language of re-lettered subsection (a)(2), prescribing the definition of a lessee, conforms with the definition of a lease under re-lettered subsection (a)(1).

The proposed language of re-lettered subsection (a)(3), prescribing the definition of a lessor, conforms with the definition of a lease under re-lettered subsection (a)(1).

The proposed language of re-lettered subsection (a)(4), prescribing the definition of a Lessee's Affidavit, conforms the language to newly amended Tax Code, §11.252.

The proposed language of re-lettered subsection (a)(6), prescribing the definition of reasonable time, provides more concise language.

The proposed language of re-lettered subsection (b)(1) deletes the word "model" from the description of forms in the section.

The proposed language of re-lettered subsection (b)(1)(A) conforms the title of the Lessee's Affidavit to the language of newly amended Tax Code, §11.252.

The proposed language of newly re-lettered subparagraph (b)(1)(B) changes the title of Form 50-288 from "Lessor's Rendition or Property Report for Leased Automobiles" to "Lessor's Rendition or Property Report Leased Automobiles".

The proposed re-lettered subsection (b)(2) adds lessees to the parties required to use the comptroller's forms adopted by reference in the section, and states that the forms are available from the Comptroller of Public Accounts Property Tax Assistance Division. The proposed amended forms may be viewed at [comptroller.texas.gov/taxes/property-tax/rules/index.php](http://comptroller.texas.gov/taxes/property-tax/rules/index.php). The proposal amends subsection (b)(2) to amend subparagraph (A) to replace the word "model" with the word "comptroller" in reference to the forms. The proposal further amends subsection (b)(2) to amend subparagraph (B) to replace the word "comptroller's model" with the word "comptroller" in reference to the forms.

The proposal amends re-lettered subsection (b)(3) to eliminate unnecessary language in order to make the subsection more

concise, and adds language to conform to newly amended language in Tax Code, §11.252

The proposal amends re-lettered subsection (b) by removing paragraph (4) as a redundant provision.

The proposal re-numbers subsequent paragraphs.

The proposed amendments re-letter and re-number paragraph (4) to add the statutory authority for chief appraisers to enter into agreements for the electronic exchange of information under Tax Code, §1.085 and confirm that nothing in the section should be construed to limit that authority.

The proposal adds new paragraph (5) to clarify that nothing in the section is to be construed to limit the electronic execution of documents according to the laws of the State of Texas.

The new subsection (c) is proposed to adopt appropriate procedures and requirements for a lessee's affidavit in connection with the appropriate procedures and exemption application requirements of this section to determine if a motor vehicle subject to a lease qualifies for exemption under Tax Code, §11.252.

The proposed new paragraph (1) complies with the language of Tax Code, §11.252, to require that a lessee must not hold a motor vehicle subject to a lease for the production of income, and that the motor vehicle must be used primarily for activities that do not include the production of income.

The proposal adds new paragraph (2), subparagraphs (A), (B) and (C), and clauses (i) and (ii) to comply with newly amended language in Tax Code, §11.252 concerning the presumption of use primarily for motor vehicles that are not involved in the production of income

The proposal deletes subsection (d).

The proposal adds new subsection (d) to prescribe the use of the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to be used by the lessor to report each leased vehicle owned and whether the lessee has designated the vehicle as not held for the production and not used for the production of income in accordance with Tax Code, §11.252(i).

The proposal adds new paragraphs (1)(A), (B), (C) and (D) to require on the lessor report: the year, make, model and vehicle identification number of each leased vehicle; the name of the lessee and address at which the leased vehicle is kept; whether the lessee has designated the vehicle as not held for the production and not used for the production of income; and whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle.

The proposal adds new paragraph (2) to require that the lessor provide the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to the chief appraiser in the manner provided by subchapter B, Chapter 22, Tax Code in accordance with Tax Code, §11.252(j).

The proposal adds new paragraph (3) to prescribe that the lessor must use the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to render each leased vehicle reported on the Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) for which the lessor does not maintain a lessee's affidavit, an electronic image of a lessee's affidavit, or a certified copy of a lessee's affidavit.

The proposal adds new subsection (e) to require that the lessor to submit the Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser in order to apply for the exemption available under Tax Code, §11.252.

The proposal deletes subsection (f). Tax Code, §11.252 does not provide authority for the lessee's affidavit to be prima facie evidence of qualification for a motor vehicle to be exempt and Tax Code, §11.252 does not authorize a limit or expansion on the chief appraiser's discretion under Tax Code, §11.43 and §11.45 in considering evidence of an exemption.

The proposal deletes subsections (g) and (h). Tax Code, §11.252 does not authorize a limit or expansion on a chief appraiser's authority for review and action on an exemption application. The review and action on the exemption application is authorized for chief appraisers under Tax Code, §11.43 and §11.45.

The proposal re-letters subsequent subsections.

The proposal amends re-lettered subsection (f) to add the language "...electronic images of the affidavits, or certified copies of the affidavits..." to subparagraph (A), (B) & (C) to conform to newly amended language in Tax Code, §11.252 and to combine with existing paragraph (1).

The proposal re-numbers existing subparagraphs A, B, C, and E to new paragraphs numbered 1-4.

The proposal deletes subparagraph (D) as unnecessary and redundant language with subsection (b) of the section.

The proposal amends re-lettered subparagraph (D) to add the language "...electronic images of the affidavits, or certified copies of the affidavits...".

The proposal deletes re-numbered paragraph (2) as the exemption is for the lessor of a qualifying motor vehicle under lease and the chief appraiser has discretionary authority under Tax Code, §11.45 to act on an application for exemption and Tax Code, §11.252 does not provide separate or additional authority for a chief appraiser to request information from the lessees.

The proposal amends re-lettered subsection (g) to change title of Form 50-286 from "Lessor's Application for Personal Use Lease Automobile Exemptions" to "Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286)".

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends current rules.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §11.252 (Motor Vehicles Leased for use Other than Production of Income) which requires the comptroller to adopt procedural rules to establish exemption application requirements, appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under the section, adoption of a form to be completed by lessees for use by lessors in application for the exemption, and the prescription of a property report form to be used by owners of vehicles subject to a lease.

The comptroller further proposes the amendments under Tax Code, §22.24 (Rendition and Report Forms) which authorizes the comptroller to prescribe and approve forms for the rendition and reporting of property.

These amendments implement Tax Code, §11.252 (Motor Vehicles Leased for Use Other than Production of Income).

*§9.419. Property Tax Exemption for Certain Leased Motor Vehicles [Procedures for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use.]*

~~[(a) Effective Date. This section is effective for motor vehicles that are leased on or after January 2, 2001.]~~

(a) ~~[(b)]~~ Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Lease--An agreement, other than a rental as defined by Tax Code, §152.001(5), whereby an owner of a motor vehicle gives exclusive use of the motor vehicle to another for consideration, ~~[whereby an owner of a motor vehicle for consideration gives exclusive use of a motor vehicle to another]~~ for a period that is longer than 180 days.

(2) Lessee--A person who enters into a lease for a specific motor vehicle ~~[primarily for the personal use of the lessee or the lessee's family].~~

(3) Lessor--~~The owner of a motor vehicle that is subject to a lease. [A person who owns a motor vehicle that is leased to another person.]~~

(4) Lessee's Affidavit or Affidavit--A properly notarized sworn statement that a lessee or authorized representative of the lessee ~~if the lessee is an entity described by Tax Code, §11.252(b) executes to attest that the lessee does not hold the leased motor vehicle for the production of income and the leased motor vehicle is used primarily for activities that do not involve the production of income. [does not primarily use the leased motor vehicle for the production of income.]~~

(5) Motor vehicle--A passenger car or truck with a shipping weight of 9,000 pounds or less.

(6) Reasonable date and/or time--A time that is after 10:00 a.m. and before 5:00 p.m., Monday through Friday, excluding holidays, unless the appraisal district and the lessor agree otherwise. ~~[A work weekday, Monday through Friday, and a time that is after 8:00 a.m. and before 5:00 p.m., unless the appraisal district and the lessor agree otherwise.]~~

(b) ~~[(e)]~~ The comptroller will make available ~~[model]~~ forms that are adopted by reference in paragraph (1) of this subsection.

Copies of the forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

(1) The comptroller adopts by reference the following ~~model~~ forms:

(A) Lessee's Affidavit Motor Vehicle Use Other than Production of Income ~~[of Primarily Non Income Producing Vehicle Use]~~ (Form 50-285); and

(B) Lessor's Rendition or Property Report ~~[for]~~ Leased Automobiles (Form 50-288).

(2) A chief appraiser, lessee and ~~or~~ lessor must use the comptroller's ~~model~~ forms ~~[that are]~~ adopted by reference in paragraph (1) of this subsection, available from the Comptroller of Public Accounts Property Tax Assistance Division unless the ~~non-model~~ form:

(A) substantially complies with the corresponding comptroller ~~model~~ form by using the same language in the same sequence as the comptroller ~~model~~ form;

(B) is an electronic version of a comptroller ~~comptroller's model~~ form and preserves the same language in the same sequence as the comptroller ~~comptroller's model~~ form; or

(C) is a rendition form [has been] approved by the comptroller in writing before the form is used.

(3) A lessor shall maintain the affidavit, an electronic image of the affidavit, or a certified copy of the affidavit and must produce the affidavit, electronic image of the affidavit, or certified copy of the affidavit to the chief appraiser for inspection or copying when requested, subject to the conditions of subsection (f)(1) of this section. [After a lessee's affidavit is signed by a lessee and properly notarized, a lessor may make an electronic image of the lessee's affidavit and may produce the electronic image of the affidavit to the chief appraiser when an inspection is requested, subject to the condition of subsection (e)(1)(D) of this section.]

~~[(4) Subject to the limitations that are provided in paragraph (2) of this subsection, if a chief appraiser uses a form other than the one that the comptroller has adopted, then the chief appraiser must make the form available to the lessor. A chief appraiser may not mandate the use of his form in lieu of the comptroller's model form and may not deny a lessor's claim for exemption based solely on the lessor's failure to use the chief appraiser's form.]~~

~~(4) [(5) No provision in this section should be construed as limiting the chief appraiser's authority to enter into an agreement for electronic exchange of information under Tax Code, §1.085. [covered by this section in a format agreed to by the chief appraiser and the lessor.]~~

~~(5) No provision in this section should be construed as limiting the ability to electronically execute a document according to the laws of the State of Texas.~~

(c) The Lessee's Affidavit for Motor Vehicle Use Other than Production of Income (Form 50-285) should be completed by lessees and the affidavit, electronic image of the lessee's affidavit, or certified copy of the lessee's affidavit should be maintained by lessors in connection with applying for the exemption available under Tax Code, §11.252.

(1) For lessor to qualify for the exemption, the Lessee must not hold the motor vehicle for the production of income and the motor vehicle must be used primarily for activities that do not include the production of income.

(2) A motor vehicle is presumed to be used primarily for activities that do not involve the production of income if:

(A) 50% or more of the miles the motor vehicle is driven in a year are for non-income producing purposes;

(B) the motor vehicle is leased to the State of Texas or a political subdivision of the State of Texas; or

(C) the motor vehicle:

(i) is leased to an organization that is exempt from federal income taxation under Internal Revenue Code, §501(a), as an organization described by Internal Revenue Code, §501(c)(3); and

(ii) would be exempt from taxation if the vehicle were owned by the organization.

(d) The Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) shall be used as the property report form required by Tax Code, §11.252(i) .

(1) To meet the reporting requirements of Tax Code, §11.252(i), the lessor shall list each leased vehicle the lessor owns on January 1, regardless of whether the leased vehicle qualifies for an exemption under Tax Code, §11.252, and provide the following:

(A) the year, make, model, and vehicle identification number for each leased vehicle;

(B) the name of the lessee and address at which the leased vehicle is kept;

(C) whether the lessee has designated the leased vehicle as not held for the production of income and used primarily for activities that do not involve the production of income; and

(D) whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle.

(2) To meet the reporting requirements of Tax Code, §11.252(j), the Lessor shall provide the form to the chief appraiser in the manner provided by Subchapter B, Chapter 22, Tax Code.

~~[(d) A lessor satisfies the requirements of Tax Code, §11.252, for exemption of leased motor vehicles if the lessor:]~~

~~[(1) properly completes and timely files with the chief appraiser the Lessor's Rendition or Property Report for Leased Automobiles (Form 50-288);]~~

~~[(2) properly completes and timely files with the chief appraiser the comptroller-prescribed model application form (Lessor's Application for Personal Use Lease Automobile Exemptions);]~~

~~[(3) receives Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that the lessee executed on or before the date on which the required forms that are enumerated in paragraphs (1) and (2) of this subsection have been filed; and]~~

~~[(4) maintains each Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that pertains to each leased motor vehicle for which the lessor seeks an exemption.]~~

(e) To apply for the exemption allowed under Tax Code, §11.252(a), the lessor shall submit a fully completed and properly executed Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser pursuant to Tax Code, §11.43 and §11.45, and indicate at the appropriate space on the form that the lessor is applying for the exemption allowed under Tax Code, §11.252(a) for each qualifying leased vehicle.

(f) [(e)] A chief appraiser may inspect and/or obtain copies of lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits that the lessor maintains.

[(4)] Unless agreed to otherwise, a lessor and a chief appraiser shall use the following procedures when the chief appraiser proposes to inspect and/or copy lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits on leased motor vehicles for which the lessor seeks an exemption.

(1) [(A)] No less than 10 days prior to the inspection, the chief appraiser shall provide the lessor with notice of the chief appraiser's intention to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits in the lessor's possession or control. The notice must state a reasonable [date and] time when the chief appraiser proposes to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits and shall identify the affidavits, electronic images of the affidavits, or certified copies of the affidavits that will be subject to inspection and/or copy.

(2) [(B)] If the proposed date or time is not convenient, then the lessor may propose an alternate reasonable date or time by notifying the chief appraiser in writing.

(3) [(C)] The lessor shall provide the chief appraiser with reasonable accommodations to inspect and/or copy any of the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits or shall permit the chief appraiser to take the affidavits, electronic images of the affidavits, or certified copies of the affidavits off premises for a period of no less than 48 hours to inspect and/or copy.

[(D)] The lessor may provide electronic images of the lessees' affidavits, unless the chief appraiser does not have equipment to receive or read electronic images. If the image is not sufficiently clear to distinguish the characteristics of a lessee's handwriting and to see the notarized signature and any other relevant details, the chief appraiser may request to inspect an original lessee's affidavit.]

(4) [(E)] If the lessor is located more than 150 miles from the appraisal district's office, then the chief appraiser may submit a written request that the lessor deliver [either copy and mail] the identified lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits [or send the original affidavits] to the chief appraiser for at least 14 days for inspection and copying. The chief appraiser and the lessor may determine who should bear the costs of delivery and copying if any [and mailing].

[(2)] A chief appraiser should first attempt to obtain information from the lessor. If the lessor does not provide the requested information within the specified time period, then the chief appraiser may contact the lessee directly.]

[(f)] A properly executed Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) is prima facie evidence that the motor vehicle is not held for the production of income and is used primarily for non-income producing activities. A chief appraiser shall also consider the following evidence of primarily non-income producing use:]

[(1)] an affidavit by the lessee's spouse or other credible person who has information about the use of the leased motor vehicle and mileage records; and]

[(2)] a statement by the lessee's employer that the motor vehicle was not used or required to be used in the lessee's employment.]

[(g)] If a chief appraiser has reason to question, in whole or in part, the validity of the lessor's application for exemption, then the chief appraiser may investigate and shall notify the lessor of the chief

appraiser's intent to investigate. The notice that is required by this rule shall:]

[(1)] identify the motor vehicle that the chief appraiser questions as qualifying for the exemption;]

[(2)] state separately the reason for questioning the claimed exemption or lessee's affidavit;]

[(3)] specify the additional information that the chief appraiser seeks; and]

[(4)] state the due date upon which the requested information must be delivered.]

[(h)] If a chief appraiser determines that some of the motor vehicles that the lessor claims in the application for exemption do not qualify for exemption, then the chief appraiser may modify the exemption by disallowing the amount of value that the non-exempt leased motor vehicles represent, but shall grant the exemption on the remaining value of the leased motor vehicles. Any notice of modification or denial of the claimed exemption shall be made in accordance with the notice requirements of Tax Code, §11.43 and §11.45.]

(g) [(i)] The comptroller-prescribed exemption [model] application form (Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) [for Personal Use Lease Automobile Exemptions]) is not adopted by reference herein and may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

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

Filed with the Office of the Secretary of State on April 12, 2021.

TRD-202101509

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 475-2220



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 63. BOARD OF TRUSTEES

#### 34 TAC §63.4

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §63.4 (Election of Trustees (Ballot)).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Tex. Admin. Code, §§61.1 *et seq.*

Section 63.4, concerning Election of Trustees (Ballot), is proposed to be amended to allow the ERS board or the board's designee to certify a candidate without conducting an election in certain circumstances. If only one candidate is eligible to be presented on the ballot, the board or the board's designee may then certify the candidate without an election.

## GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

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

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendment to the rule reflects changes to the ERS trustee election process necessary to clarify procedures in the event of a single candidate. The proposed rule amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed rule amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be the clarification of the administration of ERS trustee election processes and a reduction of the total cost of elections to the trust in certain specific scenarios (when a single candidate is certified).

Comments on the proposed rule amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at [Cynthia.Hamilton@ers.texas.gov](mailto:Cynthia.Hamilton@ers.texas.gov). The deadline for receiving comments is May 23, 2021 at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code § 815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

### §63.4 Election of Trustees (Ballot)

(a) The order of names on the ballot will be set by drawing. All nominated candidates or their representatives are entitled to be present

at the drawing. The time and location of the drawing will be set by the system.

(b) All candidates must submit within the time frame established by the system any information requested by the system for presentation on the ballot. Such information may include, but is not limited to:

- (1) name as it is to appear on the ballot;
- (2) current classification/exempt title and position as a state employee;
- (3) name of current employing state agency; and
- (4) other information the system determines may be helpful to persons qualified to vote in the election.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the system, his or her state agency mailing address, a statement of qualifications and position on system issues consisting of 250 words or less, and such additional information as the system may request. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special system newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate at the beginning of each election and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system/election administrator will, at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon request of the candidate, the system/election administrator will provide 500 ballots without preprinted names to each candidate.

(f) The system/election administrator will provide a 24-hour toll-free telephone line which eligible voters may use to request a printed ballot.

(g) Electronic ballots must be completed and submitted to the system/election administrator in accordance with the instructions contained in the electronic voting format.

(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.

(i) The system/election administrator will disqualify ballots which do not meet the requirements and instructions specified in the electronic format or printed on the ballot.

(j) The board [Board], or the board's [its] designee, shall certify the result of the election results. If only one candidate is eligible to be presented on the ballot, the board or the board's designee may certify the candidate without an election.

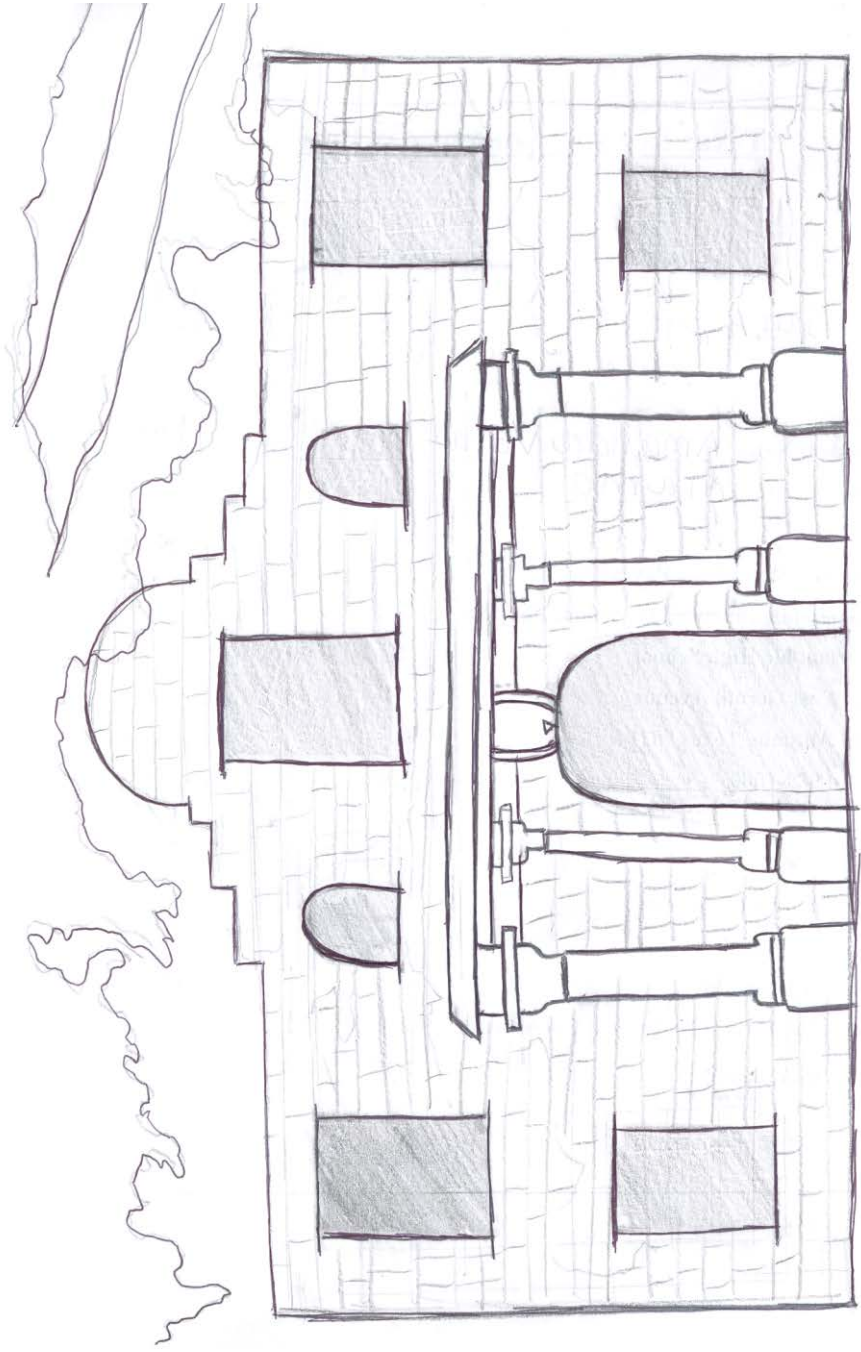
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 13, 2021.  
TRD-202101529



Cynthia C. Hamilton  
Acting General Counsel  
Employees Retirement System of Texas  
Earliest possible date of adoption: May 23, 2021  
For further information, please call: (877) 275-4377





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. PUBLIC SAFETY OFFICE

The Office of the Governor ("OOG") adopts amendments to 1 TAC §3.1, concerning Applicability, §3.3, concerning Definitions, §3.5, concerning Submission Process, §3.7, concerning Selection Process, §3.9, concerning Funding Decisions, §3.11, concerning Grant and Supplemental Award Acceptance, §3.21, concerning Use of the Internet, §3.23, concerning Delegation of Authority, §3.73, concerning Matching Funds Policy, §3.75, concerning Personnel, §3.79, concerning Travel and Training, §3.81, concerning Equipment, §3.85, concerning Indirect Costs, §3.87, concerning Program Income, §3.2001, concerning Conditions of Funding, §3.2009, concerning Cooperative Working Agreement, §3.2013, concerning Pre-Approval Requirements for Procurement, §3.2021, concerning Resolutions, §3.2025, concerning Civil Rights Liaison, §3.2501, concerning Grant Officials, §3.2503, concerning Obligating Funds, §3.2505, concerning Retention of Records, §3.2507, concerning Financial Status Reports, §3.2509, concerning Equipment Inventory Reports, §3.2513, concerning Grant Adjustments, §3.2515, concerning Bonding, §3.2517, concerning Remedies for Noncompliance, §3.2519, concerning Grant Reduction or Termination, §3.2523, concerning Violations of Laws, §3.2525, concerning Evaluating Project Effectiveness, §3.2527, concerning Grantee Reports, §3.2529, concerning Grant Management, §3.2601, concerning Monitoring, §3.2603, concerning Audits Not Performed by CJD or COD, §3.8105, concerning General Powers, §3.8115, concerning Meetings, and §3.8305, concerning General Powers. The amendments are adopted with changes to the proposed text as published in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1433) and will be republished.

The OOG identified the necessity of the adopted amendments during the Governor's Office's periodic review of 1 TAC Chapter 3, conducted pursuant to Texas Government Code §2001.039. The OOG's adoption of these amendments and the adoption of repeals and re-adoption of the remaining provisions of 1 TAC Chapter 3 elsewhere in this issue of the *Register* concludes the OOG's review of 1 TAC Chapter 3 under Texas Government Code §2001.039.

#### REASONED JUSTIFICATION

The adopted amendments will harmonize rules with the structure and organization of the OOG, improve readability and clarity, and update rules to account for technological advancements within grant processes. The rules at issue relate to grant programs under the Criminal Justice Division and the Public Safety Office ("PSO") of the OOG.

The adopted amendments to §3.3 add definitions for additional committees, teams, and divisions within the OOG. The amendments also provide definitions for "eGrants system" and "simplified acquisition threshold." The amendments further relocate matching funds requirements from the definition of "matching funds" to §3.73. The adopted amendments also correct a formatting error in subsection (x) of §3.3.

The adopted amendments to §3.5 enable requests for applications to be posted on eGrants in addition to the *Texas Register*. The adopted amendments also correct a formatting error in subsection (b) of that section.

The adopted amendments to §3.7 clarify funding decision factors by providing more specificity.

The adopted amendments to §3.73 relocate requirements related to matching funds from the definition of "matching funds" in §3.3 to the rule governing the matching funds policy.

The adopted amendments to §3.75 clarify the rule and remove outdated language.

The adopted amendments to §3.79 clarify the rule and remove outdated language.

The adopted amendments to §3.81 remove an outdated provision.

The adopted amendments to §3.85 clarify language regarding indirect cost, and changes the permissible indirect cost rate from two percent to ten percent to mirror federally-accepted standards.

The adopted amendments to §3.2013 modifies the circumstance in which a grantee must submit a completed procurement questionnaire. Previously, a grantee would have to submit a completed procurement questionnaire when a procurement would exceed \$150,000. Under the amendment, a grantee must submit a completed procurement questionnaire when the procurement exceeds the simplified acquisition threshold, as-defined in the amendments to §3.3.

The adopted amendments to §3.2021 relocate a provision requiring certain grantees to submit a new resolution when there is a change in a grant's designated authorized official to a new subsection (b). The amendments add conforming changes in response to the addition of the new subsection.

The adopted amendments to §3.2503 clarify the period of the grant.

The adopted amendments to §3.2505 clarify the record retention period for all financial records, supporting documents, statistical records, and all other records pertinent to the award.

The adopted amendments to §3.2519 clarify that the listed circumstances for termination constitute a non-exhaustive list of instances in which a grant may be terminated.

The adopted amendments to §3.2603 create a requirement to submit a Certification of Single Audit Reporting Requirement Exemption form in certain instances.

The adopted amendments to §3.8105 update statutory references.

The remaining adopted amendments replace the abbreviation "CJD" with "PSO" to reflect the structure and organization of the PSO. The remaining adopted amendments also clarify or remove outdated or unnecessary language from the rules, including using the word "shall" or "must" when provisions require certain behaviors or actions, and replacing the word "wishes" with "seeks" when describing instances in which an applicant or grantee intends to take a contemplated action.

## SUMMARY OF COMMENTS

The OOG did not receive any comments regarding the adopted amendments.

## SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

### 1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.23

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

#### Chapter 3, Subchapter A.

##### §3.1. *Applicability.*

Subchapters A through F of this chapter apply to all applications for funding and grants submitted to the Public Safety Office (PSO), Office of the Governor (OOG). A PSO-funded grantee must comply with the provisions of Subchapters A through F in effect on the date the grant is awarded by the OOG, unless a subsequent effective date is specified by the OOG in an original grant award or a grant adjustment. Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

##### §3.3. *Definitions.*

(a) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;

(b) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by the OOG through a grant award or a budget adjustment;

(c) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: citizens or parents, counties, municipalities, substance abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution or courts, and victim services. No single group or discipline may constitute more than one-third (1/3) of the CJAC;

(d) COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;

(e) computing devices: machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information;

(f) condition of funding: a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the OOG-funded portion of a grant project;

(g) eGrants: the online grant management system used by PSO grant programs;

(h) equipment: tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the grantee for financial statement purposes or \$5,000;

(i) executive director: the executive director of PSO, who also serves in the capacity required by Texas Government Code 772.006(b);

(j) grant funds: OOG-funded and matching funds portions of a grant project;

(k) grantee: an applicant that receives a grant award;

(l) HSAC: Homeland Security Advisory Committee, a component of a COG. HSACs must consist of representatives from counties, municipalities, non-profit organizations, disciplines, and/or other stakeholders from within the region who are knowledgeable about terrorism preparedness and the threats, vulnerabilities and consequences relevant to the COG region;

(m) indirect costs: those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved;

(n) information technology systems: computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources;

(o) liquidation date: the date specified in an original grant award or a subsequent grant adjustment upon which a grantee must expend all outstanding liabilities;

(p) matching funds: the grantee's share of the project costs;

(q) OCM: the Office of Compliance and Monitoring of the OOG;

(r) OMB: the Executive Office of the President of the United States, Office of Management and Budget;

(s) OOG: the Office of the Governor;

(t) program income: gross income earned by the grantee that is directly generated by a supported activity of the grant or earned as a result of the grant award during the period of performance. Program income includes, but is not limited to, forfeitures, fees for services performed, the use of rental or real or personal property acquired under an award, the sale of commodities or items fabricated under an award, and license fees and royalties on patents and copyrights. Interest earned on advances of grant funds is not program income. Except as otherwise provided in applicable law, regulations or the terms and conditions of the award, program income does not include rebates, credits, discounts and interest earned on any of them;

(u) PSO: the Public Safety Office of the OOG. The PSO includes the following divisions:

- (1) CJD: the Criminal Justice Division;
- (2) CSTT: the Child Sex Trafficking Team;
- (3) GAD: the Grants Administration Division; and
- (4) HSGD: the Homeland Security Grants Division;

(v) RFA: Request for Applications, published in either eGrants or the *Texas Register* by PSO;

(w) simplified acquisition threshold: the dollar amount below which an entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908;

(x) supplies: all tangible personal property other than those described in accordance with §3.3(h) of this chapter (relating to Definitions). A computing device is a supply if the acquisition cost is less than the lesser of the capitalizations level established by the grantee for financial statement purposes or \$5,000, regardless of the length of its useful life; and

(y) UGMS: the Uniform Grant Management Standards or the Texas Grant Management Standards, as applicable.

### §3.5. *Submission Process.*

(a) When applying for a grant pursuant to a RFA published by the PSO in either eGrants or the *Texas Register*, applicants must submit and certify their applications according to the requirements provided in the RFA.

(b) Applications for grants that are not submitted pursuant to an RFA may also be considered. Applicants shall be selected in accordance with §3.7(b) of this chapter (relating to Selection Process).

(c) Applicants must apply for funds using the procedures, forms, and certifications prescribed by PSO.

### §3.7. *Selection Process.*

(a) All applications must be submitted and certified by the applicant's authorized official. For applications submitted and certified pursuant to an RFA, the PSO may select a review group, COG, or other designee to prioritize the applications and submit a priority listing to the PSO.

(b) PSO funding decisions shall be based upon the following factors:

- (1) cost effectiveness;
- (2) overall funding availability;
- (3) PSO or state government priorities and strategies;
- (4) legislative directives;
- (5) identified gaps in services or resources;
- (6) geographic distributions;
- (7) the inherent value of the project's impact;
- (8) whether the project has the potential to be a model program;
- (9) whether delaying the project would have a significant negative impact on the area proposed to be served; and
- (10) to the extent applicable, any additional factors listed in an RFA.

(c) For applications prioritized by a COG, the CJAC or HSAC, as appropriate, must prioritize the applications and prepare the priority listing. The COG's governing body must approve the priority listing. The OOG shall make final decisions on these applications based upon factors listed in subsection (b) of this section.

(d) During the review of an application, applicants may be instructed to submit additional information necessary to complete the grant review. Such requests for information do not serve as notice that the OOG intends to fund an application. PSO may make the necessary corrections to an application to bring it into compliance with state or federal requirements. Any corrections to an applicant's budget shall be reflected in the award documentation.

(e) Applicants shall be informed of decisions on their grant applications through either a Statement of Grant Award or a notification of denial.

### §3.9. *Funding Decisions.*

(a) All funding decisions made by the OOG are final and are not subject to appeal. The receipt of an application does not obligate the OOG to fund the grant or to fund it at the amount requested.

(b) Neither the approval of a project nor any grant award shall obligate the OOG in any way to make any additional, supplemental, continuation, or other award.

### §3.11. *Grant and Supplemental Award Acceptance.*

The award documentation constitutes obligation of funds for use by the grantee in execution of the program or project covered by the award. Such obligation may be terminated without cause if the grantee's authorized official fails to accept the grant award within 45 calendar days of the date on which the OOG issues the Statement of Grant Award. PSO may extend this deadline upon written request from the applicant. Funds shall not be disbursed until acceptance of the grant by the grantee's authorized official.

### §3.21. *Use of the Internet.*

Applicants and grantees must submit grant applications, progress reports, financial reports, and other information, as applicable, to PSO via the Internet or other electronic means.

### §3.23. *Delegation of Authority.*

The executive director may delegate his or her authority or PSO's authority under this chapter.

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 April 7, 2021.

TRD-202101456

Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

Effective date: April 27, 2021

Proposal publication date: March 5, 2021

For further information, please call: (512) 463-2000



## SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

1 TAC §§3.73, 3.75, 3.79, 3.81, 3.85, 3.87

## STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

## CROSS REFERENCE TO STATUTE

### Chapter 3, Subchapter B.

#### §3.73. *Matching Funds Policy.*

(a) If matching funds are required on a grant, an applicant must ensure that it possesses or can acquire the required matching funds. A contractor or participating entity may contribute toward the matching funds requirement, but the applicant bears the responsibility for satisfying the matching funds requirement.

(b) Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the OOG-funded portion of a grant project.

#### §3.75. *Personnel.*

(a) PSO shall determine the reasonableness of requested salaries and reserves the right to limit the OOG-financed portion of any salary.

(b) The OOG shall not pay any portion of the salary of, or any other compensation for, an elected or appointed government official.

(c) Compensation for grant-funded employees must be comparable to that of non-grant-funded employees performing similar work duties.

(d) Grantees may use grant funds to compensate staff members leaving employment for accrued leave (which includes, but is not limited to, annual leave, compensatory time, and sick leave) in accordance with the grantee's policy. These payments may only fund leave earned during the current grant period. The proportion of grant funds used to pay for leave cannot exceed the proportion of grant funds used to pay the staff member's salary.

#### §3.79. *Travel and Training.*

(a) Grant funds used for travel expenses must be used only in accordance with the grantee's established travel policies. If a grantee does not have established travel policies, then the grantee must use rates that are consistent with the state travel guidelines.

(b) Grantees must maintain records that properly document the completion of all grant-funded training courses.

#### §3.81. *Equipment.*

Applicants must include a detailed description of all proposed equipment purchases in their grant applications for approval. Grantees must request any additional equipment purchases through grant adjustments.

#### §3.85. *Indirect Costs.*

(a) If the applicant has an approved federally-recognized indirect cost rate negotiated between the applicant and the federal government and seeks to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application.

(b) If the applicant has a state-approved indirect cost rate negotiated between the applicant and the applicable state agency and seeks to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application.

(c) If the applicant has never received a federally-recognized or state-approved indirect cost rate, indirect costs may be approved in the grant project in an amount not to exceed ten percent of the approved modified total direct costs.

(d) Unless otherwise specified, indirect costs are allowable under PSO grants in accordance with applicable state and federal guidelines.

#### §3.87. *Program Income.*

Earned program income must be reported to PSO. Program income may only be used, with prior approval from PSO, for allowable project costs as reflected in an approved budget. Grantees may not carry forward program income from one grant year to the next. Grantees must refund to the OOG any program income remaining at the end of the grant period.

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 April 7, 2021.

TRD-202101458

Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

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Proposal publication date: March 5, 2021

For further information, please call: (512) 463-2000



## SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

### 1 TAC §§3.2001, 3.2009, 3.2013, 3.2021, 3.2025

## STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

## CROSS REFERENCE TO STATUTE

### Chapter 3, Subchapter D.

#### §3.2001. *Conditions of Funding.*

When PSO determines that a grantee has failed to submit the necessary information or has failed to comply with any applicable statute, rule, regulation, guideline, or requirement, PSO may place a condition of funding on the grant which may invoke a hold on funds.

#### §3.2009. *Cooperative Working Agreement.*

(a) When a grantee intends to carry out a grant project by cooperating or participating with one or more outside organizations, the grantee must ensure that the cooperative working agreement is signed by each participating organization. Grantees must maintain on file a signed copy of all cooperative working agreements.

(b) Cooperative working agreements do not involve an exchange of funds.

#### §3.2013. *Pre-Approval Requirements for Procurement.*

(a) A grantee must submit a PSO-prescribed Procurement Questionnaire when any procurement is expected to exceed the simplified acquisition threshold or upon request. PSO may also request

all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates.

(b) Grantees may not divide purchases or contracts to avoid the requirements of this section. For purposes of determining compliance, PSO shall consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.

§3.2021. *Resolutions.*

(a) Applications from non-profit corporations, local units of governments and other political subdivisions must include a resolution that contains the following:

(1) authorization for the submission of the application that clearly identifies the project for which funding is requested;

(2) a commitment to provide for all applicable matching funds;

(3) a designation of the name or title of an authorized official who is given the power to apply for, accept, reject, alter, or terminate a grant; and

(4) a written assurance that, in the event of loss or misuse of grant funds, the governing body shall return all funds to the OOG.

(b) If the designation under subsection (a)(3) of this section changes during the grant period, the grantee must submit a new resolution to the OOG.

§3.2025. *Civil Rights Liaison.*

If applicable, an applicant must certify that the applicant has designated a civil rights liaison during the application process. The civil rights liaison shall serve as the grantee's civil rights point of contact and has the responsibility for ensuring that the grantee meets all applicable civil rights requirements. The designee shall act as the grantee's liaison in civil rights matters with the OOG and with the federal Office of Justice Programs.

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 April 7, 2021.

TRD-202101459

Aimee Snoddy

Executive Director, Public Safety Office

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## SUBCHAPTER E. ADMINISTERING GRANTS

**1 TAC §§3.2501, 3.2503, 3.2505, 3.2507, 3.2509, 3.2513, 3.2515, 3.2517, 3.2519, 3.2523, 3.2525, 3.2527, 3.2529**

### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter E.

§3.2501. *Grant Officials.*

(a) Each grant must have a project director, financial officer, and authorized official. No person shall serve in more than one capacity.

(b) Each grant official must have an e-mail address and access to the Internet.

(c) A grantee shall notify PSO within 20 calendar days of any change in the designated project director, financial officer, or authorized official; any change in the mailing address, e-mail address, fax number, or telephone number of each grant official and any change in the grantee's physical address.

§3.2503. *Obligating Funds.*

A grantee may not obligate grant funds before the beginning or after the end of the grant period specified in an original grant award or a subsequent grant adjustment.

§3.2505. *Retention of Records.*

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the submission of a final expenditure report or the closure of the most recent audit report, whichever is later. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the completion of the action and resolution of all issues which arise from it or until the end of the regular three-year period, whichever is later.

§3.2507. *Financial Status Reports.*

(a) Each grantee must submit financial status reports to PSO in the PSO-prescribed format no later than the designated deadlines for their submission.

(b) A financial status report reflecting cumulative expenditures from the start of the grant may be submitted as often as monthly but must be submitted at least quarterly. Grantees may only request an advance payment during the first month of the grant period to cover the first month's expenses.

(c) Grantees must ensure their final financial status report is submitted no later than the liquidation date or funds shall lapse and revert to the grantor agency. If grant funds are on hold for any reason, these funds shall lapse on the liquidation date and the grantee cannot recover them. The OOG shall not make payments to grantees that submit their final financial status report after the liquidation date.

§3.2509. *Equipment Inventory Reports.*

Grantees must maintain on file a current inventory report of all equipment purchased with grant funds during the grant period. This report must reconcile with the approved grant budget and the final financial status report, and must contain all required PSO data elements.

§3.2513. *Grant Adjustments.*

(a) The project director, financial officer, or authorized official may submit requests for grant adjustments.

(b) Adjustments consisting of increases or decreases in the amount of a grant or the reallocation of grant funds among or within approved budget categories are allowable only with prior PSO approval.

(c) Programmatic changes, such as requests to revise the scope, target, or focus of the project, or alter project activities require prior approval from PSO. Requests to extend the grant period must be submitted to and received by PSO, no later than the last day of the grant period.

§3.2515. *Bonding.*

Each nonprofit corporation receiving funds from the OOG must obtain and have on file a blanket fidelity bond that indemnifies the OOG against the loss and theft of the entire amount of grant funds. The cost of the bond is an eligible expense of the grant.

§3.2517. *Remedies for Noncompliance.*

If a grantee fails to comply with any term or condition of a grant or any applicable statutes, rules, regulations, or guidelines, the OOG may:

- (1) withhold all grant payments to a specific project or withhold all grant payments to all grant projects awarded to the grantee pending correction of the deficiency;
- (2) disallow all or part of the cost of the activity or action that is not in compliance;
- (3) withhold further grants from the program or grantee;
- (4) terminate the grant in whole or in part; or
- (5) exercise other legal remedies.

§3.2519. *Grant Reduction or Termination.*

(a) If a grantee seeks to terminate any approved grant, it must notify the OOG immediately.

(b) The OOG may reduce or terminate any grant when circumstances require reduction or termination, including, but not limited to when:

- (1) a grantee fails to comply with any term or condition of the grant or the grantee has failed to comply with any applicable statute, rule, regulation, or guideline;
- (2) the grantee and the OOG agree to do so;
- (3) state or federal funds are no longer available to the OOG;
- (4) conditions exist that make it unlikely that grant objectives will be accomplished; or
- (5) the grantee has acted in bad faith.

(c) In the event that a grant is reduced or terminated by the OOG, the OOG shall notify the grantee in writing.

§3.2523. *Violations of Laws.*

(a) A grantee must immediately notify the OOG in writing of any legal violations.

(b) A grantee must immediately notify the OOG in writing if a project or project personnel become involved in any civil or criminal litigation and the grantee must immediately forward a copy of any demand notices, subpoenas, lawsuits, or indictments to the OOG.

(c) If a federal or state court or administrative agency renders a judgment or order finding discrimination by a grantee based on race, color, national origin, sex, age, or disability, the grantee must immediately forward a copy of the judgment or order to the OOG.

(d) If any records are seized from a grantee by a law enforcement agency, or a state or federal agency, the grantee must immediately notify the OOG in writing of the seizure and must retain copies of the seized records.

§3.2525. *Evaluating Project Effectiveness.*

(a) Grantees must regularly evaluate their projects. PSO shall monitor grantees through progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review.

(b) Grantees are responsible for managing the day-to-day operations of grant and sub-grant supported activities, including those of their contractors and subcontractors. Grantees must develop and maintain a standardized monitoring program incorporating best practices.

§3.2527. *Grantee Reports.*

(a) Each grantee must submit reports regarding grant information, performance, and progress. To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

(b) The OOG may place projects on financial hold for failure to submit complete and accurate progress reports. A grantee's history of delinquent or inaccurate reports may affect future funding decisions.

§3.2529. *Grant Management.*

(a) PSO has oversight responsibility for the grants it awards and may review the grantee's management and administration of grant funds and records at any time. Grantees must respond to all PSO inquiries or requests and must make all requested records available.

(b) The grantee is the entity legally and financially responsible for the grant. A grantee may not delegate its legal or financial responsibility.

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## SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

### 1 TAC §3.2601, §3.2603

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter F.

§3.2601. *Monitoring.*

(a) PSO and OCM shall monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes and that grantees achieve grant purposes.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. PSO or OCM may implement monitoring through on-site review at the grantee or



sub-grantee location or through a desk review. PSO or OCM may request that grantees submit information to PSO or OCM to support any monitoring review.

(c) Grantees must make all records relevant to a monitoring review available. Failure to provide adequate documentation may result in disallowed costs or other remedies for noncompliance.

(d) After a monitoring review, the grantee shall be notified in writing through a preliminary report of any identified noncompliance. The preliminary report shall enumerate deficiencies and provide recommendations to cure the deficiencies.

(e) The grantee shall respond to the preliminary report and the deficiencies or recommendations, and submit to PSO or OCM a corrective action plan or, if the grantee believes correction action is not required in response to a deficiency or recommendation, an explanation under subsection (g) of this section within a time specified by PSO or OCM.

(f) The corrective action plan shall include:

- (1) the titles of the persons responsible for implementing the corrective action plan;
- (2) the corrective action to be taken; and
- (3) the anticipated completion date.

(g) If the grantee believes corrective action is not required in response to a deficiency or recommendation, the response shall include an explanation and specific reasons. PSO or OCM shall determine whether the response is adequate to resolve the deficiency or recommendation.

(h) The grantee's response and the approved corrective action plan shall become part of the final report.

(i) The grantee shall resolve all identified findings within the time specified.

(j) PSO shall issue a final report:

- (1) when PSO or OCM observes no deficiencies during the monitoring review; or
- (2) after receiving the response by a grantee to the preliminary report.

*§3.2603. Audits Not Performed by PSO or OCM.*

(a) Grantees must have audits performed in accordance with the requirements set forth in 2 CFR Part 200, Subpart F concerning Audit Requirements, and the State Single Audit requirements issued under UGMS.

(b) Grantees that meet the Single Audit requirements as set forth in either 2 CFR Part 200, Subpart F concerning Audit Requirements, or the State Single Audit requirements issued under UGMS, must submit to OCM a Single Audit reporting package within 30 calendar days of receiving the Single Audit report from the independent auditor or nine months after the end of the audit period, whichever is earlier.

(c) Grantees who are not required to have a Single Audit for any fiscal year in which the OOG award was made or expended, must submit a Certification of Single Audit Reporting Requirement Exemption form to OCM within 60 calendar days of the end of the grantee's fiscal year.

(d) All other audits performed by auditors independent of PSO or OCM must be maintained at the grantee's administrative offices and made available upon request. Grantees must notify PSO of any audit results that may adversely impact grant funds.

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 G. CRIMINAL JUSTICE  
DIVISIONS BOARDS  
DIVISION 1. TEXAS CRIME STOPPERS  
COUNCIL**

**1 TAC §3.8105, §3.8115**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

**CROSS REFERENCE TO STATUTE**

Chapter 3, Subchapter G.

*§3.8105. General Powers.*

(a) Pursuant to Chapter 414 of the Texas Government Code, the Council is authorized to:

(1) certify a crime stoppers organization to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42A of the Texas Code of Criminal Procedure;

(2) decertify an organization, thereby rendering the organization ineligible to receive such repayments or payments; and

(3) adopt rules to carry out its function; however, the Council may not adopt rules that conflict with rules relating to grants adopted by PSO or CJD.

(b) In addition, the Council acts in an advisory capacity to the executive director of PSO, who shall relate their recommendations and those of PSO to the governor as needed.

*§3.8115. Meetings.*

(a) At all meetings, the latest version of *Robert's Rules of Order* shall govern proceedings.

(b) Meetings shall be held at least annually and at other times deemed necessary by the chairman or the executive director of PSO.

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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## DIVISION 3. SPECIALITY COURTS ADVISORY COUNCIL

### 1 TAC §3.8305

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

#### CROSS REFERENCE TO STATUTE

Chapter 3, Subchapter G.

§3.8305. *General Powers.*

Pursuant to §772.0061 of the Texas Government Code, the Council is authorized to:

- (1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to PSO or CJD; and
- (2) make recommendations to PSO or CJD regarding best practices for specialty courts established under Chapters 122, 123, 124, or 125 of the Texas Government Code, or former law.

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## CHAPTER 3. CRIMINAL JUSTICE DIVISION SUBCHAPTER G. CRIMINAL JUSTICE DIVISION BOARDS

### DIVISION 2. GOVERNOR'S JUVENILE JUSTICE ADVISORY BOARD

#### 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, 3.8220

The Office of the Governor ("OOG") adopts the repeal of 1 TAC §3.8200, concerning Establishment, §3.8205, concerning General Powers, §3.8210, concerning Composition, §3.8215, concerning Meetings, and §3.8220, concerning Compensation, without changes to the text as published in the March 5, 2021,

issue of the *Texas Register* (46 TexReg 1437). The rules will not be republished.

The OOG identified the necessity of the adopted repeals during the OOG's periodic review of 1 TAC Chapter 3, conducted pursuant to Texas Government Code §2001.039. The adopted repeals dissolve the Governor's Juvenile Justice Advisory Board.

#### REASONED JUSTIFICATION

The purpose for the repeal of 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, 3.8220 being adopted is to remove the Governor's Juvenile Justice Advisory Board. The Board is a federal requirement for the administration of grant funds under the Juvenile Justice and Delinquency Prevention Act, but the OOG no longer administers these funds, so the Board is no longer necessary.

#### SUMMARY OF COMMENTS

The OOG did not receive any comments regarding the repeals.

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code, §772.006(a)(10), which provides that the OOG shall adopt rules necessary to implement the requirements of Texas Government Code, §772.006.

No other statutes, articles, or codes are affected by the adopted repeals.

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 5. GENERAL ADMINISTRATION SUBCHAPTER B. ADMINISTRATIVE POLICIES

### 1 TAC §5.101

The Office of the Governor ("OOG"), adopts amendments to 1 TAC §5.101, concerning the Identification and Escalation of Procurement Contracts that Require Enhanced Contract or Performance Monitoring. The OOG identified the necessity of the adopted amendments during the OOG's periodic review of 1 TAC Chapter 5, Subchapter B, conducted pursuant to Texas Government Code §2001.039. The adopted amendments will provide additional clarity to the OOG's processes to identify and escalate procurement contracts that required enhanced monitoring. The amendments are adopted without changes to the proposed text as published in the March 5, 2021 issue of the *Texas Register* (46 TexReg 1442) and will not be republished.

#### REASONED JUSTIFICATION

The purpose of the rule at issue is to implement state contracting requirements established by §2261.253(c), Texas Govern-

ment Code. The law requires a state agency, by rule, to establish a procedure to identify contracts that require enhanced contract or performance monitoring, and submit information on these contracts to the agency's governing official. Additionally, the agency's contract management office or procurement director is required to immediately notify the agency's governing official of any serious issue or risk that is identified with respect to a contract monitored under §2261.253(c).

The adopted amendments to §5.101(a) remove the current text of subsection (a) because it is redundant of the text of subsection (b).

The adopted amendments to §5.101(b) provide additional clarity to the provision and more specifically denote the types of contracts for which a risk assessment is required and the types of contracts for which a risk assessment is discretionary.

The adopted amendments to §5.101(c) replace "agency" with "OOG."

The adopted amendments to §5.101(d) clarify the OOG division tasked with providing information to the OOG's Chief of Staff about contracts for which it is determined the OOG must exercise enhanced monitoring.

The remaining adopted amendments redesignate subsections in conformity with the removal of subsection (a).

This concludes the review of 1 TAC Chapter 5 under Texas Government Code §2001.039.

#### SUMMARY OF COMMENTS

The OOG did not receive any comments regarding the adopted amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §2261.253(c), which requires the OOG to establish by rule a procedure to identify each procurement contract that requires enhanced contract or performance monitoring.

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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## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

#### 1 TAC §353.1315, §353.1317

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

New §353.1315 and §353.1317 are adopted with changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 679). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

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

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

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

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

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

#### Conceptual Framework

##### *Eligibility:*

HHSC determines eligibility for payments by RHC class. The SDA must have at least one governmental entity willing to provide IGT to support increased payments. Also, to be eligible for

the reimbursement increase, an RHC must be within a class designated by HHSC to receive the increase.

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

*Services subject to rate increase:*

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

*Determination of rate increase:*

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

*Reconciliation and recoupment:*

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

**COMMENTS**

The 15-day comment period ended February 13, 2021.

During this period, HHSC received comments regarding the proposed rules from 10 entities, including Amerigroup; Community Health Systems; Electra Hospital District; Faith Community Health System; Medina Regional Hospital; Reed Claymon; Rolling Plains Memorial Hospital; Texas Association of Health Plans; Texas Hospital Association; and Texas Organization of Rural & Community Hospitals. A summary of the comments received and HHSC's responses follows.

*Eligibility:*

Comment: Two commenters requested clarification on how eligibility for Rural Access to Primary and Preventive Services Program (RAPPS) will be determined. One commenter specifically asked which types of RHCs would be eligible to participate in the program (i.e., if both privately owned and publicly owned RHCs could participate, and if both hospital-based RHCs and freestanding RHCs could participate.)

Response: RHCs, including hospital-based clinics that are associated with public and private hospitals, and freestanding clinics, are eligible to participate in RAPPS. No changes were made in response to this comment.

*Non-federal share of RAPPS payments:*

Comment: One commenter asked if IGT would be returned to the sponsoring governmental entity if not all providers meet the measure requirements.

Response: IGT is not returned to sponsoring governmental entities if RHCs do not meet program requirements. Any unearned payment will be distributed across all qualifying RHCs in the SDA based on each RHC's proportion of total earned RAPPS funds from Components One and Two combined after each payment period. No changes were made in response to this comment.

Comment: One commenter asked how the sponsoring entity will be guaranteed that they will receive payments in an amount equal to or greater than the amount of their IGT.

Response: An entity's decision to participate in RAPPS in the SDA in which the entity is located, including the decision to transfer funds to HHSC and the amount of any such transfer, is completely voluntary. Once the entity's funds are transferred and combined with funds from other sponsoring governmental entities, they are used to increase capitation payments to all of the MCOs in the participating SDAs to support rate increases to all eligible contracted RHCs in the classes designated for an increase. There is no guarantee in the rule or otherwise that the transferring entity will receive increased managed care payments in an amount equal to or greater than the amount of the IGT. No changes were made in response to this comment.

*Participation requirements:*

Comment: One commenter is concerned that proposed §353.1315(f)(2)(A) would effectively make an RHC ineligible to participate in RAPPS if it has paid a consultant or lawyer fees for assistance with RAPPS if revenue from RAPPS payments is used to cover such fees, regardless of the underlying fee structure. The commenter added that while it appears that consulting fees and legal fees that are paid from an RHC's non-RAPPS revenue sources would not cause any issues under proposed §353.1315(f)(2)(A), isolating revenue from RAPPS payments in such a way to ensure that such revenue is not utilized for consulting and legal services related to RAPPS may be administratively difficult for many RHCs.

If HHSC is unwilling to remove proposed §353.1315(f)(2)(A) completely, the commenter recommends revising the certification to be more narrowly tailored and bar an RHC if it uses RAPPS revenue to pay fees to a consultant or legal advisor contingent on the amount of the RHC's RAPPS revenue.

Response: HHSC agrees with the commenter that the rule language should be refined to more clearly prohibit contingency fees for services that are based on the amount of the RHC's RAPPS revenue. HHSC understands that RHCs may utilize consultants, advisors, or legal counsel for a variety of reasons. HHSC has amended §353.1315(f)(2) to specify that no part of any RAPPS payment will be used to pay a contingency fee, nor may the entity's agreement with the RHC use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program including the RHC's receipt of RAPPS funds, and the certification must be received by HHSC with the enrollment application.

Comment: One commenter opposed proposed §353.1315(f)(2)(B) and recommended it be removed. Proposed §353.1315(f)(2)(B) would impose as a condition of participation in RAPPS that "[a]n entity that bills on behalf of the RHC must submit to HHSC, upon demand, copies of contracts it has with third parties that reference the administration of, or payments from, RAPPS." The commenter strongly believes that this condition, particularly in combination with proposed §353.1315(f)(2)(A), would not only impose a significant new

administrative burden for participating RHCs, but would also constitute an intrusion of the state government into private contracting and enterprise. The commenter added that at a minimum, the broad language of §353.1315(f)(2)(B) should be revised to state that "if a provider has changed ownership or management in the past five (5) years in a way that impacts eligibility for this program, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership and/or the management of the provider and which reference the administration of, or payment from, this program."

Response: HHSC acknowledges the concerns and does not wish to impose significant administrative burdens or to infringe upon third parties' relationships to which no governmental entity is a party. HHSC's intent of the proposed language was specific to instances where a change of ownership has occurred that would impact the eligibility of the provider. HHSC revised §353.1315(f) to clarify the applicability of this provision.

*Distribution of RAPPS payments:*

Comment: One commenter asked HHSC to discontinue the practice of using the MCO's claims system as an intermediary pass-through system. According to the commenter, IGT dollars are provided to an MCO's capitation merely to pass-through payments to providers and an MCO should not be a fiduciary intermediary in funding providers. The commenter said maintaining the integrity of a claims system is paramount to avoid downstream confusion. The commenter asked HHSC to replicate the Quality Incentive Payment Program (QIPP) in a similar way for RAPPS. In QIPP, upon completion, HHSC notifies an MCO of the eligible incentive payment for the applicable providers and the funds provided are completely autonomous of the MCO's claims system.

Response: Component One of RAPPS will be paid on a basis that does not require modification of the claims system. Component Two will require a modification to the claims system as HHSC is directing MCOs to increase rates for certain services when the provider meets program requirements and to pay claims at the percentage increase. The increased rates will be sustained through six months after the initial proposed October reporting period. No changes were made in response to this comment.

*RAPPS funding:*

Comment: Several commenters expressed concern with the amount of funding available for RAPPS, particularly as compared to the funding amounts available for the other proposed directed payment programs. They expressed concern that the funding available for RAPPS was insufficient to incentivize RHCs to participate in the program. One commenter expressed hope that the program could be grown by adding services like telemedicine or obstetrics in the future.

Response: The current program's funding is estimated at \$18.7 million in All Funds. This estimate is based on the difference between Medicaid and Medicare encounter rates based on RHCs' cost reports. CMS requires states to demonstrate that the state directed payments result in provider payment rates that are reasonable, appropriate, and attainable, and basing the calculation on the Medicare cost report level satisfies these requirements. HHSC explored other reimbursement comparisons and found Medicare to be the most reasonable and appropriate for RHCs based on the current level of Medicaid reimbursements. Ser-

vices provided via telemedicine or telehealth are included in the analysis. No changes were made in response to this comment.

Comment: Two commenters asked how the federal Rural Health Clinic Modernization Act of 2019 would impact the RAPPS program.

Response: The Rural Health Clinic Modernization Act of 2019 could affect total program value to the extent that the legislation, if enacted, affects Medicare rates. No changes were made in response to this comment.

*Quality metrics:*

Comment: One commenter recommended aligning RAPPS measures with current MCO and Alternative Payment Model (APM) measures to avoid further confusing or frustrating providers. The commenter also recommended aligning RAPPS measures with the same P4Q measures that MCOs are financially at risk to achieve.

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1317(f). No changes were made in response to this comment.

Comment: One commenter requested that HHSC consider removing metrics that MCOs use to manage APM requirements from those MCOs' contracts in order to prevent a provider from being paid twice for the same metrics. The commenter indicated that this is a structural issue around the current Uniform Managed Care Contract (UMCC).

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1317(f). No changes were made in response to this comment.

*Performance requirements:*

Comment: One commenter requested that for Component 2 process measures, HHSC consider the potential negative impacts of measuring rural performance against median national benchmarks on measures for which the state historically underperforms national rates. The commenter indicated that these methods may create an artificially high barrier to achieving the measure goal and may fail to reward meaningful gains in clinical quality for certain RHCs that may fall in a lower percentile at baseline but eventually demonstrate improvement over self.

Response: The measures and reporting requirements including performance requirements will be addressed annually through the public hearing referenced in §353.1317(f). No changes were made in response to this comment.

*MCOs:*

Comment: One commenter requested clarification on: 1) the timing of when HHSC will provide the MCOs with the payment calculations for the prospective monthly payments to the RHCs; 2) the impact of any reconciliation on MCOs; 3) how HHSC will communicate the different classes to the MCOs; 4) the type of data and reporting required by HHSC and how HHSC and the MCOs will exchange data; 5) how HHSC will work with the MCOs, understanding the various claims systems, and the time it may take to make required claims system modifications; 6) expectations related to agreements with providers and how these arrangements will impact existing provider contracts; and 7) if and how HHSC will work with the Texas Department of Insurance to waive the risk-based capital requirements on these funds,

given that the MCOs lack control over the expenditure of these funds and will likely be required to track them as separate and distinct funds.

Response: HHSC has established a workgroup with representatives from MCOs and will address these operational questions through the workgroup process. No changes were made in response to this comment.

HHSC made minor grammatical edits to §353.1315(f)(2) and §353.1317(g); §353.1315(b)(3) - §353.1315(b)(6) were renumbered to §353.1315(b)(4) - §353.1315(b)(8); §353.1317(d)(2)(C) was renumbered to §353.1317(d)(2)(B); and §353.1317(e) - §353.1317(f) were renumbered to §353.1317(f) - §353.1317(g).

HHSC made editorial changes to §353.1315(b) to include definitions for the terms "intergovernmental transfer (IGT) notification" and "suggested IGT responsibility" and clarified the definition of a rural health clinic in §353.1315(b)(5). HHSC also made editorial changes to §353.1315(e) by adding paragraph (7) to specify that only certain encounter data will be used in calculating RAPPS payments. Encounter data used to calculate RAPPS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate RAPPS payments so that the calculations will not be inappropriately skewed. HHSC also made editorial changes to §353.1315(e) by adding paragraph (8) to specify that if a provider with the same Tax Identification Number as the payor is being paid more than 200 percent of the Medicaid reimbursement on average for the same services in a one-year period, then a related-party-adjustment will be applied to the encounter data for those encounters. This adjustment will apply a calculated average payment rate from the rest of the provider pool to the related-party's paid units of service.

In addition, HHSC made editorial changes to §353.1315(f)(1) by changing "IGT notification" to "release of suggested IGT responsibilities"; to §353.1315(g)(2) by changing the date by which sponsoring governmental entities must provide the declaration of intent to HHSC; to §353.1315(g)(3) by specifying the date by which HHSC will issue an IGT notification; to §353.1317(c)(1) by changing pay-for-reporting (P4R) to improvement over self (IOS) and pay for performance (P4P) to benchmark; to §353.1317(d)(2)(A) by changing "The achievement of a structure measure is tested on whether an RHC meets the established requirement" to "To achieve a structure measure, an RHC must report its progress on associated activities for each measurement period"; by deleting §353.1317(d)(2)(B); to §353.1317(d)(2)(C) by changing P4P to IOS or benchmark and adding "In year one of the program, providers will establish a baseline for IOS measures"; by deleting §353.1317(d)(3); to §353.1317(e) and §353.1317(e)(1) regarding participating RHC reporting frequency were added; and to §353.1317(g) by adding "Publication of final metrics and performance requirements".

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under

Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

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

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

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

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

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

(3) Intergovernmental transfer (IGT) notification--Notice and directions regarding how and when IGTs should be made in support of RAPPS.

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

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

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

(7) Suggested IGT responsibility--Notice of potential amounts that a sponsoring governmental entity may wish to consider transferring in support of RAPPS.

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

(c) Classes of RHCs.

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

- (A) hospital-based RHCs; and
- (B) freestanding RHCs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Encounter data used to calculate RAPPS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate RAPPS payments.

(8) If a provider with the same Tax Identification Number as the payor is being paid more than 200 percent of the Medicaid reimbursement on average for the same services in a one-year period, then a related-party-adjustment will be applied to the encounter data for those encounters. This adjustment will apply a calculated average payment rate from the rest of the provider pool to the related-party's paid units of service.

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

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

(2) An entity that bills on behalf of the RHC must certify, on a form prescribed by HHSC, that no part of any RAPPS payment will be used to pay a contingent fee and that the entity's agreement with the RHC does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the RHC's receipt of RAPPS funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If an RHC has changed ownership in the past five years in a way that impacts eligibility for RAPPS, the RHC must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the RHC and which reference the administration of, or payments from, RAPPS.

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

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

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

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

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

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

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

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

(3) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, no fewer than 14 business days before IGT transfers are due. The IGT notification will instruct sponsoring governmental entities as to the required IGT amounts. Required IGT amounts will include all costs associated with RHC payments and rate increases, including costs associated with MCO premium taxes, risk margin, and administration, plus ten percent.

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

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

(1) Component One.

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

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

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

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

(2) Component Two.

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

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

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

(i) Distribution of RAPPS payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.

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

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

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



(2) Achievement of quality metrics.

(A) To achieve a structure measure, an RHC must report its progress on associated activities for each measurement period.

(B) To achieve an IOS or benchmark measure, an RHC must meet or exceed the measure's goal for a measurement period. Goals will be established as either a target percentage improvement over self or performance above a benchmark as specified by the metric and determined by HHSC. In year one of the program, providers will establish a baseline for IOS measures.

(c) Participating RHC reporting frequency. Participating RHCs must report quality metric achievement semi-annually unless otherwise specified by the metric.

(f) Notice and hearing.

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

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Proposal publication date: January 29, 2021

For further information, please call: (512) 923-0644



CHAPTER 355. REIMBURSEMENT RATES  
SUBCHAPTER J. PURCHASED HEALTH SERVICES  
DIVISION 31. AMBULANCE SERVICES  
1 TAC §355.8600

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8600, concerning Reimbursement Methodology for Ambulance Services. The amendment to §355.8600 is adopted with changes to the proposed text as published in the February 12, 2021, issue of the *Texas Register* (46 TexReg 1005). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8600 establishes enhanced supplemental payments to publicly owned ground emergency ambulance service providers. Publicly owned ground emergency ambulance providers currently receive fee-for-service payments to cover uncompensated care costs. Subject to approval by the Centers for Medicare and Medicaid Services, the amendment will make publicly owned ground emergency ambulance providers eligible for additional payments for services up to the average rate payable by commercial insurers for those same services.

COMMENTS

The 31-day comment period ended March 15, 2021.

During this period, HHSC received comments on the proposed rule from two commenters: Public Consulting Group (PCG) and the Texas Ambulance Association (TAA). A summary of the comments received and HHSC's responses follows.

Comment: The commenters stated that the proposal preamble's *Background and Purpose* section states that the "purpose of this proposal is to establish enhanced supplemental payments to publicly owned ground emergency ambulance service providers." The commenters asked to change it to "enhanced ACR supplemental payments" to specify average commercial rate. The commenter also suggested removing the language "fee-for-service payments" and replacing it with "charity care supplemental payments."

Response: No changes were made in response to this comment because it does not suggest a change to the rule text as proposed.

Comment: Comments were submitted regarding the definitions. Multiple commenters requested that the acronym "ACR" be added to the term "Average Commercial Rate" for clarity. A commenter requested that the acronym "UC" be added for "Uncompensated Care Costs" and its definition be replaced with "the difference between the upper payment limit for the costs and claims reimbursement determined by HHSC." Some commenters requested that the definition of "UC Charity Care Supplemental Payment" and "Enhanced Supplemental Payment Program" be added to the definition section.

Response: No changes were made in response to these comments. HHSC disagrees with these comments as they do not add clarity to the rule but lengthen it and add unnecessary complexity.

Comment: Commenters suggested multiple edits to subsection (c)(2). Commenters suggested changing the date "September 30, 2019" to "October 1, 2019;" replacing "Fee-for-service payments" with "Uncompensated Charity Care;" and instead of the language "governmental ambulance provider may be eligible to receive a supplemental payment in addition to the Fee-for-service payment," as it currently states, changing it to read that the "ambulance provider may be able to receive, through the submission of an annual cost report, a supplemental payment for Uncompensated Care Charity Care."

Response: No changes were made in response to this comment. The suggested edits would change the UC program, which is outside of the scope of this rule amendment.

Comment: Commenters suggested multiple edits in the eligibility divisions.

- Commenters requested that the lead-in to §355.8600(c)(2)(A), "Eligibility for supplemental payments," be replaced with "Eligibility for UC Supplemental Payments."

- Another commenter suggested splitting up subparagraph §355.8600(c)(2)(A), Eligibility for supplemental payments, into a new clause (i) "Initial Application." Additionally, there was a request to move subparagraph §355.8600(c)(2)(C), Cost reports, after §355.8600(c)(2)(A)(vii) as clause (ii) and retitling it to "Annual cost Reports." A commenter also requested that language in §355.8600(c)(2)(C) "delivered to Medicaid and, effective March 1,2012, uninsured clients" be replaced with "delivered to eligibly charity care recipients."

- Commenters requested that §355.8600(c)(2)(B), Eligibility for enhanced supplemental payments, be split into two: subparagraph (B) and clause (i). Commenters suggested that the new (i) be titled "Initial ACR Application," and wanted to change the word "cost" to "utilization." Commenters also suggested that the lead-in for subparagraph (B) be replaced with "Eligibility for Enhanced ACR supplemental payments."

- Commenters requested that language in §355.8600(c)(2)(C)(i-i), Purpose, "Medicaid and uncompensated care costs," be replaced with "uncompensated charity care costs."

- Commenters requested that language in §355.8600(c)(2)(C)(i-ii), Allocating allowable costs, "Medicaid and uninsured patients based on the ratio of charges for Medicaid and uninsured patients to the charges for all patients," be replaced with "to charity care based on the ratio of charges for charity care to charges for all financial classes (payers)."

- Commenters suggested adding a date to the first sentence of §366.8600(c)(2)(C)(i).

Response: Except for the last suggestion, HHSC disagrees with the comments, as they would change the UC program, which is outside of the scope of the rule amendment. The changes recommended to the enhanced supplemental payment program add unnecessary redundancy, length, and complexity to the rule. HHSC has added the date, "September 30," to the first sentence of §355.8600(c)(2)(C)(i).

Comment: Commenters suggested that the lead-in to §355.8600(c)(2)(D) "Calculation of supplemental payments" be changed to "Calculation of Enhanced Supplemental Payments." Commenters also suggested adding the top five commercial payers in subparagraph (E)(i), as well as the acronym "ACR" before "supplemental payments" to (E)(i)(I). Commenters suggested adding "by procedure code" so that (E)(i)(II) and (E)(i)(III) would read "HHSC will apply average commercial rate by procedure code."

Response: HHSC agrees that the title of subparagraph (D) should reference enhanced supplemental payments and has changed the title to "Calculation of supplemental payments and enhanced supplemental payments" as subparagraph (D) relates to both supplemental payments and enhanced supplemental payments. HHSC did not abbreviate "average commercial rate" throughout the rule. HHSC disagrees with the additional language relating to using the top five commercial payers as

it does not comply with the payment calculations as intended. Allowing the use of only the top five commercial payers creates a risk of rate inflation.

Comment: Commenters requested changing §355.8600(c)(2)(D)(iii) to (C)(iii) as well as changing subparagraph (D) to (E).

Response: No changes were made in response to this comment. HHSC disagrees with this suggestion as the relabeling is inaccurate.

Comment: Commenters recommended that §355.8600(c)(2)(E)(i)(VI) should be edited to read "HHSC will re-determine the average commercial rate annually."

Response: HHSC agrees with the recommendation and has modified the language in the rule text.

Comment: One commenter opposed the eligibility criteria provided in §355.8600(c)(2)(A), Eligibility for supplemental payments, requesting to add providers that are not public providers. The commenter mentions that there are "783 EMS provider organizations licensed by the Department of State Health Services" and 503 of those provider organizations are ineligible to participate in the enhanced supplemental payment program. The commenter believes that with the negative economic impact of the Covid-19 pandemic has brought, the enhanced supplemental payment program "should include and be made voluntarily available to all of the Texas licensed EMS organizations regardless of provider type."

Response: HHSC values the role of all providers in serving Texans, but intends for this program to focus on publicly owned ground emergency ambulance service providers.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

#### §355.8600. *Reimbursement Methodology for Ambulance Services.*

(a) Authority. Payments are made to private and governmental providers of ground and air ambulance services as specified in the ambulance program rules in Chapter 354, Subchapter A, Division 9 of this title (relating to Ambulance Services). The reimbursement determination authority is specified in §355.101 of this chapter (relating to Introduction).

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) Allowable costs--Expenses that are reasonable and necessary for the normal conduct of operations relating to the provision of ground and air ambulance services.

(2) Average Commercial Rate--The average amount payable by commercial payers for the same service.

(3) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and

Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(4) Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a unit of government that has taxing authority or has direct access to tax revenues, such as a local government, hospital authority, hospital district, city, county, or state. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(5) Medicaid shortfall--The unreimbursed cost to an ambulance provider of providing Medicaid ambulance services to Medicaid clients.

(6) Private ambulance provider--An ambulance provider that uses paid employees associated and financed through a private entity to provide ambulance services and may be under contract with a local, state, or federal government.

(7) Uncompensated care costs--The sum of the Medicaid shortfall and the uninsured costs.

(8) Uninsured costs--The unreimbursed cost to an ambulance provider of providing ambulance services that meet the definition of "medical assistance" in Social Security Act §1905(a) to uninsured patients as defined by CMS.

(9) Unit of service--A unit of service based on one or more allowable ambulance services provided to a client by all modes of approved transportation.

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment and enhanced supplemental payment for governmental ambulance providers. For services provided through September 30, 2019, a governmental ambulance provider may be eligible to receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection. For services provided beginning October 1, 2019, eligibility for governmental ambulance providers to receive a supplemental payment, and the methodology for calculating the payment amount, are described in §355.8210 of this subchapter (relating to Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care).

(A) Eligibility for supplemental payments. A governmental ambulance provider must submit a written request for determination of eligibility for supplemental payment in a manner designated by HHSC. If eligible, a governmental ambulance provider may begin to claim uncompensated care costs related to services provided on or after the first day of the month after the request for determination of eligibility is approved. HHSC only considers requests for determination of eligibility from governmental ambulance providers as defined in subsection (b) of this section. HHSC will respond to all written requests for consideration, indicating the requestor's eligibility to receive supplemental payments. An acceptable request must include:

(i) an overview of the governmental agency;

(ii) a complete organizational chart of the governmental agency;

(iii) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;

(iv) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;

(v) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and other departments of the governmental agency;

(vi) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and

(vii) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(B) Eligibility for enhanced supplemental payments. A governmental ambulance provider must submit an application for enhanced supplemental payments to HHSC using a form designated by HHSC that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified in the application. If HHSC approves the application, a governmental ambulance provider may begin to claim enhanced supplemental payments based on the average commercial rate related only to ground ambulance services reimbursed by Texas Medicaid on a fee-for-service basis provided on or after the first day of the month after the application is approved. HHSC will respond to all applications, indicating approval or disapproval of the applicant's eligibility to receive enhanced supplemental payments. An acceptable application must include:

(i) proof of enrollment as a Medicaid provider in the State of Texas at the beginning of the current demonstration year as defined in §355.8210 of this subchapter;

(ii) a primary contact person for the government agency who can respond to questions about the ambulance department;

(iii) a statement from the provider expressing its intent to participate in the program; and

(iv) a cost report that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified by HHSC.

(C) Cost reports. Governmental ambulance providers that are eligible for supplemental or enhanced supplemental payments must submit an annual cost report for ground and air ambulance services delivered to Medicaid and, effective March 1, 2012, uninsured clients on a cost report form specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period. Cost reports must be completed for a full year based on the federal fiscal year. HHSC may require newly eligible providers to submit a partial-year cost report for their first year of eligibility. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental or enhanced supplemental payments as determined by HHSC. The ending date of the partial-year cost report is the last day of the federal fiscal year that encompasses the cost report beginning date.

(i) Due date. The cost report is due on or before March 31 of the year following the cost reporting period ending date, September 30, and must be certified in a manner specified by HHSC. If March 31 falls on a federal or state holiday or weekend, the due date is the first business day after March 31. A provider may request in

writing, by regular mail or special mail delivery, an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A request for extension received after the due date is considered denied. A provider whose cost report is not received by the due date or the extended due date is ineligible for supplemental or enhanced supplemental payments for the federal fiscal year.

(ii) Purpose. A cost report documents the provider's actual allowable Medicaid and uncompensated care costs for delivering ambulance services in accordance with the applicable state and federal regulations. Because the cost report is used to determine supplemental and enhanced supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental or enhanced supplemental payment.

(iii) Allocating allowable costs. A provider's total allowable reported costs for ambulance services are allocated to Medicaid and uninsured patients based on the ratio of charges for Medicaid and uninsured patients to the charges for all patients. Only allocable expenditures related to Medicaid, Medicaid managed care, and uncompensated care as defined and approved in the Texas Healthcare Transformation and Quality Improvement 1115 Waiver Program (1115 Waiver) will be included for supplemental payment.

(D) Calculation of supplemental payments and enhanced supplemental payments.

(i) For services provided from October 1, 2011, through February 29, 2012, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its Medicaid shortfall for the cost reporting period multiplied by the federal Medical assistance percentage (FMAP) in effect during the cost reporting period.

(ii) For services provided on or after March 1, 2012, and subject to approval by CMS, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its uncompensated care costs for the cost reporting period multiplied by the FMAP in effect during the cost reporting period.

(iii) Supplemental payments based on uncompensated care costs are limited by the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as determined by §355.8201 of this chapter (relating to Waiver Payments to Hospitals for Uncompensated Care).

(iv) If the actual aggregate uncompensated care costs for all eligible governmental ambulance providers is greater than the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as described in clause (iii) of this subparagraph, then HHSC will reduce the supplemental payments for all participating governmental ambulance providers proportionately.

(v) The supplemental payment is contingent upon the governmental ambulance provider's certificate of public expenditures submitted with each cost report.

(vi) If the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC will recoup an amount equal to the federal share of supplemental payments overpaid or disallowed.

(E) Enhanced supplemental payment.

(i) For ground services reimbursed on a fee-for-service basis provided on or after October 1, 2019, a governmental ambulance provider may be eligible to receive an enhanced supplemental

payment equal to the difference between the average commercial rate and the sum of its reimbursed costs for the cost reporting period.

(I) HHSC will determine the paid Medicaid claims fees and enhanced supplemental payment amounts for all procedure codes specified in the application for each eligible publicly owned fee-for-service ground emergency ambulance service provider.

(II) HHSC will calculate an overall average commercial rate for the ambulance service providers based on the cost and payment data provided from each eligible ambulance provider.

(III) HHSC will apply the overall average commercial rate to an ambulance provider's total Medicaid utilization to determine the ambulance provider's total commercial reimbursement.

(IV) HHSC will subtract the ambulance provider's total Medicaid reimbursement from the ambulance provider's total commercial reimbursement calculated for each of the eligible services.

(V) HHSC will calculate each ambulance provider's maximum payment limit by summing each of the differences calculated in subclause (IV) of this clause for each of the provider's eligible services.

(VI) HHSC will re-determine the average commercial rate at least annually.

(VII) The enhanced supplemental payment is contingent upon the governmental ambulance provider's data submitted with each cost report. HHSC will determine payment amounts on a quarterly basis, with a reimbursement of up to 100 percent for each ambulance provider's average commercial rate.

(ii) If CMS disallows federal financial participation related to a provider's receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the disallowance. If HHSC identifies an overpayment to a provider related to the receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the overpayment.

(d) General information. In addition to the requirements of this section, cost reporting guidelines are governed by: §355.101 of this chapter; §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). If conflicts arise between this section and other sections governing cost reporting, the provisions of this section prevail.

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 April 7, 2021.

TRD-202101481



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

##### 10 TAC §8.7

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §8.7, Program Regulations and Requirements without changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 689), as it relates to properties participating in the Section 811 Program. The rule will not be republished.

The purpose of the amendment is to clarify for Owners that the Department must confirm that assistance is available for an eligible household prior to the property owner reinstating that household to the program. The amendment specifies that property owners or agents must request and receive written confirmation from the Department that the household can be reinstated to the Section 811 PRA Program.

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

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

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

1. The amended rule does not create or eliminate a government program. This amended rule merely ensures that program funding is available to support a household prior to reinstatement, and that no other households are skipped over. This rule also harmonizes the Department's policy regarding a property's actions with the federal regulation, HUD Handbook 4350.3.
2. The amended rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The amended rule does not require additional future legislative appropriations.
4. The amended rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amended rule is not creating a new regulation, except that it is amending a rule to ensure reinstated households have funding available to support them and that no other eligible households are skipped over.
6. The amended rule will expand an existing regulation by adding an additional communication requirement that ensures the pro-

gram is administered fairly and does not exceed the property's obligation or the program's budget.

7. The amended rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The amended rule will not negatively or positively affect the state's economy.

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

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

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's program covered by this rule, no small or microbusinesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so and the amendment poses no fiscal impact on such businesses.
3. The Department has determined that because all potential penalties can be avoided by adhering to program rules, there will be no economic effect on small or micro-businesses or rural communities.

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

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment. Property management partners will not have to hire additional staff to comply with this amended rule. Therefore, no local employment impact statement is required to be prepared for this rule.

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

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

Mr. Wilkinson has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended sections will be the creation of a control that will prevent funding from being committed that is not actually available. There will not be any economic cost to any individuals required to comply with the amended section

because the process described by the rule does not net an economic cost to the property owner or owner's agent subject to the rule.

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

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

g. SUMMARY OF COMMENT AND REASONED RESPONSE. The public comment period was held February 1, 2021 through March 3, 2021. One comment was received. A summary of the public comment and reasoned response is below. One public comment was received from the Houston-Galveston Area Council, an Aging and Disability Resource Center.

General Comment (Commenter One)

COMMENT SUMMARY: The commenter states the following, "These critical and compelling changes provided additional clarification for the purpose of increasing successful participation, enhancing communication and clearly defining roles and expectations for owners and well as prospective tenants who participate in this program. These important and considerate revisions also provided additional clarity which should help to increase inclusion for the first five years of this program....The new revisions were clear and transparent, and emphasized that the program funding is available to ensure that no qualifying household is skipped over."

STAFF RESPONSE: TDHCA appreciates the comment as it comes from an organization that provides and coordinates services for people with disabilities. No changes were made as a result of this comment to the amended rule.

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

Except as described herein, the amended section affects no other code, article, or statute.

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 April 9, 2021.

TRD-202101507

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 29, 2021

Proposal publication date: January 29, 2021

For further information, please call: (512) 475-1762



## PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

## CHAPTER 188. FUEL ETHANOL AND BIODIESEL PRODUCTION INCENTIVE PROGRAM

### 1 TAC §§188.1 - 188.10

The Office of the Governor, Economic Development and Tourism Office ("OOG") adopts the repeal of 10 TAC §§188.1 - 188.10, concerning the Fuel Ethanol and Biodiesel Production Incentive Program. The OOG identified the necessity of the adopted repeals during the OOG's periodic review of 10 TAC Chapter 188, conducted pursuant to Texas Government Code §2001.039. The adopted repeals remove the entirety of 10 TAC Chapter 188. The repeals are adopted without changes and will not be republished.

This concludes the review of 10 TAC Chapter 188 under Texas Government Code §2001.039.

### REASONED JUSTIFICATION

The adopted repeals pertain to the Fuel Ethanol and Biodiesel Production Incentive Program (Program), which relates to the registration of fuel ethanol and biodiesel producers and grants of state funds for the production of fuel ethanol and biodiesel.

The Program, established by Texas Agriculture Code, Chapter 16, was created to encourage the development and production of fuel ethanol and biodiesel and set registration standards. 10 TAC Chapter 188 set out a Memorandum of Understanding between the OOG and the Texas Department of Agriculture (Department) that delineated the roles of the parties related to the Program and transferred the authority to administer the Program to the Department, as authorized by Texas Agriculture Code, §16.005. The Memorandum of Understanding between the OOG and the Department terminated on August 31, 2007 and has not been renewed due to lack of funding. The Program was funded for 18 months in the 2006-2007 biennium, but has not been funded since. Therefore, the OOG has determined the adopted repeals are necessary the reasons for initially adopting the rule do not continue to exist.

The repeal of §§188.1 - 188.10 removes the entirety of 10 TAC Chapter 188, and the expired Memorandum of Understanding between the OOG and the Department.

### SUMMARY OF COMMENTS

The OOG did not receive any comments regarding the adopted amendments.

### STATUTORY AUTHORITY

The repeals are adopted under Texas Agriculture Code, §16.006, which provides that the OOG shall adopt rules necessary to provide for the distribution of grant funds under the Program.

### CROSS REFERENCE TO STATUTE

Texas Agricultural Code, Chapter 16.

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 April 7, 2021.

TRD-202101468



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 112. TEXAS ESSENTIAL

#### KNOWLEDGE AND SKILLS FOR SCIENCE

#### SUBCHAPTER C. HIGH SCHOOL

##### 19 TAC §§112.41 - 112.45

The State Board of Education (SBOE) adopts new §§112.41-112.45, concerning Texas Essential Knowledge and Skills (TEKS) for science. New §112.41 is adopted without changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7125) and will not be republished. New §§112.42-112.45 are adopted with changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7125) and will be republished. The new sections provide updated standards for Biology, Chemistry, Physics, and Integrated Physics and Chemistry to ensure they remain current.

**REASONED JUSTIFICATION:** In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science TEKS. In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.

Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June and July 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. Additionally, in July 2020, members from Work Group B met with Work Group C to discuss vertical alignment of the high school and middle school TEKS. Work Group C continued to meet virtually in August, September, and October 2020.

The new sections introduce revised standards for Biology, Chemistry, Physics, and Integrated Physics and Chemistry as well as related implementation language. The revised standards ensure that the requirements for these courses remain current. The new sections will be implemented beginning with the 2023-2024 school year.

At adoption, the following changes were made.

The student expectation in §112.42(c)(4)(C) was amended by replacing the phrase "connections between grade level appropriate concepts and" with the phrase "resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a" and by inserting the phrase "field in order to investigate STEM" before the word "careers."

The student expectation in §112.42(c)(6)(A) was amended by inserting the phrase "an overview of the" before the phrase "stages of the cell cycle."

The student expectation in §112.42(c)(7)(D) was amended by replacing the phrase "describe the function" with the phrase "discuss the importance."

The student expectation in §112.42(c)(10)(D) was amended by inserting the phrase "and their effect" before the phrase "on the gene pool."

The student expectation in §112.42(c)(11)(A) was amended by inserting the word "the" before the phrase "chemical equations" and by inserting the phrase "for these processes" after the phrase "chemical equations."

The student expectation in §112.42(c)(11)(B) was amended by deleting the phrase "identify and" and by inserting the phrase "and explain" after the word "investigate."

The student expectation in §112.42(c)(12)(B) was amended by inserting the phrase "interactions that occur among systems that perform" before the word "functions."

The student expectation in §112.43(c)(4)(C) was amended by replacing the phrase "connections between grade level appropriate concepts and" with the phrase "resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a" and by inserting the phrase "field in order to investigate STEM" before the word "careers."

The student expectation in §112.43(c)(11)(C) was amended by replacing the phrase "factors that influence" with the word "how," replacing the phrase "such as" after the phrase "gas solubilities" with the phrase "are influenced by," by inserting the word "how" before the phrase "rates of dissolution," and by replacing the phrase "such as" after the phrase "rates of dissolution" with the phrase "are influenced by."

The student expectation in §112.43(c)(11)(D) was amended by inserting the phrase "the solubility of" after the word "predict."

The student expectation in §112.44(c)(4)(C) was amended by replacing the phrase "connections between grade level appropriate concepts and" with the phrase "resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a" and by inserting the phrase "field in order to investigate STEM" before the word "careers."

The student expectation in §112.45(c)(4)(C) was amended by replacing the phrase "connections between grade level appro-

ropriate concepts and" with the phrase "resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a" and by inserting the phrase "field in order to investigate STEM" before the word "careers."

The student expectation in §112.45(c)(6)(C) was amended by replacing the word "der" with the word "de" in the phrase "Van de Graaf generators."

The student expectation in §112.45(c)(8)(A) was amended by inserting the phrase "masses on" before the phrase "springs and pendulums" and inserting the phrase "pulses in" before the word "ropes."

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting and for second reading and final adoption at its November 20, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections 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 enable districts to begin preparing for implementation of the revised high school science TEKS. 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 October 9, 2020, and ended November 13, 2020. The SBOE also provided an opportunity for registered oral and written comments at its November 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** A teacher expressed concern that the additional high school science courses have not yet been included in the TEKS review process.

**Response.** The SBOE provides the following clarification. The current TEKS for additional high school science courses will be revised on a different timeline and are expected to be adopted in 2021.

**Comment.** A teacher indicated that the majority of science credits earned by students are in career and technical education (CTE) courses because many of the current science courses no longer meet the needs of the student demographic. The commenter recommended adding independent research and special topics courses for science similar to courses offered in social studies.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** A representative from an institution of higher education suggested that student expectations with the word "including" be considered for State of Texas Assessments of Academic Readiness (STAAR®) items whereas student expectations with "such as" not be considered for STAAR® items.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** Six teachers and five administrators recommended replacing the verb "relate" with the verb "identify" in the proposed student expectation in §112.42(c)(5)(A). The commenters stated that the verb "relate" may result in very complex assessments

that are not grade-level appropriate and would result in more time spent teaching this concept.

**Response.** The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.42(c)(5)(A) is appropriate as proposed.

**Comment.** An administrator and 10 instructional coaches recommended including enzymes as a type of biomolecule in the proposed student expectation in §112.42(c)(5)(A) to read, "including carbohydrates, lipids, proteins (including enzymes), and nucleic acids."

**Response.** The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.42(c)(5)(A) is appropriate as proposed.

**Comment.** A teacher recommended adding the term "endosymbiont theory" to the proposed student expectation in §112.42(c)(5)(B) for specificity.

**Response.** The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.42(c)(5)(B) is appropriate as proposed.

**Comment.** An administrator and 10 instructional coaches stated that proposed §112.42(c)(5)(B) is wordy and should be split into two parts. The commenters recommended revising §112.42(5)(B) to read, "compare and contrast prokaryotic and eukaryotic cells, including their complexity" and a new §112.42(5)(C) should be added to read, "evaluate endosymbiotic theory as an explanation for cellular complexity."

**Response.** The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.42(c)(5)(B) is appropriately worded as proposed.

**Comment.** A teacher recommended adding more specificity to the proposed student expectation in §112.42(c)(5)(C) about the types of cellular transport and how they relate to homeostasis.

**Response.** The SBOE disagrees that the suggested change is necessary and has determined that the level of specificity in the student expectation in §112.42(c)(5)(C) is appropriate as proposed.

**Comment.** A teacher expressed concern about the removal of viral reproduction from the proposed student expectation in §112.42(c)(5)(D). The commenter stated that viral reproduction helps explain how viruses spread.

**Response.** The SBOE disagrees and has determined that the student expectation in §112.42(c)(5)(D) is appropriate as proposed.

**Comment.** An administrator and 10 instructional coaches recommended the deletion of the proposed student expectation in §112.42(c)(6)(A) because, as written, the student expectation will lead to the memorization of the cell cycle which adds nothing to student understanding of this knowledge and skills statement.

**Response.** The SBOE disagrees with the recommendation to delete the student expectation in §112.42(c)(6)(A). However, in response to this and other comments, the SBOE took action to amend the student expectation in §112.42(c)(6)(A) to read, "explain the importance of the cell cycle to the growth of organisms, including an overview of the stages of the cell cycle and deoxyribonucleic acid (DNA) replication models."

**Comment.** Two teachers and two community members expressed concern regarding the insertion at first reading of the



phrase "stages of the cell cycle" in the proposed student expectation in §112.42(c)(6)(A) because the stages are rote facts and no rigor is added by memorizing them. The commenters recommended reverting back to the language proposed by the work group to read, "explain the importance of the cell cycle to the growth of organisms, including DNA replication using models."

Response. The SBOE disagrees with the suggested change and has determined that amendment to the student expectation in §112.42(c)(6)(A) at first reading was appropriate. In response to other comments, however, the SBOE took action to amend the student expectation in §112.42(c)(6)(A) to read, "explain the importance of the cell cycle to the growth of organisms, including an overview of the stages of the cell cycle and deoxyribonucleic acid (DNA) replication models."

Comment. A teacher recommended revising the proposed student expectation in §112.42(c)(6)(A) to read, "explain the importance of the cell cycle to the growth of organisms, including stages of the cell cycle and the steps and significance of deoxyribonucleic acid (DNA) replication in the cell cycle." The commenter stated that the significance of DNA replication could be revisited in other processes including protein synthesis and mutations and viral replication.

Response. The SBOE disagrees with the suggested rewording. In response to other comments, however, the SBOE took action to amend the student expectation in §112.42(c)(6)(A) to read, "explain the importance of the cell cycle to the growth of organisms, including an overview of the stages of the cell cycle and deoxyribonucleic acid (DNA) replication models."

Comment. A teacher stated that the student expectations in §112.34(c)(6)(B) and (C) from the current Biology course should be included in the proposed new Biology TEKS because they are essential to understanding how organisms could have evolved from one another.

Response. The SBOE disagrees that §112.34(c)(6)(B) and (C) from the current Biology course are essential and has determined that they were appropriately eliminated from the TEKS. The SBOE also provides the following clarification. The concepts of transcription and translation, which are currently addressed in §112.34(c)(6)(C) have been incorporated into the new proposed student expectation in §112.45(c)(7)(A).

Comment. A teacher recommended adding gene expression to the proposed student expectation in §112.42(c)(6)(B).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(6)(B) is appropriate as proposed.

Comment. Six teachers and five administrators expressed concern regarding the proposed student expectation in §112.42(c)(6)(B). The commenters stated that focusing on process and environmental factors is beyond the scope of a freshman biology course and would require excessive time to teach. The commenters recommended revising the student expectation to read, "explain the importance of cell specialization and cell differentiation in multicellular organisms."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(6)(B) is appropriate for a high school biology course as proposed.

Comment. Six teachers and five administrators expressed concern that the wording in the proposed student expectation in

§112.42(c)(7)(A) may lead to the misconception that sugar and phosphate are relevant to the coding of genes. The commenters recommended revising the student expectation to read, "explain how the DNA structure, specifically the nitrogen base sequence, determines some traits of an organism, and examine scientific explanations for the origin of DNA."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(7)(A) is appropriately clear as proposed.

Comment. A teacher recommended including in the proposed student expectation in §112.42(c)(7)(A) a specific experiment related to the origin of DNA such as Miller Urey.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(7)(A) is appropriate as proposed.

Comment. An individual from out of state stated that explanations for the origin of DNA in the proposed student expectation in §112.42(c)(7)(A) should include both materialistic and teleological hypotheses. The commenter explained that there is nothing in the proposed TEKS regarding an explanation for the origin of life, which is an important topic and should not be ignored.

Response. The SBOE disagrees and has determined that the student expectation in §112.42(c)(7)(A) appropriately provides opportunities for students to examine a variety of scientific explanations of the origin of DNA.

Comment. A teacher recommended connecting the proposed student expectation in §112.42(c)(7)(B) to gene expression.

Response. The SBOE disagrees and has determined that gene expression is already appropriately addressed in §112.42(c)(7)(B) as proposed.

Comment. Six teachers and five administrators recommended that the proposed student expectation in §112.42(c)(7)(B) be revised for clarity to read, "use models to explain protein synthesis and the significance of gene expression."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.42(c)(7)(B) is sufficiently clear as proposed.

Comment. A teacher recommended reinstating in the proposed student expectation in §112.42(c)(7)(D) the topic of biotechnology, which was removed when Biology was streamlined in 2017.

Response. The SBOE disagrees that reinserting biotechnology in Biology is necessary. However, in response to other comments the SBOE took action to amend §112.42(c)(7)(D) to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. A teacher recommended that the SBOE reinstate the term "gene modification" in proposed new §112.42(c)(7)(D).

Response. The SBOE disagrees that the suggested change is necessary. However, in response to other comments the SBOE took action to amend §112.42(c)(7)(D) to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. A teacher expressed concern regarding potential funding issues to implement the proposed student expectations in §112.42(c)(1)(D) and (7)(D) due to tools such as gel electrophoresis and polymerase chain reaction (PCR) apparatuses, microcentrifuges, water baths, and incubators that are listed.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A teacher expressed support for the proposed student expectation in §112.42(c)(7)(D) related to genetic engineering.

Response. The SBOE agrees. In response to other comments the SBOE took action to amend §112.42(c)(7)(D) to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. An administrator and 10 instructional coaches expressed concern regarding changes made at first reading to the proposed student expectation in §112.42(c)(7)(D). The commenters stated that "describe the function" is very low rigor and recommended replacing it with the phrase "discuss the importance" to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Response. The SBOE agrees and took action to amend §112.42(c)(7)(D) to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. A teacher recommended that the proposed student expectation in §112.42(c)(7)(D) be moved to the scientific and engineering practices student expectations.

Response. The SBOE disagrees and has determined that the student expectation in §112.42(c)(7)(D) is appropriately placed. In response to other comments, however, the SBOE took action to amend the student expectation to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. Three teachers recommended replacing the phrase "describe the significance of genetic engineering" in the proposed student expectation in §112.42(c)(7)(D) with "explain the effects of genetic modification."

Response. The SBOE disagrees with the suggested change. However, in response to other comments the SBOE took action to amend the student expectation in §112.42(c)(7)(D) to read, "discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices."

Comment. Six teachers and five administrators recommended replacing the word "function" with the word "purpose" in the proposed student expectation in §112.42(c)(7)(D).

Response. The SBOE agrees that the word "function" should be replaced but disagrees with the suggested replacement. In response to other comments the SBOE took action to replace the phrase "describe the function" with the phrase "discuss the importance" in the student expectation in §112.42(c)(7)(D).

Comment. A teacher recommended merging the student expectations under the proposed knowledge and skills statements in §112.42(c)(7) and (8).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(7) and (8) are appropriate as separate knowledge and skills statements.

Comment. An administrator and 10 instructional coaches expressed concern regarding changes made to the proposed student expectation in §112.42(c)(8)(B). The commenters explained that including dihybrid crosses does not increase the rigor of the student expectation because dihybrid crosses are very algorithmic and can be taught absent of biology. The commenters recommended reverting to the student expectation as originally proposed at first reading to read, "predict possible outcomes of various genetic combinations including monohybrid crosses, incomplete dominance, codominance, sex-linked traits, and multiple alleles."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(8)(B) is appropriate as proposed.

Comment. Three teachers recommended removing dihybrid genetics problems from the proposed student expectation in §112.42(c)(8)(B). The commenters explained that the concept requires too much time to master.

Response. The SBOE disagrees and has determined that dihybrid genetics problems are appropriately included in the student expectation in §112.42(c)(8)(B).

Comment. Four teachers, five administrators, and four community members expressed concern regarding the inclusion of "dihybrid crosses" and "non-Mendelian" in the proposed student expectation in §112.42(c)(8)(B). The commenters recommended reverting back to the language originally proposed by the work group.

Response. The SBOE disagrees and has determined that the terms "dihybrid crosses" and "non-Mendelian" are appropriately included in the student expectation in §112.42(c)(8)(B).

Comment. A teacher proposed adding the analysis of graphs to the proposed student expectation in §112.42(c)(9)(B) for more specificity.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(9)(B) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches expressed concern regarding the proposed student expectation in §112.42(c)(9)(B). The commenters recommended reverting to the student expectation as written by the work group because it specifies what students are expected to examine.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(9)(B) is appropriate as proposed.

Comment. An individual from out of state stated that proposed student expectations related to biological evolution in §112.42(c)(10)(A)-(D) deal with microevolution (small scale change within a species). The commenter added that mutation/natural selection mechanism applies to microevolution, not macroevolution (large scale change with new body parts and plans). The commenter recommended that the possible role of intentional design (teleology) should be included.

Response. The SBOE disagrees and has determined that speculation is appropriately addressed in the student expectations in §112.42(c)(10)(A)-(D) as proposed.

Comment. A teacher expressed concern regarding the choice of verbs in the proposed student expectations in §112.42(c)(10)(A)-(D). The commenter explained that a lower level of Bloom's taxonomy is more appropriate because Biology is the first time students are exposed to evolution concepts at this level of detail.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the choice of verbs in the student expectations in §112.42(c)(10)(A)-(D) is appropriate as proposed. In response to other comments, however, the SBOE took action to amend §112.42(c)(10)(D) to read, "analyze evolutionary mechanisms other than natural selection, including genetic drift, gene flow, mutation, and genetic recombination, and their effect on the gene pool of a population."

Comment. Five administrators, ten teachers, and two community members expressed concern regarding the grade-level appropriateness of the verbs "analyze and evaluate" in the proposed student expectation in §112.42(c)(10)(A) because analyzing and evaluating natural selection requires extensive background knowledge. The commenters recommended reverting back to the verb "explain."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the verbs in the student expectation in §112.42(c)(10)(A) are appropriate as proposed.

Comment. Five administrators, thirteen teachers, and two community members expressed concern regarding the grade-level appropriateness of the verbs "analyze and evaluate" in the proposed student expectation in §112.42(c)(10)(B) because analyzing and evaluating natural selection requires extensive background knowledge. The commenters recommended reverting back to the verbs "explain and analyze."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the verbs in the student expectation in §112.42(c)(10)(B) are appropriate as proposed.

Comment. An administrator and 10 instructional coaches expressed concern that changes at first reading to the proposed student expectation in §112.42(c)(10)(A), (B), and (D) were not reviewed by the work group. The commenters recommended reverting back to the wording proposed by the work group.

Response. The SBOE disagrees with the recommendation and has determined that the student expectations in §112.42(c)(10)(A), (B), and (D) are appropriate as proposed. However, in response to other comments the SBOE took action to amend §112.42(c)(10)(D) to read, "analyze evolutionary mechanisms other than natural selection, including genetic drift, gene flow, mutation, and genetic recombination, and their effect on the gene pool of a population."

Comment. Six teachers and five administrators expressed concern that the proposed student expectation in §112.42(c)(10)(D) is not developmentally appropriate for the typical high school freshman or in a first biology course because it requires too much prior knowledge and excessive time to teach. The commenters recommended deleting the student expectation.

Response. The SBOE disagrees that §112.42(c)(10)(D) should be deleted. However, in response to other comments the SBOE took action to amend §112.42(c)(10)(D) to read, "analyze evolutionary mechanisms other than natural selection, including ge-

netic drift, gene flow, mutation, and genetic recombination, and their effect on the gene pool of a population."

Comment. A teacher recommended the inclusion of the carbon cycle in the proposed student expectation in §112.42(c)(11)(A).

Response. The SBOE disagrees that the suggested change is necessary. In response to other comments, however, the SBOE took action to amend §112.42(c)(11)(A) to read, "explain how matter is conserved and energy is transferred during photosynthesis and cellular respiration using models, including the chemical equations for these processes."

Comment. An administrator and 10 instructional coaches expressed concern regarding the proposed student expectation in §112.42(c)(11)(A) and recommended editing the student expectation to read, "explain how matter is conserved and energy is transferred during photosynthesis and cellular respiration using models."

Response. The SBOE disagrees that the suggested change is necessary. In response to this and other comments, however, the SBOE took action to amend §112.42(c)(11)(A) to read, "explain how matter is conserved and energy is transferred during photosynthesis and cellular respiration using models, including the chemical equations for these processes."

Comment. A teacher recommended listing specific cellular processes such as DNA replication and cell cycle to make a connection to cell processes addressed in the proposed student expectation in §112.42(c)(11)(B).

Response. The SBOE disagrees that the suggested change is necessary. In response to other comments, however, the SBOE took action to amend §112.42(c)(11)(B) to read, "investigate and explain the role of enzymes in facilitating cellular processes."

Comment. A teacher recommended that enzymes may fit better under DNA and protein synthesis than in the student expectation in §112.42(c)(11)(B) regarding cellular processes.

Response. The SBOE disagrees that the suggested change is necessary and has determined that enzymes are appropriately included in the student expectation in §112.42(c)(11)(B) as proposed.

Comment. An administrator, ten instructional coaches, two teachers, and two community members expressed concern that changes made at first reading to the verbs in the proposed student expectation in §112.42(c)(11)(B) decrease the rigor of the student expectation. The commenters suggest reverting back to the verbs "investigate and explain."

Response. The SBOE agrees and took action to amend §112.42(c)(11)(B) to read, "investigate and explain the role of enzymes in facilitating cellular processes."

Comment. An administrator and 10 instructional coaches expressed concern that the cognitive level expected for the proposed student expectation in §112.42(c)(12)(A), related to animals, is much higher than the proposed student expectation in §112.42(c)(12)(B), related to plants, and seems to imply that plants are not important. The commenters recommended revising §112.42(c)(12)(B) to read, "analyze the interactions that occur among systems that perform the functions of transport, reproduction, and response in plants that are facilitated by their structures."

Response. The SBOE disagrees and has determined that §112.42(c)(12)(A) and (B) give equal importance to plants

and animals. However, in response to other comments the SBOE took action to amend §112.42(c)(12)(B) to read, "explain how the interactions that occur among systems that perform functions of transport, reproduction, and response in plants are facilitated by their structures."

Comment. Six teachers and five administrators expressed concern regarding the clarity of the proposed student expectation in §112.42(c)(12)(B). The commenters recommended revising the student expectation to read, "explain how the structures in plants facilitate the functions of transport, reproduction, and response."

Response. The SBOE disagrees that the suggested change is necessary. However, in response to other comments the SBOE took action to amend §112.42(c)(12)(B) to read, "explain how the interactions that occur among systems that perform functions of transport, reproduction, and response in plants are facilitated by their structures."

Comment. Three teachers recommended changing the verbs in the proposed student expectation in §112.42(c)(13)(A) from "investigate and evaluate" to "analyze."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the verbs in §112.42(c)(13)(A) are appropriate as proposed.

Comment. Six teachers and five administrators expressed concern regarding the verbs "investigate and evaluate" in the proposed student expectation in §112.42(c)(13)(A). The commenters explained that it is dangerous to "investigate" predatory, parasitic, competitive, and symbiotic relationships and People for the Ethical Treatment of Animals (PETA) would find it unacceptable to engage in these investigations. The commenters recommended substituting the verb "explain."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the verbs in the student expectation in §112.42(c)(13)(A) are appropriate as proposed.

Comment. Six teachers and five administrators expressed concern regarding the clarity of the proposed student expectations in §112.42(c)(13)(B) and (C). The commenters recommended deleting the student expectation in §112.42(c)(13)(C) and revising the student expectation in §112.42(c)(13)(B) to read, "use models to analyze ecosystem stability and the effects of disruptions in cycling of matter (including nitrogen and carbon) and flow of energy."

Response. The SBOE disagrees that the suggested changes are necessary and has determined that the student expectations in §112.42(c)(13)(B) and (C) are sufficiently clear as proposed.

Comment. A teacher recommended specifying the models students should use such as food webs, food chains, and food pyramids in the proposed student expectation in §112.42(c)(13)(B).

Response. The SBOE disagrees that the suggested examples of models are necessary and has determined that the student expectation in §112.42(c)(13)(B) is appropriate as proposed.

Comment. Two teachers and two community members stated that adding human activity to the proposed student expectation in §112.42(c)(13)(D) is a step in the right direction but does not specifically address climate change. The commenters recommended revising the student expectation to read, "explain how environmental change, including climate change due to human activity, affects biodiversity and analyze how changes in biodiversity impact ecosystem stability."

Response. The SBOE disagrees that the suggested change is necessary and has determined that environmental changes due to human activity are appropriately addressed in §112.42(c)(13)(D) as proposed.

Comment. Six teachers and five administrators expressed concern regarding the clarity of the proposed student expectation in §112.42(c)(13)(D). The commenters recommended revising the student expectation to read, "explain and analyze how environmental change affects biodiversity and ecosystem stability."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.42(c)(13)(D) is sufficiently clear as proposed.

Comment. A parent stated that there should be no reference to creationism in the state curriculum because superstition isn't science.

Response. The SBOE agrees that the Biology TEKS should be based on science and has determined that the language in the standards is appropriate. Additional changes were made in response to other comments.

Comment. An individual from out of state stated that because the term "evolution" has multiple meanings, the TEKS should identify which definition is being used.

Response. The SBOE disagrees and has determined that the standards in which evolution is addressed are sufficiently clear.

Comment. A community member expressed concern that the only theory listed in the proposed Biology TEKS is evolutionary theory. The commenter suggested that the TEKS specifically list other theories or at least acknowledge that other theories exist.

Response. The SBOE agrees that the study of scientific theory is important and provides the following clarification. Scientific theories are addressed in the four proposed high school science courses by including them in the introduction and scientific and engineering practices in §§112.42(c)(1)(H), 112.43(c)(1)(H), 112.44(c)(1)(H), and 112.45(c)(1)(H).

Comment. A teacher questioned whether Chemistry should be a prerequisite for enrollment in Biology.

Response. The SBOE disagrees and has determined that completion of Chemistry is not necessary for students to be successful in Biology.

Comment. A teacher expressed concern regarding the removal of the current knowledge and skills statement in §112.42(c)(3) regarding using critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The commenter stated that this statement gives room for a broad range of connections to 21st century skills and other disciplines.

Response. The SBOE agrees that using critical thinking, scientific reasoning, and problem solving to make informed decisions is important and has determined that these skills are appropriately included in the introduction in §112.42(b)(1) with the phrase, "By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving."

Comment. A teacher stated that the proposed new TEKS for §112.42, Biology, are very well written and provide an overall focus for many of the concepts in the course.

Response. The SBOE agrees. Additional changes were made in response to other comments.

Comment. A teacher expressed support for addressing theory in the content student expectations for Biology.

Response. The SBOE agrees that the inclusion of scientific theory in the Biology TEKS is appropriate. Additional changes were made in response to other comments.

Comment. A teacher requested that the SBOE identify sections of proposed §112.42, Biology, that would not need to be taught so that educators could go deeper into the content.

Response. The SBOE disagrees and has determined that the scope of the proposed new TEKS for Biology are appropriate and permit teachers to go into sufficient depth of content. The SBOE also provides the following clarification. In accordance with 19 TAC §74.1(b), a school district must provide instruction in all of the TEKS for the appropriate grade levels and/or courses in the required curriculum. A school district may add elements at its discretion but must not delete or omit instruction.

Comment. A teacher stated that the proposed new TEKS for Biology cover more content than can be thoroughly taught in one year. The commenter requested that consideration be given for how much students are required to learn in a course.

Response. The SBOE disagrees and has determined that the scope of the proposed new TEKS for Biology are appropriate in scope and can be sufficiently taught in an instructional year.

Comment. Three teachers and five administrators recommended revising the proposed student expectation in §112.43(c)(6)(A) to read, "use models and experimental design to explain Dalton's Postulates, Thomson's discovery of electron properties, Rutherford's nuclear atom, Bohr's nuclear atom, and Heisenberg's Uncertainty Principle, and how they have lead to the modern atomic theory." The commenters stated that adding experimental designs addresses the issue that all of the examples in the student expectation can be captured in a model.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(6)(A) is appropriate as proposed.

Comment. Three teachers and five administrators recommended eliminating the student expectation in §112.43(c)(6)(D) and adding isotopes to the proposed student expectation in §112.43(c)(6)(B) to support conceptual chemistry.

Response. The SBOE disagrees that the suggested changes are necessary and has determined that §112.43(c)(6)(B) and (D) are appropriate as proposed.

Comment. Three teachers and five administrators expressed disagreement with the proposed student expectation in §112.43(c)(6)(C). The commenter recommended reverting to the student expectation proposed by the work group which focused on chemistry rather than mathematics to read, "investigate the quantized energy emitted by electron movement of various elements and relate the emissions to the electromagnetic spectrum."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(6)(C) is appropriate as proposed.

Comment. A representative from an institution of higher education expressed concern that the addition of the phrase "and relate it to the quantization of energy in the emission spectrum"

in the proposed student expectation in §112.43(c)(6)(C) extends the student expectation into the realm of physics and will add additional weeks of instructional time to an already full course. The commenter recommended revising the student expectation to read, "investigate the energy emitted by electron movement of various elements and relate the emissions to the various elements of atomic emission spectra."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(6)(C) is appropriate as proposed.

Comment. A teacher recommended removing the phrase "the mathematical relationship" from the proposed student expectation in §112.43(c)(6)(C) and reverting back to the original wording proposed by the work group to read, "investigate the quantized energy emitted by electron movement of various elements and relate the emissions to the electromagnetic spectrum."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(6)(C) is appropriate as proposed.

Comment. Three teachers and five administrators expressed concern regarding the clarity of the proposed student expectation in §112.43(c)(6)(E). The commenters recommended revising the student expectation to read, "construct electron configurations and Lewis dot structures to express the arrangement of electrons in atoms."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(6)(E) is sufficiently clear as proposed.

Comment. Three teachers and five administrators recommended deleting the proposed student expectation in §112.43(c)(7)(C) and stated that most Chemistry students have not completed Geometry; therefore, the student expectation is not accessible to them.

Response. The SBOE disagrees that the suggested deletion is necessary and has determined that §112.43(c)(7)(C) is appropriate as proposed.

Comment. Three teachers and five administrators recommended revising the proposed student expectation in §112.43(c)(7)(A) to read, "predict bonding between elements using the periodic trends associated with electronegativity." The commenters explained that the wording as proposed lacks the clarity teachers would need in planning for assessments and activities.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(7)(A) is sufficiently clear as proposed.

Comment. A teacher stated that something about determining molecular polarity should be added to the Chemistry TEKS because students will need the skill to fully understand intermolecular forces (IMF) theory in §112.43(c)(7)(D). The commenter added that the skill also supports understanding of the unique properties of water, the reason that water is polar, and concepts in solubility.

Response. The SBOE disagrees and has determined that there is sufficient background for students to fully understand the student expectation in §112.43(c)(7)(D).

Comment. Three teachers and five administrators expressed concern regarding changes to the student expectation in

§112.43(c)(9)(A) and recommended reverting to the language proposed by the work group.

Response. The SBOE disagrees and has determined that §112.43(c)(9)(A) is appropriate as proposed.

Comment. A teacher questioned the meaning of "interpret chemical equations," in the proposed student expectation in §112.43(c)(9)(A). The commenter stated that it is unclear whether students should be able to identify the type of chemical reaction by looking at the chemical equation or if they should be able to predict the products of different types of equations.

Response. The SBOE disagrees and has determined that §112.43(c)(9)(A) is sufficiently clear as proposed.

Comment. Three teachers and five administrators recommended keeping all types of chemical reactions together in the proposed student expectation in §112.43(c)(9)(B) by revising the student expectation to read, "classify the reactions as synthesis, decomposition, single replacement, double replacement, and combustion reactions and differentiate among acid-base reactions, precipitation reactions, and oxidation-reduction reactions."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(9)(B) is appropriate as proposed.

Comment. A teacher stated that the proposed student expectation in §112.43(c)(9)(B) is unnecessary and should be deleted. The commenter explained that acid-base reactions are addressed in §112.43(c)(12)(D), precipitation reactions are addressed in §112.43(c)(11)(D), and electrochemistry (oxidation-reduction reactions) is not covered in Chemistry and does not support students' ability to master the other student expectations.

Response. The SBOE disagrees with the suggested deletion and has determined that §112.43(c)(9)(B) is appropriate as proposed.

Comment. A representative from an institution of higher education expressed concern that the proposed student expectation in §112.43(c)(11)(C) might be confusing to teachers because it contains two "such as" statements. The commenter recommended revising the student expectation to read, "investigate factors that influence solid and gas solubilities using solubility curves and rates of dissolution such as temperature, agitation, and surface area."

Response. The SBOE agrees that the language of the student expectation as proposed could use refinement and took action to amend §112.43(c)(11)(C) to read, "investigate how solid and gas solubilities are influenced by temperature using solubility curves and how rates of dissolution are influenced by temperature, agitation, and surface area."

Comment. A teacher expressed support for the addition of bases to the proposed student expectation in §112.43(c)(12)(A) because it aligns the student expectation with the knowledge and skills statement.

Response. The SBOE agrees and has determined that the student expectation and knowledge and skills statement are appropriately aligned.

Comment. Five teachers and five administrators expressed concern about the addition of the phrase "and bases" to the

proposed student expectation in §112.43(c)(12)(A). The commenters recommended the deletion of the phrase because bases do not have their own naming rules.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(12)(A) is appropriate as proposed.

Comment. Three teachers and five administrators recommended deleting the student expectation in §112.43(c)(12)(C) and revising §112.43(c)(12)(B) to read, "classify acids and bases based on the presence and concentration of hydrogen ions (protons) using the pH scale" to give students a better real world understanding of acids and bases that would be more relevant to how students might use their knowledge of acids and bases beyond the classroom.

Response. The SBOE disagrees that the suggested changes are necessary and has determined that §112.43(c)(12)(B) and (C) are appropriate as proposed.

Comment. Three teachers and five administrators expressed concern that the proposed student expectation in §112.43(c)(12)(D) duplicates part of the student expectation in §112.43(c)(9)(A) because a reaction of an acid and base to form water is a double-replacement reaction. The commenters recommended revising the student expectation to read, "describe how acids and bases neutralize each other and how this applies to solving real world issues such as heart burn, soil balance in gardens, and pool maintenance" to incorporate real world chemistry.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(12)(D) is appropriate as proposed.

Comment. Three teachers and five administrators expressed concern regarding the proposed student expectation in §112.43(c)(12)(E). The commenters explained that this student expectation focuses too much on complex calculations that lack a connection to how pH is used in real-world problem solving. The commenters recommended editing the student expectation to read, "test solutions to classify as acids or bases."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(12)(E) is appropriate as proposed.

Comment. Four teachers and five administrators expressed concern regarding the grade-level appropriateness of the proposed student expectation in §112.43(c)(13)(A). The commenter stated that thermodynamics is more appropriate for Physics or an upper level chemistry course.

Response. The SBOE disagrees and has determined that thermodynamics is appropriately included in the student expectation in §112.43(c)(13)(A).

Comment. Two teachers recommended deleting or rewriting the proposed student expectation in §112.43(c)(13)(A) because the laws of thermodynamics require knowledge students would not have if they have not taken Physics. The commenters stated that portions of the laws can be taught in Chemistry; however, a true understanding of concepts related to thermodynamics such as entropy are beyond the scope of a high school course.

Response. The SBOE disagrees and has determined that thermodynamics is appropriately included in the student expectation in §112.43(c)(13)(A).

Comment. Two teachers recommended amending the proposed student expectation in §112.43(c)(13)(A) to include everyday examples of only the first and second laws of thermodynamics because the third and fourth laws are difficult to understand and not as relevant for high school students.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(13)(A) is appropriate as proposed.

Comment. A teacher recommended changing the verb from "explain" to "identify" in the student expectation in §112.43(c)(13)(A) to make the student expectation more attainable.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(13)(A) is appropriate as proposed.

Comment. Three teachers and five administrators recommended moving the proposed student expectations in §112.43(c)(14)(A) and (B) to the Earth and Space Science and Astronomy courses since the elements are formed in stars and the student expectation is beyond the scope of Chemistry.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectations in §112.43(c)(14)(A) and (B) are appropriate as proposed.

Comment. Three teachers and five administrators recommended moving the proposed student expectation in §112.43(c)(14)(C) to proposed §112.45, Physics.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.43(c)(14)(C) is appropriate as proposed.

Comment. A teacher expressed concern that the proposed new TEKS for §112.43, Chemistry, will be much more difficult for students due to the deletion of basic concepts (such as states of matter and the comparison of substances and mixtures) and the addition of more difficult concepts (such as electronegativity and intramolecular and intermolecular forces). The commenter explained that these changes will force many schools to offer Chemistry as a junior-level class because very few underclassmen have the logical reasoning for abstract concepts.

Response. The SBOE disagrees and has determined that the new TEKS for Chemistry are appropriate as proposed. Additional changes were made in response to other comments.

Comment. A teacher expressed support for not including physical and chemical changes and properties, states of matter, pure substances and mixtures, and energy and its forms in the proposed new Chemistry TEKS because they are planned to be covered in Grade 8.

Response. The SBOE agrees and has determined the new TEKS for Chemistry are appropriate as proposed. Additional changes were made in response to other comments.

Comment. A teacher expressed concern regarding the lack of content regarding dimensional analysis or significant digits in proposed §112.43, Chemistry. The commenter explained that, since measurements are uncertain, only numbers that are meaningful should be used and knowing how to perform dimensional analysis will help students be more successful and see the purpose of performing calculations.

Response. The SBOE disagrees and has determined that dimensional analysis and significant digits are unnecessary in the TEKS for Chemistry.

Comment. An administrator recommended the addition of the following statement to the prerequisites for the proposed Chemistry TEKS, "It is recommended that students taking Chemistry in 10th grade made an 80 or higher in Algebra I; otherwise, it is recommended they take Chemistry in 11th grade."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the prerequisites for Chemistry are appropriate as proposed.

Comment. Four teachers and six administrators stated that there is not sufficient time to teach the quantity of student expectations in the proposed new Chemistry course.

Response. The SBOE disagrees and has determined that the scope of the proposed new TEKS for Chemistry are appropriate in scope and can be sufficiently taught in an instructional year.

Comment. A teacher recommended the addition of the following concepts to proposed new §112.44, Integrated Physics and Chemistry (IPC), to prepare students for Chemistry or Physics: basic atomic structure; atomic theory and models; ionic versus covalent bonding properties; kinetic molecular theory as it relates to states of matter; work versus energy; and an overview of Newton's laws.

Response. The SBOE disagrees that the suggested additions are necessary and has determined that the topics addressed in the new IPC TEKS are appropriate as proposed.

Comment. A teacher expressed concern regarding the lack of continuity in proposed §112.44, the IPC course. The commenter recommended revising the TEKS so that connections can be made within each knowledge and skills statement, making it easier for teachers to support student learning.

Response. The SBOE disagrees that the suggested changes are necessary and has determined that §112.44 included connections to support student learning as appropriate.

Comment. A teacher recommended adding distance and displacement to clarify position in the proposed student expectation in §112.44(c)(5)(A).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(5)(A) is appropriate as proposed.

Comment. A teacher recommended removing impulse from the proposed student expectation in §112.44(c)(5)(C). The commenter recommended concentrating on momentum.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(5)(C) is appropriate as proposed.

Comment. A teacher recommended the phrase "describe the nature of the four fundamental forces" should be clarified in the proposed student expectation in §112.44(c)(5)(D).

Response. The SBOE disagrees that additional clarification is necessary and has determined that §112.44(c)(5)(D) is appropriate as proposed.

Comment. A teacher recommended that the proposed student expectation in §112.44(c)(5)(D) should focus on nuclear forces.

Response. The SBOE disagrees that the student expectation should focus on nuclear forces and has determined that §112.44(c)(5)(D) is appropriate as proposed.

Comment. A teacher recommended dividing the proposed student expectation in §112.44(c)(5)(D) into separate student expectations because it is difficult to assess the mastery level needed as written. The commenter added that clarification on mass-energy equivalency is also needed to determine mastery level.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(5)(D) is appropriate as proposed.

Comment. A teacher and five administrators expressed concern that concepts in the proposed student expectation in §112.44(c)(5)(D) are not appropriate for the average student enrolled in an IPC course. The commenters recommended revising the student expectation to read, "conduct an experiment that shows the relationship between the kinetic and potential energy of objects that are in motion and at rest." The commenters added that this revision would also better align with the knowledge and skills statement.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(5)(D) is appropriate as proposed.

Comment. Two teachers and one representative from an institution of higher education recommended deleting the proposed student expectation in §112.44(c)(5)(D) due to the advanced nature of the topic. The commenters stated that mass-energy equivalency is too abstract and complex for general education students and is more appropriate for Advanced Placement Chemistry or college-level chemistry and beyond.

Response. The SBOE disagrees that the topic is too advanced for the revised IPC course and has determined that §112.44(c)(5)(D) is appropriate as proposed.

Comment. A teacher and five administrators recommended replacing the proposed student expectation in §112.44(c)(5)(E) with a new student expectation to read "define and calculate work in a mechanical system." The commenters stated that as currently proposed, the student expectation would take excessive time to teach and the suggested revision would better prepare students for the student expectation in §112.44(c)(6)(C).

Response. The SBOE disagrees that the suggested revision is necessary and has determined that §112.44(c)(5)(E) is appropriate as proposed.

Comment. A teacher recommended replacing "and" with "or" in the proposed student expectation in §112.44(6)(A) regarding series and parallel circuits.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(A) is appropriate as proposed.

Comment. A teacher expressed concern that the level of difficulty increased substantially in the proposed student expectation in §112.44(c)(6)(B).

Response. The SBOE disagrees that the level of difficulty increased substantially in the student expectation and has determined that §112.44(c)(6)(B) is appropriate as proposed.

Comment. A teacher and five administrators recommended adding a real-world approach to the proposed student expectation in §112.44(c)(6)(B) by revising it to read, "analyze various ways to generate electricity by investigating mechanical

generators, chemical cells, including batteries and fuel cells, and photovoltaic cells (solar panels)."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(B) is appropriate as proposed.

Comment. A teacher and five administrators recommended revising the proposed student expectation in §112.44(c)(6)(C) to read, "define and calculate efficiency as it relates to energy conserved and energy transferred out of the system." The commenters stated that it is difficult for students to create a closed system which shows that energy is conserved.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(C) is appropriate as proposed.

Comment. A teacher recommended clarifying the kinds of energy, such as potential and kinetic, expected in the proposed student expectation in §112.44(c)(6)(C).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(C) is appropriate as proposed.

Comment. A representative from an institution of higher education expressed concern that the proposed student expectation in §112.44(c)(6)(E), which calls for conducting an investigation, would be challenging for most schools given the equipment required. The commenter recommended revising the student expectation to read, "analyze data to evaluate the transfer of energy or information through different materials by different types of waves such as wireless signals, ultraviolet radiation, and microwaves."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(E) is appropriate as proposed.

Comment. A teacher and five administrators recommended revising the proposed student expectation in §112.44(c)(6)(E) to read, "model the process through which electromagnetic waves are propagated and describe how the characteristics of waves can be manipulated to transfer energy and information in everyday items such as AM/FM radio, wireless telephones, photographic equipment, x-rays, and microwave ovens." The commenters stated that planning and investigating waves such as wireless signals exceeds the scope of the course.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(6)(E) as proposed is appropriate for the scope of the revised course.

Comment. A teacher expressed concern that since there was no proposed student expectation on fundamentals of wave characteristics, students could not be expected to plan and conduct an investigation to evaluate the transfer of energy by different types of waves in the proposed student expectation in §112.44(c)(6)(F).

Response. The SBOE disagrees and has determined that the fundamentals of wave characteristics are addressed appropriately in other student expectations for the course.

Comment. A teacher and five administrators recommended revising the proposed student expectation in §112.44(c)(7)(A) to read, "model basic atomic structure and relate an element's atomic structure to its bonding, reactivity, and placement on the Periodic Table." The commenters stated that reactivity is a



chemical property and already covered in the proposed student expectation in §112.44(c)(7)(B).

Response. The SBOE is unable to agree or disagree with this comment as it is unclear what the commenters wish to change. The language recommended in the comment matches the language of the student expectation as proposed.

Comment. Two teachers recommended clarifying the proposed student expectation in §112.44(c)(7)(A) by specifying what needs to be included on the model of an atom such as the placement of protons, neutrons, and electrons or the atom's charge and relative size and then separating the phrase "relate an element's atomic structure" to form a new student expectation.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(7)(A) is appropriate as proposed.

Comment. A teacher recommended clarifying the type of model described in the proposed student expectation in §112.44(c)(7)(A) as a Bohr model.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(7)(A) is appropriate as proposed.

Comment. A teacher stated that the content in the proposed student expectation in §112.44(c)(7)(D) is already covered in the proposed TEKS for Chemistry. The commenter recommended either deleting the student expectation or adjusting the level of mastery by changing the verb "explain" to "describe."

Response. The SBOE disagrees that the content is duplicative as many students will not take both courses. The SBOE has determined that §112.44(c)(7)(D) is appropriate as proposed.

Comment. A representative from an institution of higher education recommended deleting the proposed student expectation in §112.44(c)(7)(D) because it exceeds the scope of the knowledge and skills statement in §112.44(c)(7).

Response. The SBOE disagrees and has determined that §112.44(c)(7)(D) is appropriately included in IPC and does not exceed the scope of the knowledge and skills statement.

Comment. A teacher stated that the content in the proposed student expectation in §112.44(c)(7)(D) is already covered in Chemistry. The commenter recommended either deleting the student expectation or adjusting the level of mastery by changing the verb "explain" to "describe."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(7)(D) is appropriate as proposed.

Comment. An administrator expressed concern about the proposed student expectation in §112.44(c)(7)(D) because the concepts are inappropriate for an introductory level science course.

Response. The SBOE disagrees and has determined that §112.44(c)(7)(D) is appropriate as proposed for the revised IPC course.

Comment. An administrator expressed concern that concepts such as how atomic energy levels and emission spectra present evidence for wave particle duality in proposed §112.43(c)(7)(E) are highly inappropriate for IPC and are usually taught in Physics.

Response. The SBOE disagrees that the suggested concepts are inappropriate for the revised IPC course and has determined that §112.44(c)(7)(E) is appropriate as proposed.

Comment. A teacher and five administrators recommended deleting the proposed student expectation in §112.44(c)(7)(E) related to wave particle duality because IPC students do not have the prior knowledge needed to understand this content.

Response. The SBOE disagrees and has determined that wave particle duality is appropriately included in §112.44(c)(7)(E).

Comment. Three teachers and one representative from an institution of higher education recommended deleting the proposed student expectation in §112.44(c)(7)(E). The commenters stated that wave duality is already covered in Physics and students taking IPC spend most of the instructional time trying to grasp that waves are a transference of energy and to apply the mathematical models.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.44(c)(7)(E) was appropriately included in the revised IPC course.

Comment. A teacher expressed concern with regard to the placement of the proposed student expectation in §112.44(c)(7)(F) because the student expectations under knowledge and skills statement §112.44(c)(7) don't build on each other.

Response. The SBOE disagrees and has determined that the student expectation in §112.44(c)(7)(F) is appropriately placed under the knowledge and skills statement in §112.44(c)(7).

Comment. A teacher expressed concern regarding the proposed student expectation in §112.44(c)(8)(A). The commenter explained that students do not have sufficient background in this topic to master the concept of chemical reactions. The commenter stated that the current student expectation is better.

Response. The SBOE disagrees that the topic is inappropriate for the revised IPC course and has determined that §112.44(c)(8)(A) is appropriate as proposed.

Comment. Two teachers, one parent, four community members, and two representatives from institutions of higher education stated that climate change should be addressed in the science TEKS.

Response. The SBOE agrees that the concept of climate change should be appropriately addressed in the TEKS in relevant courses. In response to this and other comments, the SBOE took action to amend §112.44(c)(8)(D) to read, "construct and communicate an evidence-based explanation of the environmental impact of the end-products of chemical reactions such as those that may result in degradation of water, soil, air quality, and global climate change."

Comment. Two teachers, four administrators, three community members, one representative from an institution of higher education, and ten instructional coaches recommended that the SBOE delay adoption of the proposed TEKS to provide work groups adequate time to respond to public comments.

Response. The SBOE disagrees that additional time is necessary and has determined that the adoption of proposed §§112.42-112.45 shall proceed as planned.

Comment. An administrator expressed concern that, by adopting high school standards first, the lower grades may be forced to incorporate content that is not cognitively appropriate or com-

press too many standards into particular grade levels. The commenter recommended putting the adoption of the high school science TEKS on hold; finalizing the elementary TEKS, followed by the middle school TEKS; and then allowing a brief period of revision for the high school TEKS to ensure vertical alignment.

Response. The SBOE disagrees that the delay of adoption of the high school science TEKS is necessary and has determined that the adoption of proposed §§112.42-112.45 shall proceed as planned.

Comment. Two teachers expressed concern that teachers have not had time to appropriately review and give feedback on the proposed changes to the science TEKS. The commenter added that teachers need to review proposed middle school science TEKS to make an appropriate decision on high school science TEKS.

Response. The SBOE disagrees that teachers have not had sufficient time to comment and that the middle school TEKS were necessary prior to adoption of the TEKS for the four high school courses. The SBOE determined that the adoption of proposed §§112.42-112.45 shall proceed as planned.

Comment. Two teachers expressed concern that teachers need to review proposed revisions to the middle school science TEKS to make an appropriate decision on high school science TEKS.

Response. The SBOE disagrees that the middle school TEKS were necessary prior to adoption of the TEKS for the four high school courses. The SBOE determined that the adoption of proposed §§112.42-112.45 shall proceed as planned.

Comment. An administrator expressed concern with the lack of inclusion of the contributions of female scientists and scientists of color in the proposed science TEKS.

Response. The SBOE disagrees and has determined that the proposed science TEKS include the contributions of scientists as appropriate for the content and reflect what is essential in each course.

Comment. An administrator and 10 instructional coaches stated that the proposed TEKS for the core high school science courses will not prepare students for the future of Texas. The commenters stated that science education should not be focused around learning facts, but about how to do science and recommended drastically reducing the number of student expectations so students have time to learn science through inquiry and to make sense of the world around us.

Response. The SBOE disagrees and has determined that the proposed TEKS for the four high school science courses will adequately prepare students.

Comment. A teacher stated that the proposed TEKS for Biology, Chemistry, IPC, and Physics are comprehensive and add a new layer of inquiry and scientific discovery that are critical for students.

Response. The SBOE agrees and took action to approve proposed new TEKS for Biology, Chemistry, IPC, and Physics. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher expressed concern regarding the lack of any mention of inferences in the proposed TEKS for Biology, Chemistry, IPC, and Physics. The commenter explained that inferencing skills aid with the writing evidence-based arguments and support connections with other subjects.

Response. The SBOE disagrees that the TEKS for the four high school courses must include references of inferencing.

Comment. A community member requested the SBOE include only facts in the science TEKS.

Response. The SBOE agrees and has determined that the science TEKS appropriately address scientific facts.

Comment. A community member stated that the TEKS should address the lack of education and awareness of light pollution.

Response. The SBOE disagrees and has determined that inclusion of light pollution would not be appropriate in one of the four courses currently under consideration, but may be more appropriate in another science course or grade level.

Comment. An individual from out-of-state recommended that a distinction be made between current science and historical science with regard to theories and hypotheses. The commenter explained that hypotheses and theories concerning origin or historical science are not testable and should not be considered science in the current sense.

Response. The SBOE disagrees and has determined that a distinction between current science and historical science with regard to theories and hypotheses is not necessary.

Comment. An administrator expressed concern that the science high school TEKS should not attempt to compress whatever content is left after Kindergarten-Grade 8 to meet arbitrary college-level expectations or college readiness ideals created with little to no reference to child development and cognitive appropriateness. The commenter stated that this philosophy has created standards with too much content to cover, and students leave high school with a plethora of science facts that are easily dismissed instead of a real understanding of how science works.

Response. The SBOE agrees and has determined that the TEKS for the four high school science courses appropriately address essential knowledge and skills and foster a real understanding of how science works.

Comment. A teacher expressed concern that significant figures are not included in the proposed TEKS for the four high school courses. The commenter stated that understanding how significant digits are used when measuring and when rounding a number in an answer is very important because it prevents scientific data from being misunderstood and manipulated.

Response. The SBOE disagrees and has determined that the suggested change is not necessary.

Comment. Two teachers recommended adding data science and computational thinking as tools where appropriate in the high school courses. The commenter further recommended adding a statement to the general requirements to regarding computational thinking and programming to read, "The desire to achieve educational excellence is the driving force behind the TEKS for mathematics, guided by the college and career readiness standards. By embedding statistics, probability, and finance, while focusing on computational thinking, mathematical fluency and solid understanding, Texas will lead the way in mathematics education and prepare all Texas students for the challenges they will face in the 21st century."

Response. The SBOE disagrees and has determined that the suggested language is not appropriate for the high school science general requirements.

Comment. A teacher stated that proposed revisions to the science TEKS for Biology, Chemistry, IPC, and Physics appear to have added additional content and depth. The commenter expressed concern that ensuring mastery of the current TEKS within the suggested time frame is already a challenge, and that adding content would only further rush the process of preparing students for the STAAR®.

Response. The SBOE disagrees and has determined that the proposed revisions to the science TEKS for Biology, Chemistry, IPC, and Physics are appropriate in scope. Additionally, the SBOE provides the follow clarification. The only high school science course with a required STAAR® exam is Biology.

Comment. A representative from an institution of higher education recommended that explanations should be defined in the introductions for the four proposed high school courses in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3). The commenter proposed the wording to read, "explanations are statements based on evidence from observations of facts or a series of events that describe the natural or physical world."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the language in the introductions of §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3) is appropriate as proposed.

Comment. A representative from an institution of higher education stated that the introduction of the proposed four high school courses should contain fundamental scientific and engineering definitions and ideas for better literacy and critical thinking that business and industry value for improving the economy.

Response. The SBOE agrees and has determined that scientific and engineering practices are appropriately defined in the introduction as proposed. The SBOE also agrees that literacy and critical thinking skills are highly valued by business and industry; however, the SBOE disagrees that additional changes to the introduction are necessary.

Comment. A representative from an institution of higher education recommended addressing inferences in the introductions for the four proposed high school courses in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3). The commenter recommended amending the language to read, "Scientific observations, inferences, hypotheses, theories, and laws" and adding new §§112.42(b)(3)(C), 112.43(b)(3)(C), 112.44(b)(3)(C), and 112.45(b)(3)(C) to read, "inferences are predictions or conclusions about past or future events based on observations."

Response. The SBOE disagrees that the suggested changes are necessary. The SBOE has determined that addressing scientific hypotheses and theories in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3) is sufficient and the introduction is appropriate as proposed.

Comment. A representative from an institution of higher education recommended that observations should be defined in the introductions for the proposed four high school courses in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3). The commenter proposed amending the language to read, "observations are facts from obtaining qualitative information of natural or physical phenomena using direct experience that can be drawings/diagrams, words, or numbers and play a role in scientific explanations."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §§112.42(b)(3),

112.43(b)(3), 112.44(b)(3), and 112.45(b)(3) are appropriate as proposed.

Comment. A representative from an institution of higher education recommended editing the introductions for the four proposed high school courses in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) to read, "Scientific inquiry and engineering problem solving. Scientific inquiry is the planned and deliberate investigation of the natural or physical world using scientific practices. Scientific methods of investigation are descriptive, correlative, comparative, or experimental designs. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; correlative investigations which involve predicting a relationship between variables; comparative investigations, which involve predicting a relationship between group means; and experimental investigations, which involve predicting a treatment effect and a control is identified. Engineering involves identifying a problem and designing a solution."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) are appropriate as proposed.

Comment. A representative from an institution of higher education recommended defining scientific laws of matter in the introductions for the four proposed high school courses in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3). The commenter proposed adding the statement, "scientific laws of matter are the same in all parts of the universe and over any period of time which describe natural and physical phenomena."

Response. The SBOE disagrees that the suggested change is necessary. The SBOE has determined that the inclusion of definitions of scientific hypotheses and theories in §§112.42(b)(3), 112.43(b)(3), 112.44(b)(3), and 112.45(b)(3) is sufficient and the introduction is appropriate as proposed.

Comment. A representative from an institution of higher education recommended adding a sentence to the definition of scientific theories in the introductions for the four proposed high school courses in §§112.42(b)(3)(B), 112.43(b)(3)(B), 112.44(b)(3)(B), and 112.45(b)(3)(B) that states, "Theories do not become laws or facts." The commenter stated that this sentence should be inserted to address a common misconception.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the definition of scientific theories is sufficiently clear in §§112.42(b)(3)(B), 112.43(b)(3)(B), 112.44(b)(3)(B), and 112.45(b)(3)(B) as proposed.

Comment. A representative from an institution of higher education recommended that the introductions for the four proposed high school courses in §§112.42(b)(4)(A), 112.43(b)(4)(A), 112.44(b)(4)(A), and 112.45(b)(4)(A) should be edited because the information contained in these subsections is incomplete guidance for teachers, particularly those who lack adequate scientific research experience or professional development.

Response. The SBOE disagrees and has determined that §§112.42(b)(4)(A), 112.43(b)(4)(A), 112.44(b)(4)(A), and 112.45(b)(4)(A) are appropriate as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE amend the introductions for the four proposed high school courses in §§112.42(b)(4)(B),

112.43(b)(4)(B), 112.44(b)(4)(B), and 112.45(b)(4)(B) to read, "Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models and research relevant information."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §§112.42(b)(4)(B), 112.43(b)(4)(B), 112.44(b)(4)(B), and 112.45(b)(4)(B) are appropriate as proposed.

Comment. A teacher stated that the introductions for the four high school science courses in §§112.42(b)(4)(B), 112.43(b)(4)(B), 112.44(b)(4)(B), and 112.45(b)(4)(B) should be revised to read "students should be able to identify problems, design and communicate solutions using appropriate tools and models."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §§112.42(b)(4)(B), 112.43(b)(4)(B), 112.44(b)(4)(B), and 112.45(b)(4)(B) are appropriate as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE add a new subparagraph to the introductions for the four proposed high school courses in §§112.42(b)(4)(B), 112.43(b)(4)(B), 112.44(b)(4)(B), and 112.45(b)(4)(B) that states, "Scientific practices. Students should be able to design and conduct a descriptive investigation by forming a research question, select subject or group and type of observations, make the observations, repeat observations, calculate data summaries (sample size, mean and standard deviation)."

Response. The SBOE disagrees that the suggested addition is necessary and has determined that scientific practices are appropriately addressed in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE add a new subparagraph to the introductions for the four proposed high school courses in §§112.42(b)(4)(C), 112.43(b)(4)(C), 112.44(b)(4)(C), and 112.45(b)(4)(C) that states, "Scientific practices. Students should be able to design and conduct a correlative investigation by developing a hypothesis that predicts a natural pattern and a relationship between variables, select a representative group, measure variables relevant to the hypothesis across subjects in one of more groups, quantify the correlation."

Response. The SBOE disagrees that the suggested addition is necessary and has determined that scientific practices are appropriately addressed in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE add a new subparagraph to the introductions for the four proposed high school courses in §§112.42(b)(4)(C), 112.43(b)(4)(C), 112.44(b)(4)(C), and 112.45(b)(4)(C) that states, "Engineering practices. Students should be able to test and evaluate the possible solutions using mathematical and computational representations of established relationships and principles integral to the design; use a systematic process to design a solution by using reasoning and argument, clearly communicate the advantages of their design and critique competing design solutions based upon agreed design criteria."

Response. The SBOE disagrees that the suggested addition is necessary and has determined that engineering practices

are appropriately addressed in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE add a new subparagraph to the introductions for the four proposed high school courses in §§112.42(b)(4)(D), 112.43(b)(4)(D), 112.44(b)(4)(D), and 112.45(b)(4)(D) that states, "Scientific practices. Students should be able to design and conduct a comparative investigation by developing a hypothesis that predicts a natural pattern and a relationship between representative groups, measure response variables relevant to the hypothesis across groups, compare group means, and determine if the response variables consist of counts (discrete data) or measurements (continuous data) and use appropriate statistical tests."

Response. The SBOE disagrees that the suggested addition is necessary and has determined that scientific practices are appropriately addressed in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) as proposed.

Comment. A representative from an institution of higher education recommended that the SBOE add a new subparagraph to the introductions for the four proposed high school courses in §§112.42(b)(4)(E), 112.43(b)(4)(E), 112.44(b)(4)(E), and 112.45(b)(4)(E) that states, "Scientific practices. Students should be able to design and conduct an experimental investigation by selecting a treatment effect, developing a hypothesis that predicts a treatment effect, select representative subjects, measure the response variables relevant to the hypothesis on members of different treatment groups, compare treatment means."

Response. The SBOE disagrees that the suggested addition is necessary and has determined that scientific practices are appropriately addressed in §§112.42(b)(4), 112.43(b)(4), 112.44(b)(4), and 112.45(b)(4) as proposed.

Comment. A representative from an institution of higher education recommended deleting "(scientific methods)" from the introductions for the four proposed high school courses in §§112.42(b)(5), 112.43(b)(5), 112.44(b)(5), and 112.45(b)(5). The commenter stated that using this term misleads teachers into the incorrect idea that there is only one scientific method and that there a set of steps that must be followed.

Response. The SBOE disagrees and has determined that the term "scientific methods" is appropriately included in §§112.42(b)(5), 112.43(b)(5), 112.44(b)(5), and 112.45(b)(5) as proposed.

Comment. A teacher expressed concern about the incorporation of the term "social ethics" in the introductions of the four proposed high school courses in §§112.42(b)(5), 112.43(b)(5), 112.44(b)(5), and 112.45(b)(5). The commenter recommended removing the language or revising it to provide more clarity because it is unclear how social ethics would be taught and instruction could become politicized.

Response. The SBOE disagrees and has determined that the term "social ethics" is appropriately included in §§112.42(b)(5), 112.43(b)(5), 112.44(b)(5), and 112.45(b)(5) in the introductions as proposed.

Comment. Four community members stated that the term "social justice" should be eliminated from the proposed science TEKS. The commenters stated that the term is not adequately defined, has been recently maligned as meaning promoting lesbian, gay,

bisexual, transexual, and queer (LGBTQ) advocacy, and has no place in science courses.

Response. The SBOE provides the following clarification. The term "social justice" does not appear in the proposed new TEKS as proposed. This language was amended at first reading.

Comment. A representative from an institution of higher education suggested adding the phrase "to problems" after design solutions in the knowledge and skills statement for scientific and engineering practices in the four high school courses in §§112.42(c)(1), 112.43(c)(1), 112.44(c)(1), and 112.45(c)(1). The commenter stated the phrase as written is incomplete because engineers design solutions to problems.

Response. The SBOE disagrees that the suggested change is necessary and has determined that knowledge and skills statement in the proposed TEKS for the four high school courses in §§112.42(c)(1), 112.43(c)(1), 112.44(c)(1), and 112.45(c)(1) is appropriate as proposed.

Comment. A community member expressed concern about the wording of the four proposed high school courses in §§112.42(c)(1)(B), 112.43(c)(1)(B), 112.44(c)(1)(B), and 112.45(c)(1)(B) because students will not usually do both the scientific and the engineering practices in the same activity or lesson. The commenter suggested replacing the word "and" with "and/or" in the phrase to read, "apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations, and/or use engineering practices to design solutions to problems."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the language in the four high school courses in §§112.42(c)(1)(B), 112.43(c)(1)(B), 112.44(c)(1)(B), and 112.45(c)(1)(B) is appropriate as proposed.

Comment. A representative from an institution of higher education suggested amending the proposed student expectation in the scientific and engineering practices for the four proposed high school courses in §§112.42(c)(1)(B), 112.43(c)(1)(B), 112.44(c)(1)(B), and 112.45(c)(1)(B) to read, "apply scientific practices to plan and conduct descriptive, correlative, comparative and experimental investigations; and apply engineering practices to design solutions to problems."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in the scientific and engineering practices for the four high school courses in §§112.42(c)(1)(B), 112.43(c)(1)(B), 112.44(c)(1)(B), and 112.45(c)(1)(B) is appropriate as proposed.

Comment. A representative from an institution of higher education suggested amending the proposed student expectation in the scientific and engineering practices for the four proposed high school courses in §§112.42(c)(1)(H), 112.43(c)(1)(H), 112.44(c)(1)(H), and 112.45(c)(1)(H) to read, "distinguish among scientific observations, inferences, explanations, hypotheses, theories, and laws."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in the scientific and engineering practices for the four high school courses in §§112.42(c)(1)(H), 112.43(c)(1)(H), 112.44(c)(1)(H), and 112.45(c)(1)(H) is appropriate as proposed.

Comment. A teacher stated that the proposed knowledge and skills statement in the science and engineering practices for the four proposed high school courses in §§112.42(c)(2),

112.43(c)(2), 112.44(c)(2), and 112.45(c)(2) should be revised to add the phrase "client perspectives" to read, "the student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships, correlations, or client perspectives to develop evidence-based arguments or evaluate designs."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the knowledge and skills statement in the scientific and engineering practices for the four high school courses in §§112.42(c)(2), 112.43(c)(2), 112.44(c)(2), and 112.45(c)(2) is appropriate as proposed.

Comment. A representative from an institution of higher education stated that the proposed knowledge and skills statement in the science and engineering practices for the four proposed high school courses in §§112.42(c)(2), 112.43(c)(2), 112.44(c)(2), and 112.45(c)(2) should be revised to replace the word "correlations" with the phrase "discover relationships" to read, "The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships to develop evidence-based arguments or evaluate designs."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the knowledge and skills statement in the scientific and engineering practices for the four high school courses in §§112.42(c)(2), 112.43(c)(2), 112.44(c)(2), and 112.45(c)(2) is appropriate as proposed.

Comment. A teacher and a representative from an institution of higher education stated that in the proposed student expectation in the science and engineering practices for the four proposed high school courses in §§112.42(c)(2)(D), 112.43(c)(2)(D), 112.44(c)(2)(D), and 112.45(c)(2)(D), the phrase "based on design criteria and constraints" should be revised to read, "evaluate experimental and engineering designs based on design criteria and constraints."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in the scientific and engineering practices for the four high school courses in §§112.42(c)(2)(D), 112.43(c)(2)(D), 112.44(c)(2)(D), and 112.45(c)(2)(D) is appropriate as proposed.

Comment. A representative from an institution of higher education stated that the proposed knowledge and skills statement in the science and engineering practices for the four proposed high school courses in §§112.42(c)(4), 112.43(c)(4), 112.44(c)(4), and 112.45(c)(4) should be revised to read, "The student knows the contributions of diverse scientists and engineers and recognizes the importance of scientific and engineering research and innovation on society."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the knowledge and skills statement in the scientific and engineering practices for the four high school courses in §§112.42(c)(4), 112.43(c)(4), 112.44(c)(4), and 112.45(c)(4) is appropriate as proposed.

Comment. A representative from an institution of higher education suggested amending the student expectation in the science and engineering practices for the four proposed high school courses in §§112.42(c)(4)(A), 112.43(c)(4)(A), 112.44(c)(4)(A), and 112.45(c)(4)(A) to read, "analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and observations or experimental testing, so as to encourage critical thinking by the student because science does not test observationally."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in the scientific and engineering practices for the four high school courses in §§112.42(c)(4)(A), 112.43(c)(4)(A), 112.44(c)(4)(A), and 112.45(c)(4)(A) is appropriate as proposed.

Comment. A representative from an institution of higher education suggested adding a reference to engineers in the proposed student expectation in the science and engineering practices for the four proposed high school courses in §§112.42(c)(4)(B), 112.43(c)(4)(B), 112.44(c)(4)(B), and 112.45(c)(4)(B) to read, "relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists and engineers as related to the content."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in the scientific and engineering practices for the four high school courses in §§112.42(c)(4)(B), 112.43(c)(4)(B), 112.44(c)(4)(B), and 112.45(c)(4)(B) is appropriate as proposed.

Comment. An administrator recommended that the SBOE integrate the scientific and engineering practices into all grade levels and courses.

Response. The SBOE agrees that scientific and engineering practices are essential knowledge and skills and took action to approve scientific and engineering practices as proposed in the four high school courses in §§112.42(c)(1)-(4), 112.43(c)(1)-(4), 112.44(c)(1)-(4), and 112.45(c)(1)-(4). The SBOE also provides the following clarification. The grade level TEKS for Kindergarten-Grade 8 are outside the scope of the proposed rulemaking.

Comment. A parent and two community members expressed support for the inclusion of science, technology, engineering, and mathematics (STEM) and engineering in the proposed high school TEKS.

Response. The SBOE agrees that STEM and engineering knowledge and skills are essential and took action to adopt the scientific and engineering practices in the four proposed high school courses in §§112.42(c)(1)-(4), 112.43(c)(1)-(4), 112.44(c)(1)-(4), and 112.45(c)(1)-(4). In response to other comments, the SBOE took action to approve additional changes to the scientific and engineering practices.

Comment. Two teachers stated that, based on the depth and rigor of the proposed Physics TEKS, Algebra I should be a prerequisite because merely recommending a prerequisite or allowing the course as a corequisite would set students up for failure.

Response. The SBOE disagrees and has determined that Algebra I is appropriate as a recommended prerequisite corequisite to enrollment in Physics.

Comment. A teacher stated that proposed new §112.45, Physics, is well written and includes more details about how to teach the standards.

Response. The SBOE agrees and took action to adopt the new TEKS for the course. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher stated that the proposed new TEKS for §112.45, Physics, are a vast improvement because they are both streamlined for necessary content and less vague than student expectations in the current TEKS. The commenter stated that no further changes are necessary.

Response. The SBOE agrees that the proposed TEKS for §112.45, Physics, are appropriately streamlined and took action to adopt the new TEKS for the course. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two teachers expressed concern about the additional number of student expectations in proposed §112.45, Physics. The commenters suggested reducing the number of proposed student expectations so students can understand concepts at a deeper level.

Response. The SBOE disagrees and has determined that the scope of proposed §112.45, Physics is appropriate. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Five administrators recommended deleting "hand graphing and" from the proposed student expectation in §112.45(c)(5)(A).

Response. The SBOE disagrees that the suggested change is necessary and has determined that hand graphing is appropriately included in §112.45(c)(5)(A) as proposed.

Comment. An administrator and 10 instructional coaches stated that the technology required by proposed §112.45(c)(5)(A) is too specific. The commenters recommended revising the student expectation to read, "investigate, analyze, and model motion in terms of position, velocity, acceleration, and time using tables, graphs, and mathematical relationships."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the specificity of §112.45(c)(5)(A) is appropriate as proposed.

Comment. Two teachers recommended deleting acceleration versus time graphs and rates of change of acceleration from the proposed student expectation in §112.45(c)(5)(A).

Response. The SBOE disagrees that the suggested change is necessary and has determined that 112.45(c)(5)(A) is appropriate as proposed.

Comment. Five administrators stated that the word "graphs" is missing from the proposed student expectation in §112.45(c)(5)(A) and should be added after the phrase "acceleration versus time."

Response. The SBOE disagrees that the suggested change is necessary and has determined that 112.45(c)(5)(A) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches recommended deleting the proposed student expectation in §112.45(c)(5)(B) related to combining vectors because it is not a skill that will be used in other activities.

Response. The SBOE disagrees and has determined that the skill of combining vectors is appropriately included in §112.45(c)(5)(B) as proposed.

Comment. An administrator and 10 instructional coaches recommended that proposed §112.45(c)(5)(C) be deleted and the content be combined into §112.45(c)(5)(A) to read, "investigate, analyze, and model motion in terms of position, velocity, acceleration, and time using tables, graphs, and mathematical relationships."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(5)(A) and (C) are appropriate as proposed.

Comment. Five administrators and one teacher stated that a comma is missing between the words "speed" and "velocity" in the student expectation in §112.45(c)(5)(C).

Response. The SBOE agrees. This and other comments have been addressed as technical edits.

Comment. An administrator and 10 instructional coaches recommended that proposed §112.45(c)(5)(D) be edited to read, "describe and analyze acceleration in uniform circular and horizontal projectile motion in two dimensions using motion graphs, tables and mathematical models."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(5)(D) is appropriate as proposed.

Comment. A teacher expressed concern that the proposed student expectation in §112.45(c)(5)(E) does not include Newton's second and third laws.

Response. The SBOE disagrees that Newton's second and third laws are necessary in §112.45(c)(5)(E). The SBOE provides the following clarification. Newton's second law is appropriately addressed in §112.45(c)(5)(F) and Newton's third law is appropriately addressed in §112.45(c)(5)(G).

Comment. A teacher asked whether the new student expectation in §112.45(c)(5)(E) as proposed indicates that teachers are no longer expected to teach concepts related to projectiles shot at an angle.

Response. The SBOE provides the following clarification. The student expectation in §112.45(c)(5)(E) requires that students apply the concepts of equilibrium and inertia as represented by Newton's first law of motion using relevant real-world examples such as rockets, satellites, and automobile safety devices; however, the student expectation does not require that any of the real-world examples used must be shot at an angle.

Comment. Five administrators stated that the term "gravity" should be replaced with the term "gravitational" in the list of forces in the proposed student expectation in §112.45(c)(5)(F).

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.45(c)(5)(F) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches recommended replacing the verb "calculate" with the phrase "analyze data to explain" in the proposed student expectation in §112.45(c)(5)(F). The commenters explain that the revision will require students to look at more than just the math side of Newton's second law.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the verb "calculate" in §112.45(c)(5)(F) is appropriate as proposed.

Comment. A teacher requested that the friction equation  $F_f = \mu * F_n$  be added to the old STAAR® reference sheet for Physics because the proposed student expectation in §112.45(c)(5)(F) requires students to calculate the effects of friction.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Five administrators recommended revising the student expectation in §112.45(c)(5)(G) to read, "illustrate and analyze the simultaneous forces between two objects as represented in Newton's third law of motion" because free body diagrams are already covered in the student expectation in §112.45(c)(5)(F).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(5)(G) is appropriate as proposed.

Comment. Five administrators recommended revising the student expectation in §112.45(c)(5)(H) to read, "describe and calculate the magnitude of force between two objects and predict the effects on objects in linear and orbiting systems using Newton's law of universal gravitation."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(5)(H) is sufficiently clear as proposed.

Comment. An administrator and 10 instructional coaches recommended that the proposed student expectation in §112.45(c)(5)(H) be moved to the knowledge and skills statement in §112.45(c)(6). The commenters explained that gravitational forces in §112.45(c)(5)(H) and electrical forces in §112.45(c)(6)(A) are very closely related in terms of force interactions; therefore, both belong in §112.45(c)(6).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(5)(H) is appropriately placed under the knowledge and skills statement in §112.45(c)(6) as proposed.

Comment. Five administrators recommended revising the student expectation in §112.45(c)(6)(A) to read, "calculate the magnitude of the electric force between two objects using Coulomb's law."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(6)(A) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches expressed concern that the proposed student expectations in §112.45(c)(6)(B)-(E) do not lead to a real-world understanding of electricity as it affects our daily lives. The commenters recommended that these student expectations be rewritten to focus on real-world understanding and application.

Response. The SBOE disagrees that the suggested changes are necessary and has determined that §112.45(c)(6)(B)-(E) are appropriate as proposed. In response to other comments, the phrase "Van der Graaf" in the student expectation in §112.45(c)(6)(C) was amended to read, "Van de Graaf."

Comment. A teacher stated that in the proposed student expectation in §112.45(c)(6)(C), the name of the "Van de Graaff" generator is misspelled as the "Van der Graaf" generator.

Response. The SBOE agrees and took action to amend the phrase "Van der Graaf" in the student expectation in §112.45(c)(6)(C) to read, "Van de Graaf."

Comment. Five administrators recommended revising the proposed student expectation in §112.45(c)(7)(A) to read, "calculate and explain work and power in one dimension and describe how work impacts a system."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(7)(A) is sufficiently clear as proposed.

Comment. An administrator and 10 instructional coaches recommended that the proposed student expectation in §112.45(c)(7)(D) be revised to read "apply the concepts of momentum and impulse to design, evaluate, and refine a device to minimize or maximize the net force on objects during collisions such as those that occur during vehicular accidents, sports activities, or the dropping of personal electronic devices."

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(7)(D) is appropriate as proposed.

Comment. A teacher expressed support for the separation of momentum from energy in the proposed student expectations in §112.45(c)(7)(C) and (D).

Response. The SBOE agrees and took action to approve the student expectations in §112.45(c)(7)(C) and (D) as proposed.

Comment. An administrator and 10 instructional coaches recommended that inelastic and elastic collisions be deleted from the proposed student expectation in §112.45(c)(7)(E) because they are unnecessary.

Response. The SBOE disagrees and has determined that inelastic and elastic collisions are appropriately included in §112.45(c)(7)(E) as proposed.

Comment. An administrator and 10 instructional coaches recommended reverting back to the original work group language for the proposed student expectation in §112.45(c)(8)(A) to read, "examine and describe simple harmonic motion, standing waves, and energy propagation in various types of media using examples such as springs, pendulums, surface waves on a body of water and ropes."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the wording in §112.45(c)(8)(A) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches recommended revising the proposed student expectation in §112.45(c)(8)(C) to read, "investigate how the characteristics of waves are used in various technologies" to incorporate real world application into the characteristics of a wave and how they apply to or can impact technology.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the characteristics of waves are appropriately addressed in the student expectation in §112.45(c)(8)(C) as proposed.

Comment. Five administrators recommended deleting the word "superposition" from the proposed student expectation in §112.45(c)(8)(D) to avoid duplication.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the word "superposition" is appropriately included in the student expectation in §112.45(c)(8)(D) as proposed.

Comment. A teacher requested that resonance be reinserted in the proposed student expectation in §112.45(c)(8)(D).

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.45(c)(8)(D) is appropriate as proposed.

Comment. An administrator and 10 instructional coaches recommended that the proposed student expectation in §112.45(c)(8)(E) be revised to read, "plan and conduct an investigation to evaluate the transfer of energy or information through different materials by different types of waves such as wireless signals, ultraviolet radiation, and microwaves."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §112.45(c)(8)(E) is appropriate as proposed.

Comment. An administrator, ten instructional coaches, and two teachers recommended the deletion of the proposed student expectation in §112.45(c)(8)(F) because the concept of emission spectra is more appropriate for and included in the proposed new Chemistry course.

Response. The SBOE disagrees with the suggested deletion and has determined that the concept of emission spectra in §112.45(c)(8)(F) is appropriately included in Physics, §112.45, as proposed.

Comment. An administrator and 10 instructional coaches recommended deleting the proposed student expectation in §112.45(c)(8)(G) because the concepts take a lot of time to teach and do not add enough to an understanding of physics.

Response. The SBOE disagrees with the suggested deletion and has determined that the student expectation in §112.45(c)(8)(G) is sufficiently relevant to an understanding of physics and appropriately included in the Physics course as proposed.

Comment. A teacher expressed concern that the proposed student expectation in §112.45(c)(8)(G) does not include curved mirrors or concave lenses in addition to plane mirrors and thin convex lenses.

Response. The SBOE disagrees that the inclusion of curved mirrors or concave lenses is necessary and has determined that the student expectation in §112.45(c)(8)(G) is appropriate as proposed.

Comment. Two teachers recommended that the concept of the duality of light should be taught in relation to waves by adding a new student expectation in §112.45(c)(8)(H).

Response. The SBOE disagrees with the suggested change and has determined that the concept of duality of light is appropriately included in §112.45(c)(9)(C) as proposed.

Comment. Five teachers expressed concern about the inclusion of quantum phenomena in the proposed student expectations in §112.45(c)(9)(A)-(D). The commenters explained that including these standards increases the amount of content for the course by 20-25% and would exceed the level of quantum physics in AP Physics 1, AP Physics 2, and the College and Career Readiness Standards (CCRS).

Response. The SBOE disagrees and has determined that the inclusion of quantum phenomena in the proposed student expectations in §112.45(c)(9)(A)-(D) is appropriate in scope for the revised Physics TEKS.

Comment. Two teachers and two community members recommended replacing the student expectations in §112.45(c)(9)(A)-(D) with a new student expectation in §112.45(c)(8)(H) to read, "investigate and understand how quantum physics applies to the behavior of waves, including mass-energy equivalence, the photoelectric effect, and the dual nature of light."



Response. The SBOE disagrees that the suggested changes are necessary and has determined that the student expectations in §112.45(c)(9)(A)-(D) are appropriate as proposed.

Comment. An administrator and 10 instructional coaches recommended that the proposed student expectation in §112.45(c)(9)(A) be moved back into the knowledge and skills statement in §112.45(c)(8) related to the characteristics and behavior of waves.

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(9)(A) is appropriately placed under the knowledge and skills statement in §112.45(c)(9).

Comment. A teacher requested that the dual nature of light, which is covered in the current Physics TEKS, be included in the proposed student expectation in §112.45(c)(9)(A).

Response. The SBOE disagrees that the suggested change is necessary and has determined that §112.45(c)(9)(A) is appropriate as proposed.

Comment. Three teachers and five administrators stated that Malus's Law is not appropriate for an on-level physics course. The commenters suggested deleting the student expectation in §112.45(c)(9)(B).

Response. The SBOE disagrees and has determined that Malus's Law is appropriately included in §112.45(c)(9)(B) as proposed.

Comment. A teacher expressed concern about the use of the verb "investigate" in the proposed student expectation in §112.45(c)(9)(B). The commenter questioned how Malus's Law could be investigated.

Response. The SBOE disagrees and has determined that the verb "investigate" is appropriate in §112.45(c)(9)(B) as proposed.

Comment. An administrator and a teacher expressed concern that the resources required to teach the proposed student expectations in §112.45(c)(9)(B) and (D) may be limited in low-income districts.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Five administrators recommended deleting the proposed student expectation in §112.45(c)(9)(C) because the concepts of superposition of quantum states and wave-particle duality of light are not grade-level appropriate.

Response. The SBOE disagrees with the suggestion to delete the student expectation in §112.45(c)(9)(C) and has determined that the student expectation is appropriate for an on-level physics course.

Comment. Two teachers stated that removing thermodynamics from Physics and adding it to Chemistry is a mistake as thermodynamics is fundamentally a physics concept, not a chemistry concept.

Response. The SBOE disagrees and has determined that thermodynamics is appropriately included in Physics as proposed.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which

requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(j), which allows the SBOE to require laboratory instruction in secondary science courses and require a specific amount or percentage of time in a secondary science course that must be laboratory instruction; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education curriculum required in TEC, §28.002; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (j), and (n); and 28.025(a).

§112.42. *Biology (One Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-11.

(b) Introduction.

(1) Biology. Students in Biology focus on patterns, processes, and relationships of living organisms through four main concepts: biological structures, functions, and processes; mechanisms of genetics; biological evolution; and interdependence within environmental systems. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental inves-

tigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as microscopes, slides, Petri dishes, laboratory glassware, metric rulers, digital balances, pipets, filter paper, micropipettes, gel electrophoresis and polymerase chain reaction (PCR) apparatuses, microcentrifuges, water baths, incubators, thermometers, hot plates, data collection probes, test tube holders, lab notebooks or journals, hand lenses, and models, diagrams, or samples of biological specimens or structures;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using scatter plots, line graphs, bar graphs, charts, data tables, digital tools, diagrams, scientific drawings, and student-prepared models;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish among scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a science, technology, engineering, and mathematics (STEM) field in order to investigate STEM careers.

(5) Science concepts--biological structures, functions, and processes. The student knows that biological structures at multiple levels of organization perform specific functions and processes that affect life. The student is expected to:

(A) relate the functions of different types of biomolecules, including carbohydrates, lipids, proteins, and nucleic acids, to the structure and function of a cell;

(B) compare and contrast prokaryotic and eukaryotic cells, including their complexity, and compare and contrast scientific explanations for cellular complexity;

(C) investigate homeostasis through the cellular transport of molecules; and

(D) compare the structures of viruses to cells and explain how viruses spread and cause disease.

(6) Science concepts--biological structures, functions, and processes. The student knows how an organism grows and the importance of cell differentiation. The student is expected to:

(A) explain the importance of the cell cycle to the growth of organisms, including an overview of the stages of the cell cycle and deoxyribonucleic acid (DNA) replication models;

(B) explain the process of cell specialization through cell differentiation, including the role of environmental factors; and

(C) relate disruptions of the cell cycle to how they lead to the development of diseases such as cancer.

(7) Science concepts--mechanisms of genetics. The student knows the role of nucleic acids in gene expression. The student is expected to:

(A) identify components of DNA, explain how the nucleotide sequence specifies some traits of an organism, and examine scientific explanations for the origin of DNA;

(B) describe the significance of gene expression and explain the process of protein synthesis using models of DNA and ribonucleic acid (RNA);

(C) identify and illustrate changes in DNA and evaluate the significance of these changes; and

(D) discuss the importance of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices.

(8) Science concepts--mechanisms of genetics. The student knows the role of nucleic acids and the principles of inheritance and variation of traits in Mendelian and non-Mendelian genetics. The student is expected to:

(A) analyze the significance of chromosome reduction, independent assortment, and crossing-over during meiosis in increasing diversity in populations of organisms that reproduce sexually; and

(B) predict possible outcomes of various genetic combinations using monohybrid and dihybrid crosses, including non-Mendelian traits of incomplete dominance, codominance, sex-linked traits, and multiple alleles.

(9) Science concepts--biological evolution. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life that has multiple lines of evidence. The student is expected to:

(A) analyze and evaluate how evidence of common ancestry among groups is provided by the fossil record, biogeography, and homologies, including anatomical, molecular, and developmental; and

(B) examine scientific explanations for varying rates of change such as gradualism, abrupt appearance, and stasis in the fossil record.

(10) Science concepts--biological evolution. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life that has multiple mechanisms. The student is expected to:

(A) analyze and evaluate how natural selection produces change in populations and not in individuals;

(B) analyze and evaluate how the elements of natural selection, including inherited variation, the potential of a population to

produce more offspring than can survive, and a finite supply of environmental resources, result in differential reproductive success;

(C) analyze and evaluate how natural selection may lead to speciation; and

(D) analyze evolutionary mechanisms other than natural selection, including genetic drift, gene flow, mutation, and genetic recombination, and their effect on the gene pool of a population.

(11) Science concepts--biological structures, functions, and processes. The student knows the significance of matter cycling, energy flow, and enzymes in living organisms. The student is expected to:

(A) explain how matter is conserved and energy is transferred during photosynthesis and cellular respiration using models, including the chemical equations for these processes; and

(B) investigate and explain the role of enzymes in facilitating cellular processes.

(12) Science concepts--biological structures, functions, and processes. The student knows that multicellular organisms are composed of multiple systems that interact to perform complex functions. The student is expected to:

(A) analyze the interactions that occur among systems that perform the functions of regulation, nutrient absorption, reproduction, and defense from injury or illness in animals; and

(B) explain how the interactions that occur among systems that perform functions of transport, reproduction, and response in plants are facilitated by their structures.

(13) Science concepts--interdependence within environmental systems. The student knows that interactions at various levels of organization occur within an ecosystem to maintain stability. The student is expected to:

(A) investigate and evaluate how ecological relationships, including predation, parasitism, commensalism, mutualism, and competition, influence ecosystem stability;

(B) analyze how ecosystem stability is affected by disruptions to the cycling of matter and flow of energy through trophic levels using models;

(C) explain the significance of the carbon and nitrogen cycles to ecosystem stability and analyze the consequences of disrupting these cycles; and

(D) explain how environmental change, including change due to human activity, affects biodiversity and analyze how changes in biodiversity impact ecosystem stability.

§112.43. *Chemistry (One Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisites: one credit of high school science and Algebra I. Recommended prerequisite: completion of or concurrent enrollment in a second year of mathematics. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) Chemistry. In Chemistry, students conduct laboratory and field investigations, use scientific practices during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include characteristics of matter, use of the Periodic Table, development of atomic theory, chemical bonding, chemical stoichiometry, gas laws, solution

chemistry, acid-base chemistry, thermochemistry, and nuclear chemistry. Students investigate how chemistry is an integral part of our daily lives. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations includes descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as Safety Data Sheets (SDS), scientific or graphing calculators, computers and probes, electronic balances, an adequate supply of consumable chemicals, and sufficient scientific glassware such as beakers, Erlenmeyer flasks, pipettes, graduated cylinders, volumetric flasks, and burettes;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using oral or written lab reports, labeled drawings, particle diagrams, charts, tables, graphs, journals, summaries, or technology-based reports;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish between scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a science, technology, engineering, and mathematics (STEM) field in order to investigate STEM careers.

(5) Science concepts. The student understands the development of the Periodic Table and applies its predictive power. The student is expected to:

(A) explain the development of the Periodic Table over time using evidence such as chemical and physical properties;

(B) predict the properties of elements in chemical families, including alkali metals, alkaline earth metals, halogens, noble gases, and transition metals, based on valence electrons patterns using the Periodic Table; and

(C) analyze and interpret elemental data, including atomic radius, atomic mass, electronegativity, ionization energy, and reactivity to identify periodic trends.

(6) Science concepts. The student understands the development of atomic theory and applies it to real-world phenomena. The student is expected to:

(A) construct models using Dalton's Postulates, Thomson's discovery of electron properties, Rutherford's nuclear atom, Bohr's nuclear atom, and Heisenberg's Uncertainty Principle to show the development of modern atomic theory over time;

(B) describe the structure of atoms and ions, including the masses, electrical charges, and locations of protons and neutrons in the nucleus and electrons in the electron cloud;

(C) investigate the mathematical relationship between energy, frequency, and wavelength of light using the electromagnetic spectrum and relate it to the quantization of energy in the emission spectrum;

(D) calculate average atomic mass of an element using isotopic composition; and

(E) construct models to express the arrangement of electrons in atoms of representative elements using electron configurations and Lewis dot structures.

(7) Science concepts. The student knows how atoms form ionic, covalent, and metallic bonds. The student is expected to:

(A) construct an argument to support how periodic trends such as electronegativity can predict bonding between elements;

(B) name and write the chemical formulas for ionic and covalent compounds using International Union of Pure and Applied Chemistry (IUPAC) nomenclature rules;

(C) classify and draw electron dot structures for molecules with linear, bent, trigonal planar, trigonal pyramidal, and

tetrahedral molecular geometries as explained by Valence Shell Electron Pair Repulsion (VSEPR) theory; and

(D) analyze the properties of ionic, covalent, and metallic substances in terms of intramolecular and intermolecular forces.

(8) Science concepts. The student understands how matter is accounted for in chemical substances. The student is expected to:

(A) define mole and apply the concept of molar mass to convert between moles and grams;

(B) calculate the number of atoms or molecules in a sample of material using Avogadro's number;

(C) calculate percent composition of compounds; and

(D) differentiate between empirical and molecular formulas.

(9) Science concepts. The student understands how matter is accounted for in chemical reactions. The student is expected to:

(A) interpret, write, and balance chemical equations, including synthesis, decomposition, single replacement, double replacement, and combustion reactions using the law of conservation of mass;

(B) differentiate among acid-base reactions, precipitation reactions, and oxidation-reduction reactions;

(C) perform stoichiometric calculations, including determination of mass relationships, gas volume relationships, and percent yield; and

(D) describe the concept of limiting reactants in a balanced chemical equation.

(10) Science concepts. The student understands the principles of the kinetic molecular theory and ideal gas behavior. The student is expected to:

(A) describe the postulates of the kinetic molecular theory;

(B) describe and calculate the relationships among volume, pressure, number of moles, and temperature for an ideal gas; and

(C) define and apply Dalton's law of partial pressure.

(11) Science concepts. The student understands and can apply the factors that influence the behavior of solutions. The student is expected to:

(A) describe the unique role of water in solutions in terms of polarity;

(B) distinguish among types of solutions, including electrolytes and nonelectrolytes and unsaturated, saturated, and super-saturated solutions;

(C) investigate how solid and gas solubilities are influenced by temperature using solubility curves and how rates of dissolution are influenced by temperature, agitation, and surface area;

(D) investigate the general rules regarding solubility and predict the solubility of the products of a double replacement reaction;

(E) calculate the concentration of solutions in units of molarity; and

(F) calculate the dilutions of solutions using molarity.

(12) Science concepts. The student understands and applies various rules regarding acids and bases. The student is expected to:

(A) name and write the chemical formulas for acids and bases using IUPAC nomenclature rules;

(B) define acids and bases and distinguish between Arrhenius and Bronsted-Lowry definitions;

(C) differentiate between strong and weak acids and bases;

(D) predict products in acid-base reactions that form water; and

(E) define pH and calculate the pH of a solution using the hydrogen ion concentration.

(13) Science concepts. The student understands the energy changes that occur in chemical reactions. The student is expected to:

(A) explain everyday examples that illustrate the four laws of thermodynamics;

(B) investigate the process of heat transfer using calorimetry;

(C) classify processes as exothermic or endothermic and represent energy changes that occur in chemical reactions using thermochemical equations or graphical analysis; and

(D) perform calculations involving heat, mass, temperature change, and specific heat.

(14) Science concepts. The student understands the basic processes of nuclear chemistry. The student is expected to:

(A) describe the characteristics of alpha, beta, and gamma radioactive decay processes in terms of balanced nuclear equations;

(B) compare fission and fusion reactions; and

(C) give examples of applications of nuclear phenomena such as nuclear stability, radiation therapy, diagnostic imaging, solar cells, and nuclear power.

§112.44. *Integrated Physics and Chemistry (One Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9 and 10.

(b) Introduction.

(1) Integrated Physics and Chemistry. In Integrated Physics and Chemistry, students conduct laboratory and field investigations, use engineering practices, use scientific practices during investigation, and make informed decisions using critical thinking and scientific problem solving. This course integrates the disciplines of physics and chemistry in the following topics: force, motion, energy, and matter. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as data-collecting probes, software applications, the internet, standard laboratory glassware, metric rulers, meter sticks, spring scales, multimeters, Gauss meters, wires, batteries, light bulbs, switches, magnets, electronic balances, mass sets, Celsius thermometers, hot plates, an adequate supply of consumable chemicals, lab notebooks or journals, timing devices, models, and diagrams;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using labeled drawings and diagrams, graphic organizers, charts, tables, and graphs;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish between scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a science, technology, engineering, and mathematics (STEM) field in order to investigate STEM careers.

(5) Science concepts. The student knows the relationship between force and motion in everyday life. The student is expected to:

(A) investigate, analyze, and model motion in terms of position, velocity, acceleration, and time using tables, graphs, and mathematical relationships;

(B) analyze data to explain the relationship between mass and acceleration in terms of the net force on an object in one dimension using force diagrams, tables, and graphs;

(C) apply the concepts of momentum and impulse to design, evaluate, and refine a device to minimize the net force on objects during collisions such as those that occur during vehicular accidents, sports activities, or the dropping of personal electronic devices;

(D) describe the nature of the four fundamental forces: gravitation; electromagnetic; the strong and weak nuclear forces, including fission and fusion; and mass-energy equivalency; and

(E) construct and communicate an explanation based on evidence for how changes in mass, charge, and distance affect the strength of gravitational and electrical forces between two objects.

(6) Science concepts. The student knows the impact of energy transfer and energy conservation in everyday life. The student is expected to:

(A) design and construct series and parallel circuits that model real-world circuits such as in-home wiring, automobile wiring, and simple electrical devices to evaluate the transfer of electrical energy;

(B) design, evaluate, and refine a device that generates electrical energy through the interaction of electric charges and magnetic fields;

(C) plan and conduct an investigation to provide evidence that energy is conserved within a closed system;

(D) investigate and demonstrate the movement of thermal energy through solids, liquids, and gases by convection, conduction, and radiation such as weather, living, and mechanical systems;

(E) plan and conduct an investigation to evaluate the transfer of energy or information through different materials by different types of waves such as wireless signals, ultraviolet radiation, and microwaves;

(F) construct and communicate an evidence-based explanation for how wave interference, reflection, and refraction are used in technology such as medicine, communication, and scientific research; and

(G) evaluate evidence from multiple sources to critique the advantages and disadvantages of various renewable and nonrenewable energy sources and their impact on society and the environment.

(7) Science concepts. The student knows that relationships exist between the structure and properties of matter. The student is expected to:

(A) model basic atomic structure and relate an element's atomic structure to its bonding, reactivity, and placement on the Periodic Table;

(B) use patterns within the Periodic Table to predict the relative physical and chemical properties of elements;

(C) explain how physical and chemical properties of substances are related to their usage in everyday life such as in sunscreen, cookware, industrial applications, and fuels;

(D) explain how electrons can transition from a high energy level to a low energy state, emitting photons at different frequencies for different energy transitions;

(E) explain how atomic energy levels and emission spectra present evidence for the wave particle duality; and

(F) plan and conduct an investigation to provide evidence that the rate of reaction or dissolving is affected by multiple factors such as particle size, stirring, temperature, and concentration.

(8) Science concepts. The student knows that changes in matter affect everyday life. The student is expected to:

(A) investigate how changes in properties are indicative of chemical reactions such as hydrochloric acid with a metal, oxidation of metal, combustion, and neutralizing an acid with a base;

(B) develop and use models to balance chemical equations and support the claim that atoms, and therefore mass, are conserved during a chemical reaction;

(C) research and communicate the uses, advantages, and disadvantages of nuclear reactions in current technologies; and

(D) construct and communicate an evidence-based explanation of the environmental impact of the end-products of chemical reactions such as those that may result in degradation of water, soil, air quality, and global climate change.

§112.45. *Physics (One Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Recommended prerequisite or corequisite: Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Physics. In Physics, students conduct laboratory and field investigations, use scientific practices during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include: laws of motion, changes within physical systems and conservation of energy and momentum, forces, characteristics and behavior of waves, and electricity and magnetism. Students will apply conceptual knowledge and collaborative skills to experimental design, implementation, and interpretation. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have

been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations, and use engineering practices to design solutions to problems;



(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as balances, ballistic carts or equivalent, batteries, computers, constant velocity cars, convex lenses, copper wire, discharge tubes with power supply (H, He, Ne, Ar), data acquisition probes and software, dynamics and force demonstration equipment, electrostatic generators, electrostatic kits, friction blocks, graph paper, graphing technology, hand-held visual spectrosopes, inclined planes, iron filings, lab masses, laser pointers, magnets, magnetic compasses, metric rulers, motion detectors, multimeters (current, voltage, resistance), optics bench, optics kit, photogates, plane mirrors, prisms, protractors, pulleys, resistors, rope or string, scientific calculators, stopwatches, springs, spring scales, switches, tuning forks, wave generators, or other equipment and materials that will produce the same results;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using bar charts, line graphs, scatter plots, data tables, labeled diagrams, and conceptual mathematical relationships;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish among scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-ben-

efit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore resources such as museums, libraries, professional organizations, private companies, online platforms, and mentors employed in a science, technology, engineering, and mathematics (STEM) field in order to investigate STEM careers.

(5) Science concepts. The student knows and applies the laws governing motion in a variety of situations. The student is expected to:

(A) analyze different types of motion by generating and interpreting position versus time, velocity versus time, and acceleration versus time using hand graphing and real-time technology such as motion detectors, photogates, or digital applications;

(B) define scalar and vector quantities related to one- and two-dimensional motion and combine vectors using both graphical vector addition and the Pythagorean theorem;

(C) describe and analyze motion in one dimension using equations with the concepts of distance, displacement, speed, velocity, frames of reference, and acceleration;

(D) describe and analyze acceleration in uniform circular and horizontal projectile motion in two dimensions using equations;

(E) explain and apply the concepts of equilibrium and inertia as represented by Newton's first law of motion using relevant real-world examples such as rockets, satellites, and automobile safety devices;

(F) calculate the effect of forces on objects, including tension, friction, normal, gravity, centripetal, and applied forces, using free body diagrams and the relationship between force and acceleration as represented by Newton's second law of motion;

(G) illustrate and analyze the simultaneous forces between two objects as represented in Newton's third law of motion using free body diagrams and in an experimental design scenario; and

(H) describe and calculate, using scientific notation, how the magnitude of force between two objects depends on their masses and the distance between their centers, and predict the effects on objects in linear and orbiting systems using Newton's law of universal gravitation.

(6) Science concepts. The student knows the nature of forces in the physical world. The student is expected to:

(A) use scientific notation and predict how the magnitude of the electric force between two objects depends on their charges and the distance between their centers using Coulomb's law;

(B) identify and describe examples of electric and magnetic forces and fields in everyday life such as generators, motors, and transformers;

(C) investigate and describe conservation of charge during the processes of induction, conduction, and polarization using different materials such as electroscopes, balloons, rods, fur, silk, and Van de Graaf generators;

(D) analyze, design, and construct series and parallel circuits using schematics and materials such as switches, wires, resistors, lightbulbs, batteries, voltmeters, and ammeters; and

(E) calculate current through, potential difference across, resistance of, and power used by electric circuit elements connected in both series and parallel circuits using Ohm's law.

(7) Science concepts. The student knows that changes occur within a physical system and applies the laws of conservation of energy and momentum. The student is expected to:

(A) calculate and explain work and power in one dimension and identify when work is and is not being done by or on a system;

(B) investigate and calculate mechanical, kinetic, and potential energy of a system;

(C) apply the concept of conservation of energy using the work-energy theorem, energy diagrams, and energy transformation equations, including transformations between kinetic, potential, and thermal energy;

(D) calculate and describe the impulse and momentum of objects in physical systems such as automobile safety features, athletics, and rockets; and

(E) analyze the conservation of momentum qualitatively in inelastic and elastic collisions in one dimension using models, diagrams, and simulations.

(8) Science concepts. The student knows the characteristics and behavior of waves. The student is expected to:

(A) examine and describe simple harmonic motion such as masses on springs and pendulums and wave energy propagation in various types of media such as surface waves on a body of water and pulses in ropes;

(B) compare the characteristics of transverse and longitudinal waves, including electromagnetic and sound waves;

(C) investigate and analyze characteristics of waves, including velocity, frequency, amplitude, and wavelength, and calculate using the relationships between wave speed, frequency, and wavelength;

(D) investigate behaviors of waves, including reflection, refraction, diffraction, interference, standing wave, the Doppler effect and polarization and superposition; and

(E) compare the different applications of the electromagnetic spectrum, including radio telescopes, microwaves, and x-rays;

(F) investigate the emission spectra produced by various atoms and explain the relationship to the electromagnetic spectrum; and

(G) describe and predict image formation as a consequence of reflection from a plane mirror and refraction through a thin convex lens.

(9) Science concepts. The student knows examples of quantum phenomena and their applications. The student is expected to:

(A) describe the photoelectric effect and emission spectra produced by various atoms and how both are explained by the photon model for light;

(B) investigate Malus's Law and describe examples of applications of wave polarization, including 3-D movie glasses and LCD computer screens;

(C) compare and explain how superposition of quantum states is related to the wave-particle duality nature of light; and

(D) give examples of applications of quantum phenomena, including the Heisenberg uncertainty principle, quantum computing, and cybersecurity.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 115. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

The State Board of Education (SBOE) adopts new §§115.11-115.17, 115.25-115.27, and 115.37-115.40, concerning Texas Essential Knowledge and Skills (TEKS) for health education. New §§115.11, 115.25, and 115.37 are adopted without changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7135) and will not be republished. New §§115.12-115.17, 115.26, 115.27, and 115.38-115.40 are adopted with changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7135) and will be republished. The new sections update the standards to reflect current health education research and best practices and align with changes to requirements in statute.

**REASONED JUSTIFICATION:** In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

In preparation for the review and revision of the TEKS for health education, the SBOE in September 2017 requested that the commissioner of education convene a group of experts to develop a study to provide guidance for the development of revised health education TEKS. At that time, the SBOE also approved parameters for the recommendations of the commissioner's committee to include a framework for what the strands should be for Kindergarten-Grade 12, distinctions regarding grade levels and/or grade bands at which health concepts are most appropriately taught, and a summary of all statutory requirements related to health education and suggestions regarding the most appropriate way to integrate those requirements into the framework. In 2018, Texas Education Agency (TEA) convened a group of experts to develop recommendations to address the SBOE's charge related to the health education TEKS. This health education advisory committee drafted a response to the SBOE's charge, and the response was submitted to the commissioner. Based on the response, the commissioner provided recommendations to the SBOE at the June 2019 meeting.

The review of the health education TEKS is taking place concurrently with the review of the physical education TEKS. In March 2019, applications to serve on the health education TEKS review

work groups were posted on the TEA website. At the April 2019 meeting, SBOE members were asked to designate content advisors for the health education TEKS review. In May 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the health education TEKS. TEA staff provided applications for the health education review work groups to SBOE members on a monthly basis from June 2019 to March 2020.

In August 2019, content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the health education TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in September 2019 to review survey results and recommend specific topics that should be included in the proposed framework. The work group was also charged with identifying where student expectations from the current TEKS would fit into the proposed framework. The work group completed recommendations for Kindergarten only. Work Group B was convened in October 2019 and was charged with identifying where student expectations would fit into the proposed framework for all other grade levels and identifying the grade levels where topics developed by Work Group A should be taught. Work Group C was convened in December 2019 and again in early February 2020 to draft recommendations for student expectations in three of the six strands in the proposed framework. Work Group D was convened at the end of February 2020 to draft recommendations for the remaining strands in the proposed framework. Work Group E was convened in March 2020 to review the vertical alignment of the strands across all grade levels and to ensure horizontal alignment with the physical education TEKS. In May 2020, content advisors were sent the draft recommendations for review and met virtually to develop consensus recommendations to be provided to the SBOE. At the June-July 2020 SBOE meeting, the board asked TEA to convene another work group to address specific guidance provided by board members. TEA convened Work Group F virtually in July 2020 to develop final recommendations for revisions to the health education TEKS.

The new sections will supersede the existing health education TEKS for elementary, middle school, and high school in §§115.1-115.7, 115.21-115.23, and 115.31-115.33 beginning with the 2022-2023 school year.

The following changes were made to proposed new 19 TAC Chapter 115 since published as proposed.

#### *Subchapter A, Elementary*

Section 115.12(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.12(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.12(b)(2)(A) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.12(b)(8)(A) was amended by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.12(b)(9)(B) was amended by deleting the phrase "and practice telling a parent or trusted adult if threatened" after the phrase "unsafe situations."

A new student expectation was added to §115.12(b)(10) that states, "recall personal home address as part of a personal safety plan."

The student expectation in §115.12(b)(11) was amended by adding the word "other" before the phrase "trusted adult."

The student expectation in §115.12(b)(12)(C) was amended by replacing the word "a" with the word "another" before the phrase "trusted adult."

The student expectation in §115.12(b)(12)(D) was amended by adding the phrase "and practice" after the word "explain" and by adding the word "another" before the word "trusted adult."

The knowledge and skills statement in §115.12(b)(14) was amended by replacing the phrase "role play" with the word "identify" and by adding the word "another" before the word "trusted adult."

Section 115.13(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.13(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.13(b)(9)(A) was amended by adding the word "another" before the phrase "trusted adult."

A new student expectation was added to §115.13(b)(10) that states, "recall parents'/caregivers' phone numbers as part of a personal safety plan."

The student expectation in §115.13(b)(11)(B) was amended by deleting the word "drugs" after the word "weapons" and by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.13(b)(12) was amended by adding the word "other" before the phrase "trusted adult."

The student expectation in §115.13(b)(13)(D) was amended by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.13(b)(16) was amended by adding the word "another" before the phrase "trusted adult."

Section 115.14(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.14(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.14(b)(10)(B) was amended by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.14(b)(11)(B) was amended by adding the word "another" before the phrase "trusted adult."

A new student expectation was added to §115.14(b)(11) that states, "identify two trusted adults not part of the immediate family and recall their phone numbers as part of a personal safety plan."

The student expectation in §115.14(b)(12)(B) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.14(b)(13)(C) was amended by adding the word "other" before the phrase "trusted adults."

Section 115.15(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.15(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

The student expectation in §115.15(b)(4)(A) was amended by adding the phrase "including identifying areas for one's personal growth" after the word "formed."

The student expectation in §115.15(b)(4)(B) was amended by adding the word "another" before the phrase "trusted adult."

A new student expectation was added to §115.15(b)(11) that states, "create a personal safety plan."

The student expectation in proposed §115.15(b)(12)(D) was deleted.

The student expectation in §115.15(b)(13)(C) was amended by replacing the phrase "identify examples of" with the word "define" and deleting the phrase "and describe how to respond."

Section 115.16(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.16(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

New §115.16(a)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.16(a)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.16(a)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.16(a)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.16(a)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.16(a)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.16(a)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.16(b)(4)(A) was amended by adding the phrase "including areas for one's personal growth and ways to gather constructive feedback" after the word "others."

The student expectation in §115.16(b)(5)(E) was amended by replacing the phrase "self-harm behaviors that may present when someone is struggling to manage overwhelming emotions or lacks support and explain the importance of telling a parent or trusted adult if observed in self or others" with the phrase "ways to express and manage overwhelming emotions without harming oneself, others, or property such as calming strategies or talking to a parent or another trusted adult."

The student expectation in §115.16(b)(12)(A) was amended by deleting the phrase "and drugs."

A new student expectation was added to §115.16(b)(12) that states, "create a personal safety plan."

The student expectation in proposed §115.16(b)(12)(D) was deleted.

The student expectation in §115.16(b)(14)(D) was amended by adding the word "another" before the phrase "trusted adult."

The knowledge and skills statement in §115.16(b)(20) was amended by deleting the phrase "and pregnancy" after the word "reproduction," replacing the word "analyzes" with the word "identifies," and deleting the phrase "the process of fertilization, and healthy fetal development."

Section 115.17(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.17(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

New §115.17(a)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.17(a)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.17(a)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.17(a)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.17(a)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.17(a)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.17(a)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.17(b)(3)(C) was amended by adding the word "negative" after the word "resisting" and replacing the word "pressure" with the word "influence."

A new student expectation was added to §115.17(b)(4) that states, "identify goals that one wishes to achieve, including identifying areas for one's personal growth and ways to gather constructive feedback."

The student expectation in §115.17(b)(6)(D) was amended by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.17(b)(6)(E) was amended by deleting the phrase "and behavioral."

The student expectation in §115.17(b)(6)(F) was amended by deleting the phrase "self-management" and the word "prevent" and by adding the phrase "others, or property" after the word "oneself" and by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.17(b)(12)(A) was amended by deleting the phrase "and drugs."

The student expectation in proposed §115.17(b)(12)(C) was deleted.

The student expectation in §115.17(b)(12)(C) was amended by replacing the word "evaluate" with the word "identify."

A new student expectation was added to §115.17(b)(12) that states, "create a personal safety plan."

The student expectation in proposed §115.17(b)(14)(A) was deleted.

The student expectation in proposed §115.17(b)(14)(B) was deleted.

The student expectation in §115.17(b)(16)(B) was amended by deleting the phrase "analyze the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances and," by replacing the word "their" with the word "the," and by adding the phrase "of alcohol, tobacco, other drugs, and dangerous substances" after the phrase "illegal use."

The student expectation in proposed §115.17(b)(20)(A) was deleted.

The student expectation in §115.17(b)(21)(B) was amended by adding the word "another" before the phrase "trusted adult."

The student expectation in §115.17(b)(21)(D) was amended by deleting the phrase "related to physical intimacy such as holding hands, hugging, and kissing."

The knowledge and skills statement in §115.17(b)(22) was amended by replacing the word "analyzes" with the phrase "identifies the processes of" and by deleting the phrase "the process of" before the word "fertilization."

A new student expectation was added to §115.17(b)(22) that states, "identify significant milestones of fetal development."

#### *Subchapter B, Middle School*

Section 115.26(a)(2) was amended by adding the sentences, "Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support."

Section 115.26(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.26(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

New §115.26(a)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.26(a)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.26(a)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.26(a)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.26(a)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.26(a)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.26(a)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.26(b)(4)(B) was amended to replace the word "implications" with the word "benefits" and to add the phrase "setting and implementing" before the phrase "long-term personal goals."

The student expectation in proposed §115.26(b)(5)(A) was deleted.

The student expectation in §115.26(b)(6)(B) was amended by replacing the phrase "coping with" with the word "managing."

The student expectation in §115.26(b)(6)(E) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.26(b)(6)(F) was amended by replacing the phrase "warning signs associated with suicide as" with the phrase "suicide risk and suicide protective factors" and by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.26(b)(6)(G) was amended by replacing the phrase "describe why self-harm" with the phrase "explain the role of a healthy self-concept in avoiding self-harming," by inserting the word "that" before the phrase "can occur," and by deleting the phrase "or lacks support."

The student expectation in §115.26(b)(10)(D) was amended by replacing the word "in" with the word "between," by inserting the phrase "or minimally processed" after the word "fresh," and by replacing the phrase "versus serving ready-prepared" with the phrase "and commercially prepared or highly."

The student expectation in §115.26(b)(12)(B) was amended by deleting the proposed student expectation and replacing it with a new student expectation that states, "define safe haven and identify dedicated safe haven locations in the community."

A new student expectation was added to §115.26(b)(12) that states, "create a personal safety plan."

The student expectation in §115.26(b)(13)(B) was amended by inserting the phrase "social media posts" after the phrase "such as."

The student expectation in §115.26(b)(13)(C) was amended by inserting the phrase "social media posts" after the phrase "such as."

The student expectation in proposed §115.26(b)(14)(A) was deleted.

The student expectation in §115.26(b)(14)(A) was amended by inserting the phrase "and the importance of reporting suspected abuse" after the word "behavior."

The student expectation in §115.26(b)(14)(D) was amended by replacing the word "or" with the word "and."

The student expectation in §115.26(b)(15)(D) was amended by deleting the phrase "prescription drugs, over the counter drugs."

The student expectation in §115.26(b)(16)(B) was amended by deleting the word "and" before the word "misuse" and by inserting the phrase "and possession" after the word "misuse."

The student expectation in proposed §115.26(b)(16)(C) was deleted.

The student expectation in §115.26(b)(17)(A) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.26(b)(17)(C) was amended by replacing the phrase "at least one example" with the word "examples" and by inserting the phrase "unsafe situations regarding" after the phrase "related to."

The student expectation in proposed §115.26(b)(18)(E) was deleted.

The student expectation in proposed §115.26(b)(19)(D) was deleted.

The student expectation in §115.26(b)(20)(A) was amended by replacing the phrase "compare and contrast the differences" with the phrase "define and distinguish."

The student expectation §115.26(b)(20)(E) was amended by replacing the word "dating" with the phrase "dating/romantic."

The student expectation in §115.26(b)(21)(D) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.26(b)(21)(E) was amended by replacing the phrase "decision making regarding" with the phrase "making and respecting decisions about" and by replacing the word "promotes" with the word "promote."

The student expectation in §115.26(b)(21)(G) was amended by inserting the word "and" after the word "communicating."

The student expectation in §115.26(b)(22)(E) was amended by replacing the word "identify" with the word "explain."

The student expectation in §115.26(b)(23)(D) was amended by replacing the phrase "that there are" with the word "what" and by inserting the word "are" after the word "risks."

The student expectation in §115.26(b)(23)(E) was amended by inserting the word "other" before the phrase "trusted adults."

The student expectation in §115.26(b)(23)(G) was amended by replacing the abbreviation "STIs" with the abbreviation "STDs/STIs."

Section 115.27(a)(2) was amended by adding the sentences, "Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support."

Section 115.27(a)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.27(a)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

New §115.27(a)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.27(a)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.27(a)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.27(a)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.27(a)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.27(a)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.27(a)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.27(b)(3)(A) was amended by replacing the word "casual" with the word "causal."

The student expectation in proposed §115.27(b)(3)(F) was deleted.

The student expectation in proposed §115.27(b)(5)(A) was deleted.

The student expectation in proposed §115.27(b)(5)(D) was deleted.

The student expectation in §115.27(b)(6)(D) was amended to insert the word "another" before the phrase "trusted adult."

The student expectation in §115.27(b)(6)(E) was amended by inserting the phrase "the suicide risk and suicide" after the word "discuss," by deleting the phrase "of suicide" after the phrase "protective factors," and by inserting the phrase "and the impor-

tance of telling a parent or another trusted adult if one observes the warning sign in self or others."

The student expectation in §115.27(b)(6)(F) was amended by inserting the phrase "and discuss protective factors and" after the word "research" and by replacing the phrase "harming oneself" with the phrase self-harming behaviors."

The student expectation in §115.27(b)(7)(A) was amended by inserting the word "the" after the word "determine" and by inserting the phrase "of foods and make healthy decisions about daily caloric intake" after the phrase "nutritional value."

The student expectation in proposed §115.27(b)(7)(B) was deleted.

The student expectation in proposed §115.27(b)(8)(A) was deleted.

The student expectation in §115.27(b)(8)(B) was amended by deleting the word "expenditures."

The student expectation in §115.27(b)(8)(C) was amended by inserting the phrase "apply the CDC guidelines for daily physical activity to" before the word "develop."

The student expectation in §115.27(b)(10)(C) was amended by inserting the phrase "and digital" after the word "community."

The student expectation in §115.27(b)(10)(D) was amended by inserting the word "nutritional" before the word "differences," replacing the word "in" with the word "between," inserting the phrase "or minimally processed food" after the phrase "fresh food," and by replacing the phrase "ready-prepared" with the phrase "commercially prepared or highly."

The student expectation in proposed §115.27(b)(12)(C) was deleted.

A new student expectation was added to §115.27(b)(12) that states, "create a personal safety plan."

The student expectation in §115.27(b)(13)(A) was amended by inserting the phrase "social media posts" after the phrase "such as."

The student expectation in §115.27(b)(13)(B) was amended by inserting the phrase "social media posts" after the phrase "such as."

The student expectation in proposed §115.27(b)(14)(A) was deleted and replaced with a new student expectation that states, "identify forms of family violence, including physical, mental, and emotional violence."

The student expectation in proposed §115.27(b)(14)(B) was deleted.

The student expectation in §115.27(b)(14)(E) was amended by replacing the phrase "preventing bullying, including cyberbullying and harassment" with the phrase "prevention and intervention of all forms of bullying and cyberbullying such as emotional, physical, social, and sexual."

The student expectation in proposed §115.27(b)(14)(H) was deleted.

The student expectation in proposed §115.27(b)(15)(D) was deleted.

The student expectation in §115.27(b)(15)(D) was amended by inserting the phrase "and addiction to alcohol, tobacco, vaping

products, drugs, and other substances" after the phrase "substance misuse" and by replacing the phrase "drug abuse, and substance use disorders" with the word "drugs."

The student expectation in proposed §115.27(b)(15)(F) was deleted.

The student expectation in §115.27(b)(16)(A) was amended by inserting the phrase "addiction to alcohol and tobacco and" before the word "prescription."

The student expectation in §115.27(b)(16)(B) was amended by replacing the word "alternatives" with the phrase "alternative activities."

The student expectation in §115.27(b)(18)(B) was amended by inserting the phrase "physical and" after the word "examine."

The student expectation in proposed §115.27(b)(18)(C) was deleted.

The student expectation in §115.27(b)(18)(D) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in proposed §115.27(b)(20)(A) was deleted and replaced with a new student expectation that states, "compare and contrast the difference between friendship, infatuation, dating/romantic relationships, and marriage."

The student expectation in §115.27(b)(20)(F) was amended by replacing the word "romantic" with the phrase "dating/romantic" and by deleting and phrase "and responsibility."

The student expectation in §115.27(b)(21)(E) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.27(b)(21)(F) was amended by deleting the phrase "and respecting," by replacing the word "safe" with the phrase "setting and respecting personal," and by deleting the phrase "and limits."

The student expectation in §115.27(b)(21)(G) was amended by inserting the word "how" before the phrase "refusal skills," by inserting the phrase "can be used" after the phrase "refusal skills," by replacing the word "pressure" with the word "influences," by inserting the phrase "reinforce personal boundaries to" before the word "avoid," and by inserting the phrase "and behaviors that increase sexual risk" after the word "situations."

The student expectation in proposed §115.27(b)(21)(H) was deleted.

The student expectation in proposed §115.27(b)(21)(J) was deleted.

The student expectation in proposed §115.27(b)(22)(D) was deleted.

The student expectation in §115.27(b)(22)(D) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.27(b)(23)(C) was amended by replacing the phrase "sexually transmitted diseases (STDs) and sexually transmitted infections (STIs)" with the phrase "sexually transmitted diseases/sexually transmitted infections (STDs/STIs)."

The student expectation in §115.27(b)(23)(D) was amended by replacing the phrase "STDs and STIs, including skin-to-skin contact and the exchange of bodily fluids through sexual contact" with the abbreviation "STDs/STIs."

A new student expectation §115.27(b)(23) was added that states, "identify the prevalence of STDs/STIs among teens by referencing county, state, and/or federal data sources."

The student expectation in §115.27(b)(23)(F) was amended by replacing the phrase "STDs and STIs" with the abbreviation "STDs/STIs" after the phrase "symptoms of" and the phrase "why not all."

The student expectation in §115.27(b)(23)(G) was amended by replacing the phrase "STD and STI" with the abbreviation "STD/STI."

The student expectation in §115.27(b)(23)(H) was amended by inserting the word "other" before the phrase "trusted adult."

The student expectation in §115.27(b)(23)(J) was amended by inserting the word "other" before the phrase "trusted adults."

The student expectation in §115.27(b)(23)(L) was amended by replacing the word "condoms" with the phrase "barrier protection" and by replacing the phrase "STDs, STIs" with the abbreviation "STDs/STIs."

The student expectation in §115.27(b)(23)(M) was amended by inserting the phrase "the most common types of" after the phrase "transmission of" and by replacing the word "or" with the phrase "cancer and."

The student expectation in §115.27(b)(23)(O) was amended by replacing the word "regarding" with the word "of," by replacing the phrase "child support and" with the phrase "the legal effects of," and by inserting the phrase "and proof" after the word "acknowledgement."

The student expectation in §115.27(b)(23)(P) was amended by replacing the word "implications" with the phrase "aspects of sexual activity with a minor person," by deleting the phrase "and offenses regarding sexual activity as they relate to minor persons, including," and by inserting the phrase "sexual abuse" after the phrase "sexual assault."

#### *Subchapter C, High School*

Section 115.38(b)(2) was amended by adding the sentences, "Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support."

Section 115.38(b)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.38(b)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

Section 115.38(b)(3)(F) was amended by replacing the phrase "sexually transmitted infections (STIs)" with the phrase "sexually transmitted diseases/sexually transmitted infections (STDs/STIs)."

New §115.38(b)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.38(b)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to

ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.38(b)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.38(b)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.38(b)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.38(b)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.38(b)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.38(c)(2)(A) was amended by inserting the phrase "perspective-taking and" after the word "demonstrate" and by inserting the phrase "show respect for others' feelings and" before the phrase "express empathy."

The student expectation in §115.27(c)(3) was amended by deleting the word "mental" before the phrase "health information."

The student expectation in proposed §115.38(c)(4)(A) was deleted.

The student expectation in §115.38(c)(4)(B) was amended by replacing the word "effects" with the word "events."

The student expectation in §115.38(c)(5)(A) was amended by replacing the phrase "warning signs and" with the phrase "suicide risk and suicide," by deleting the phrase "of suicide as," and by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.38(c)(5)(B) was amended by replacing the word "assess" with the word "discuss."

The student expectation in proposed §115.38(c)(5)(C) was deleted.

The student expectation in §115.38(c)(6)(A) was amended by replacing the word "for" with the phrase "to determine the" and by replacing the phrase "including recommended daily calories" with the phrase "of foods and make healthy decisions about daily caloric intake."

A new student expectation was added to §115.38(c)(7) that states, "analyze the relationships between body composition, diet, and physical activity, including how to balance caloric intake and physical activity."

The student expectation in §115.38(c)(8)(A) was amended by inserting the word "nutritional" before the word "differences," by inserting the phrase "or minimally processed" after the phrase "serving fresh," and by replacing the phrase "ready-prepared or" with the phrase "commercially prepared or highly."



The student expectation in proposed §115.38(c)(8)(B) was deleted and replaced with a new student expectation that states, "evaluate the connection between physical activity and dietary choices as they relate to the prevention of chronic conditions."

The student expectation in §115.38(c)(11)(A) was amended by inserting the phrase "social media posts" after the phrase "such as."

The student expectation in §115.38(c)(15)(B) was amended by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.38(c)(16)(A) was amended by inserting the phrase "physical and" after the phrase "compare and contrast."

The student expectation in proposed §115.38(c)(18)(A) was deleted.

The student expectation in §115.38(c)(18)(A) was amended by replacing the word "dating" with the phrase "dating/romantic."

A new student expectation was added to §115.38(c)(18) that states, "describe how a healthy marriage can provide a supportive environment for the nurturing and development of children."

The student expectation in §115.38(c)(19)(C) was amended by replacing the word "identify" with the word "analyze."

A new student expectation was added to §115.38(c)(19) that states, "examine factors, including alcohol and other substances, that increase sexual risk and that affect setting, perceiving, and making decisions about boundaries."

A new student expectation was added to §115.38(c)(19) that states, "examine and discuss influences and pressures to become sexually active and why it is wrong to violate another person's boundaries and manipulate or threaten someone into sexual activity."

A new student expectation was added to §115.38(c)(19) that states, "explain the importance of reporting to a parent or another trusted adult sexual harassment, sexual abuse, sexual assault, and dating violence involving self or others."

The student expectation in proposed §115.38(c)(20)(A) was deleted.

The student expectation in proposed §115.38(c)(20)(B) was deleted.

The student expectation in §115.38(c)(20)(C) was amended by inserting "another" before the phrase "trusted adult."

The student expectation in §115.38(c)(21)(B) was amended by replacing the phrase "sexually transmitted diseases (STDs) and STIs, including skin-to-skin contact, oral sex, vaginal sex, and anal sex" with "STDs/STIs."

A new student expectation was added to §115.38(c)(21) that states, "investigate and summarize the statistics on the prevalence of STDs/STIs among teens by referencing county, state, and/or federal data sources."

The student expectation in §115.38(c)(21)(D) was amended by replacing the phrase "STDs and STIs" with the abbreviation "STDs/STIs" after the phrase "signs and symptoms of" and before the phrase "show symptoms."

The student expectation in §115.38(c)(21)(E) was amended by replacing the phrase "STD and STI" with the abbreviation "STD/STI," by deleting the phrase "if there is a concern or," and

by inserting the phrase "or if there is a concern" after the phrase "yearly physicals."

The student expectation in §115.38(c)(21)(G) was amended by replacing the phrase "STDs, and STIs" with the phrase "and STDs/STIs."

A new student expectation was added to §115.38(c)(21) that states, "identify support from parents and other trusted adults and create strategies, including building peer support, to be abstinent or for return to abstinence if sexually active."

The student expectation in §115.38(c)(21)(I) was amended by replacing the phrase "and may" with the word "to" and by replacing the phrase "STDs, STIs" with the abbreviation "STDs/STIs."

Section 115.39(b)(2) was amended by adding the sentences, "Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support."

Section 115.39(b)(3)(D) was amended by adding the word "prevention" after the word "bullying."

Section 115.39(b)(3)(E) was amended by adding the word "other" before the phrase "trusted adults."

Section 115.39(b)(3)(F) was amended by replacing the phrase "sexually transmitted infections (STIs)" with the phrase "sexually transmitted diseases/sexually transmitted infections (STDs/STIs)."

New §115.39(b)(4) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.39(b)(4)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.39(b)(4)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.39(b)(4)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.39(b)(4)(D) was added to state, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.39(b)(4)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.39(b)(5) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, in-

cluding public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

A new student expectation was added to §115.39(c)(5) that states, "discuss how the use of suicide prevention resources such as the National Suicide Prevention Hotline reduces the likelihood of suicide."

A second new student expectation was added to §115.39(c)(5) that states, "research and discuss data on and prevalence of local, state, and national suicide rates among various groups."

The student expectation in proposed §115.39(c)(9)(A) was deleted and replaced by a new student expectation that states, "research and discuss the social and economic impact of chronic conditions, including obesity, heart disease, and diabetes."

The student expectation in §115.39(c)(9)(B) was amended by inserting the phrase "and digital" before the word "resources."

The student expectation in proposed §115.39(c)(13)(A) was deleted.

The student expectation in §115.39(c)(14)(A) was amended by inserting the phrase "substance misuse and" before the word "addiction" and by replacing the word "impacts" with the phrase "impact family and."

The student expectation in proposed §115.39(c)(15)(A) was deleted.

The student expectation in §115.39(c)(19)(C) was amended by replacing the word "describe" with the word "examine."

The student expectation in §115.39(c)(20)(B) was amended by replacing the word "explain" with the word "evaluate" and by inserting the word "another" before the phrase "trusted adult."

The student expectation in §115.39(c)(20)(E) was amended by replacing the phrase "examine and discuss" with the word "evaluate."

The student expectation in §115.39(c)(21)(B) was amended by replacing the phrase "sexually transmitted diseases (STDs) and STIs" with the abbreviation "STDs/STIs."

The student expectation in proposed §115.39(c)(21)(C) was deleted.

The student expectation in §115.39(c)(22)(B) was amended by replacing the phrase "STDs and STIs" with the abbreviation "STDs/STIs."

The student expectation in §115.39(c)(22)(C) was amended by inserting the word "other" before the phrase "trusted adult" and by replacing the phrase "STD and STI" with the abbreviation "STD/STI."

The student expectation in §115.39(c)(22)(D) was amended by replacing the phrase "and may" with the word "to" and by replacing the phrase "STDs and STIs" with the abbreviation "STDs/STIs."

The student expectation in §115.39(c)(22)(E) was amended by inserting the phrase "the most common types of" before the abbreviation "HPV," by inserting the word "cancer" after the words "neck," "cervical," and "anal," and by inserting the phrase "that may occur" before the phrase "in males and females."

The student expectation in §115.39(c)(22)(G) was amended by replacing the word "identify" with the word "assess" and by inserting the word "other" before the phrase "trusted adults."

The student expectation in §115.39(c)(22)(H) was amended by replacing the phrase "describe the" with the phrase "investigate and summarize" and by deleting the phrase "and offenses regarding sexual activity as they relate to minor persons, including."

New §115.40(b)(2) was added to state, "Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support."

New §115.40(b)(3) was added to state, "An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:"

New §115.40(b)(3)(A) was added to state, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

New §115.40(b)(3)(B) was added to state, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC §28.004(i)-(j))."

New §115.40(b)(3)(C) was added to state, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

New §115.40(b)(3)(D) was added to state "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

New §115.40(b)(3)(E) was added to state, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)."

New §115.40(b)(4) was added to state, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

The student expectation in §115.40(c)(1)(A) was amended by replacing the phrase "identify and characterize" with the word "define."

The student expectation in §115.40(c)(2)(A) was amended by replacing the word "apply" with the word "explain."

The student expectation in §115.40(c)(3)(C) was amended by replacing the phrase "compare and contrast different" with the phrase "analyze key."

The student expectation in §115.40(c)(4)(F) was amended by replacing the word "including" with the phrase "and compare with."

The student expectation in §115.40(c)(5)(C) was amended by inserting the phrase "health care" before the phrase "community resources."

The student expectation in §115.40(c)(6)(B) was amended by replacing the phrase "and physician privileges and expectations" with the word "rights," by replacing the phrase "sexually transmitted infection (STI)" with the phrase "sexually transmitted disease/sexually transmitted infection (STD/STI)," and by inserting the phrase "and explain physician privileges" after the phrase "health care."

The student expectation in §115.40(c)(6)(D) was amended by replacing the phrase "the ability" with the word "how."

The student expectation in §115.40(c)(10)(B) was amended by deleting the phrase "the characteristics of."

The student expectation in §115.40(c)(13)(B) was amended by replacing the word "explore" with the word "evaluate."

The student expectation in §115.40(c)(13)(F) was amended by replacing the word "explore" with the word "research."

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting and for second reading and final adoption at its November 20, 2020 meeting.

The effective date of the new sections is August 1, 2022.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began October 9, 2020, and ended November 13, 2020. The SBOE also provided an opportunity for registered oral and written comments at its November 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** A teacher expressed concern with teaching students in Kindergarten through Grade 2 about alcohol, tobacco, and other drugs.

**Response.** The SBOE disagrees and has determined that student expectations related to alcohol, tobacco, and other drugs are appropriately included in the Kindergarten through Grade 2 TEKS.

**Comment.** A parent expressed concern with teaching Grade 1 students about drugs and alcohol.

**Response.** The SBOE disagrees and has determined that drugs and alcohol are appropriately included in the TEKS for Grade 1.

**Comment.** A parent expressed concern that teaching Drug Abuse Resistance Education (DARE) program to students in Grade 5 is inappropriate.

**Response.** The SBOE provides the following clarification. The DARE program is not included in the TEKS as adopted. Local districts have the authority to determine curriculum and instructional programs for use to provide instruction in the TEKS.

**Comment.** A teacher stated that the alcohol, tobacco, and other drugs strand should be moved to the physical education TEKS in Grades 3-5 and deleted from the health education TEKS.

**Response.** The SBOE disagrees and has determined that the alcohol, tobacco, and other drugs strand is appropriately included in the health education TEKS for Kindergarten-Grade 8 and high school courses.

**Comment.** The National Association of Social Workers (NASW)-Texas Chapter expressed support for including information about substance use that is non-stigmatizing.

**Response.** The SBOE agrees and has determined that the health education TEKS provide appropriate substance abuse information that is non-stigmatizing. The SBOE also took action to approve additional changes to respond to other comments.

**Comment.** A parent recommended that the health education TEKS should not be included at the elementary grade levels.

**Response.** The SBOE disagrees and has determined that health education TEKS are appropriately included in the elementary grade levels.

**Comment.** The NASW-Texas Chapter recommended that the SBOE include more neutral language concerning families and family structures so that the standards will acknowledge the different ways families can look.

**Response.** The SBOE agrees that the health education TEKS should be neutral. The SBOE has determined that the TEKS as adopted are sufficiently neutral and no further language concerning families and family structures is necessary.

**Comment.** Some 1,767 community members expressed opposition to including any discussion of abortion in the proposed new health education TEKS.

**Response.** The SBOE agrees that the topic of abortion is not essential in the TEKS for health education. However, the SBOE has also determined that health educators must be aware of relevant state laws. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(E), 115.17(a)(4)(E), 115.26(a)(4)(E), 115.27(a)(4)(E), 115.38(b)(4)(E), 115.39(b)(4)(E), and 115.40(b)(4)(E) to affirm, "the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33)." Additionally, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(5), 115.17(a)(5), 115.26(a)(5), 115.27(a)(5), 115.38(b)(5), 115.39(b)(5), and 115.40(b)(5) to read, "Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272)."

**Comment.** A person from out of state, 2 parents, and 1,822 community members expressed support for abstinence-based education.

**Response.** The SBOE agrees and has determined that the TEKS as adopted adequately address abstinence. In response to this and other comments, the SBOE took action to add new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to introductions in the TEKS to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))." Additionally, the SBOE took action to add new §§115.16(a)(4)(D), 115.17(a)(4)(D), 115.26(a)(4)(D), 115.27(a)(4)(D), 115.38(b)(4)(D), 115.39(b)(4)(D), and 115.40(b)(4)(D) to introductions in the TEKS to affirm "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

**Comment.** Some 1,767 community members expressed support for any additional amendments made to the proposed revisions to further promote abstinence and the importance of marriage in

providing a supportive environment for the nurturing and development of children.

Response. The SBOE agrees that appropriate sex education that includes abstinence and the importance of marriage is appropriately included in the TEKS for Grades 4-8 and high school and determined that no further language on abstinence and the importance of marriage was necessary. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))." Additionally, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(D), 115.17(a)(4)(D), 115.26(a)(4)(D), 115.27(a)(4)(D), 115.38(b)(4)(D), 115.39(b)(4)(D), and 115.40(b)(4)(D) to affirm, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

Comment. Some 1,767 community members expressed support for the proposed health education TEKS and teaching students the risks of early childhood sexual activity.

Response. The SBOE agrees and has determined that the TEKS adequately address risks associated with sexual activity. Additionally, in response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))." Additionally, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(D), 115.17(a)(4)(D), 115.26(a)(4)(D), 115.27(a)(4)(D), 115.38(b)(4)(D), 115.39(b)(4)(D), and 115.40(b)(4)(D) to affirm, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

Comment. Some 54 community members, 4 teachers, and 3 parents stated that any student expectations that are adopted must be taught and cannot be deleted or omitted from instruction per 19 Texas Administrative Code (TAC) §74.1; therefore, the health education TEKS must align with requirements in TEC, §28.004, related to human sexuality instruction.

Response. The SBOE agrees that all the health education TEKS should be taught and not deleted or omitted. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(C), 115.17(a)(4)(C), 115.26(a)(4)(C), 115.27(a)(4)(C), 115.38(b)(4)(C), 115.39(b)(4)(C), and 115.40(b)(4)(C) to affirm, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC §28.004(i))."

Comment. The Texas is Ready Coalition, 1 teacher, 5 parents, 11 community members, and 2 people from out of state expressed support for abstinence-plus instruction in the proposed health education TEKS.

Response. The SBOE agrees that appropriate sex education should be included in the health education TEKS for Grades 4-8 and high school courses. Decisions regarding specific instructional approaches are determined by the local school

district. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. The Texas is Ready Coalition, 1 teacher, 5 parents, 10 community members, and 2 people from out of state expressed support for evidence-based, developmentally appropriate information on contraception and prevention of STIs.

Response. The SBOE agrees and has determined that contraception and STIs are appropriately addressed in the TEKS. Additionally, in response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A teacher, three parents, five community members, and one person from out of state stated that while teaching abstinence is important, an abstinence-only curriculum does not give students the information they need to protect themselves from STIs.

Response. The SBOE agrees that appropriate sex education should be included in the health education TEKS. In response to this and other comments, the SBOE took action to add new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A person from out of state, 4 teachers, 4 parents, and 1,874 community members expressed opposition to comprehensive sex education.

Response. The SBOE provides the following clarification. The health education standards include a new reproductive and sexual health strand to address the components of human sexuality instruction deemed essential. Decisions regarding specific instructional approaches are determined by the local school district. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A counselor, 16 parents, and 15 community members expressed support for comprehensive sex education.

Response. The SBOE provides the following clarification. The health education standards include a new reproductive and sexual health strand to address the components of human sexuality instruction deemed essential. Decisions regarding specific instructional approaches are determined by the local school district. In response to this and other comments, the

SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A parent stated that children do not need sex education classes and are not sexual from birth as comprehensive sex education advocates teach.

Response. The SBOE disagrees and has determined that the health education standards address only the components of human sexuality instruction deemed essential and appropriate for the grade level. Additionally, this content is just one strand within a larger health education framework.

Comment. Five parents, one counselor, and four community members stated that students need full disclosure of unbiased, medical facts on reproductive health care and all contraception options.

Response. The SBOE agrees that appropriate information on reproductive health is important. However, the SBOE disagrees that additional disclosure of contraception options is necessary and has determined that the health education standards address only the components of human sexuality instruction deemed essential and appropriate for the grade level.

Comment. A community member expressed support for the proposed health education TEKS because curriculum grounded in well-researched, medically accurate information results in delayed onset of sexual activity, reduced STIs, decreased number of sexual partners, and fewer unintended pregnancies in teens and young adults.

Response. The SBOE agrees that appropriate sexual education standards are important and has determined that the health education TEKS are medically accurate and well-researched and will positively affect students' behaviors and overall health. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A counselor, two parents, and one community member stated that incomplete sex education leads to increases in risk-taking behaviors that result in teen pregnancy and STIs.

Response. The SBOE agrees and has determined that the health education TEKS include a new and complete reproductive and sexual health strand to address the components of human sexuality instruction deemed essential. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A parent and a community member expressed support for the proposed health education TEKS because students should have a thorough understanding of contraception and contraceptive methods in addition to the obvious benefits of abstinence.

Response. The SBOE agrees and has determined that contraception, contraceptive methods, and the benefits of

abstinence are appropriately included in the health education TEKS as adopted. In response to other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(D), 115.17(a)(4)(D), 115.26(a)(4)(D), 115.27(a)(4)(D), 115.38(b)(4)(D), 115.39(b)(4)(D), and 115.40(b)(4)(D) to affirm, "the centrality of abstinence education in any human sexuality curriculum (TEC §28.004(e))."

Comment. A parent, a teacher, and a community member stated that a complete picture of sex education is necessary to support student's ability to make informed decisions.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Some 1,767 community members expressed support for reinstating student expectations on fetal development.

Response. The SBOE agrees. In response to this and other comments, the SBOE also took action to add new §115.17(b)(22)(E) to read, "identify significant milestones of fetal development."

Comment. Fifty-one community members expressed support for including all fetal development stages, not just significant milestones, in the TEKS.

Response. The SBOE disagrees and has determined that student expectations focusing on the significant milestones of fetal development are appropriate. Additionally, in response to other comments the SBOE took action to add new §115.17(b)(22)(E) to read, "identify significant milestones of fetal development."

Comment. Three community members and the Texas is Ready Coalition recommended that the SBOE consider adding a reference to both short- and long-term contraceptive methods to the proposed Health I TEKS.

Response. The SBOE disagrees and has determined that contraceptive methods are adequately addressed in the Health I TEKS as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. The Medical Institute for Sexual Health and 51 community members recommended deleting the phrase "work and" from the proposed student expectation in §115.38(c)(21)(G) in Health I to read, "analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they may reduce the risk of STDs, STIs, and pregnancy." The commenters stated that including how contraceptives work would encourage demonstration of contraceptive measures.

Response. The SBOE disagrees that the suggested change is necessary. However, the SBOE agrees that the student expectation could be further clarified. In response to this and other comments, the SBOE took action to amend the student expectation in §115.38(c)(21)(I) to read, "analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work to reduce the risk of STDs/STIs and pregnancy."

Comment. Fifty community members asked the SBOE to remove how barrier protection and other contraceptive methods work from the student expectation in §115.39(c)(22)(D) in Health II.

Response. The SBOE agrees. In response to this and other comments, the SBOE took action to amend the student expectation in §115.39(c)(22)(D) to read, "analyze the effectiveness

and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work to reduce the risk of STDs/STIs and pregnancy."

Comment. A parent stated that high teen pregnancy and STI rates in Texas indicate that education around birth control and safer sex needs to improve.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A teacher, a parent, 53 community members, and 1 person from out of state expressed opposition to defining sexual consent at elementary and middle school levels.

Response. The SBOE agrees and has determined that sexual consent was not appropriate in the TEKS, but that personal boundaries and refusal skills was appropriate at some grade levels. In response to other comments, the SBOE took action to add new §115.27(b)(23)(P) in Grade 7 to read, "describe legal aspects of sexual activity with a minor person, including the legal age of consent, statutory rape, aggravated sexual assault, sexual assault, sexual abuse, and indecency with a child."

Comment. The Medical Institute for Sexual Health and 1,767 community members expressed opposition to any efforts to add language discussing consent.

Response. The SBOE agrees and has determined that sexual consent was not appropriate in the TEKS, but that personal boundaries and refusal skills was appropriate at some grade levels. In response to this and other comments, the SBOE took action to eliminate §115.27(b)(21)(J), which referenced consent.

Comment. Fifty community members asked the SBOE to remove consent from the student expectation in §115.27(b)(21)(J).

Response. The SBOE agrees and has determined that the student expectation in §115.27(b)(21)(J) is not essential. In response to this and other comments, the SBOE took action to eliminate §115.27(b)(21)(J).

Comment. The Medical Institute for Sexual Health recommended revising the proposed student expectation in §115.27(b)(21)(J) in Grades 7-8 by replacing the term "consent" with "refusal skills."

Response. The SBOE disagrees that the specific change is necessary but did take action to eliminate §115.27(b)(21)(J).

Comment. The NASW-Texas Chapter, the Texas is Ready Coalition, the Texas Association Against Sexual Assault (TAASA), the Texas Medical Association, an administrator, 2 teachers, 21 parents, 24 community members, a representative from an institution of higher education, and 2 persons from out of state expressed support for including information about consent in the proposed health TEKS.

Response. The SBOE disagrees that the term "consent" is necessary and has determined that personal boundaries and refusal skills are more appropriately included in the health education TEKS as amended.

Comment. A community member expressed support for including language about consent beginning with kindergarten.

Response. The SBOE disagrees that the term "consent" is necessary and has determined that personal boundaries are more appropriately included in the health education TEKS for kindergarten.

Comment. The Texas is Ready Coalition, the NASW-Texas Chapter, and four community members expressed support for positive language that is included in the proposed new TEKS regarding traits of healthy relationships, prevention of dating violence, and respect.

Response. The SBOE agrees and has determined that healthy relationships, prevention of dating violence, and respect are appropriately included in the health education TEKS as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A community member stated that the attitude of instructors can reinforce shame and guilt and contribute to lifelong problems with self-esteem and the ability to form stable, loving, and trusting relationships.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Four parents expressed support for language on boundaries, consent, healthy relationships, and abuse and the prevention of violence in the health education draft TEKS.

Response. The SBOE agrees and has determined that boundaries, healthy relationships, and abuse and the prevention of violence are appropriately included in the health education TEKS as amended. However, the SBOE disagrees that the term "consent" is necessary and has determined that personal boundaries and refusal skills are more appropriately included in the health education TEKS as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher and two parents stated that teaching fifth graders who are ten years old about human immunodeficiency virus (HIV) is inappropriate.

Response. The SBOE agrees and has determined that HIV was not addressed in the Grade 5 TEKS as proposed.

Comment. A community member expressed concern about Sexual Orientation and Gender Identity (SOGI) curriculum programs. The commenter stated that districts should present only biological information about anatomy and reproduction and should not present controversial experimental theories like SOGI that have been widely proven to cause physical and psychological harm to students.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. The Medical Institute for Sexual Health and 1,819 community members expressed support for the omission of differentiated instruction on lesbian, gay, bisexual, transgender, and queer (LGBTQ) issues.

Response. The SBOE agrees and has determined that the health education TEKS do not specifically address LGBTQ issues and are inclusive of all students.

Comment. The NASW-Texas Chapter, Texas is Ready Coalition, 5 teachers, 2 counselors, 3 administrators, 7 parents, 36 community members, a representative from an institution of higher education, and 2 people from out of state expressed support for including language that supports the needs of LGBTQ youth in the proposed health education TEKS.

Response. The SBOE agrees that appropriate sex education should be inclusive and support the needs of all students. However, the SBOE disagrees that it is necessary to specifically address LGBTQ issues in the TEKS.

Comment. The Texas is Ready Coalition and three community members recommended that the proposed health education TEKS emphasize respect for all people, including those of minority genders and sexual orientations, and discourage harmful trends like bullying, discrimination, and victimization. The commenters recommended adding a new student expectation to read, "demonstrate ways to show respect for all, regardless of sexual orientation or gender identity."

Response. The SBOE disagrees that the suggested change is necessary and has determined that the health education TEKS sufficiently emphasize respect for all people and discourage bullying, discrimination, and victimization as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A teacher stated that regardless of religious and political beliefs, Texas must be courageous enough to change our culture for the good of all through compassion and inclusivity in our educational practices.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A teacher, a counselor, a parent, 54 community members, and a person from out of state expressed opposition to redefining marriage as a committed relationship.

Response. The SBOE provides the following clarification. Language referring to committed relationships was revised and was not included in the proposed health education TEKS.

Comment. Two parents and 50 community members expressed opposition to including references to oral and anal sex such as in the proposed student expectation in §115.38(c)(21)(B).

Response. The SBOE agrees and took action to amend the student expectation in §115.38(c)(21)(B) to read, "describe various modes of transmission of STDs/STIs."

Comment. The Texas is Ready Coalition and three community members expressed concern that language in the proposed student expectation in §115.27(b)(23)(D) is imprecise and may cause students to incorrectly assess the risk of types of sexual or non-sexual contact. The commenters recommended reverting to language from previous work group drafts to read, "describe various modes of transmission of STDs/STIs."

Response. The SBOE agrees that the student expectation could benefit from clearer language. In response to this and other comments, the SBOE took action to amend the student expectation in §115.27(b)(23)(D) to read, "describe various modes of transmission of STDs/STIs."

Comment. A teacher questioned the need for health education TEKS and stated that schools should teach the basics and the additional instruction, including teaching children about how to handle their emotions, only adds to the burdens of teachers and schools.

Response. The SBOE provides the following clarification. Health education is part of the enrichment curriculum required by TEC, §28.002(a)(2), that school districts offering Kindergarten through Grade 12 must offer.

Comment. A parent expressed opposition to the proposed health education TEKS because they lead to hostile classroom discussions that do not protect students and medical privacy, and overtly lead to students distrust that parents are making good decisions for them.

Response. The SBOE disagrees and has determined that the health education TEKS sufficiently protect students and their medical privacy and do not negatively impact their trust of their parents.

Comment. TAASA commended the SBOE for including language about respect for personal boundaries across all grade levels.

Response. The SBOE agrees that the inclusion of personal boundaries at all grade levels is essential and took action to approve the health education TEKS as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Some 54 community members, 3 teachers, and 5 parents expressed opposition to the reproductive and sexual health strand because it violates a parent's right to direct the moral and religious teachings of their children per Texas Family Code, §151.001, and would also be in direct violation of TEC, §28.004(a), which allows for local control of the teaching of sex education.

Response. The SBOE disagrees and has determined that appropriate sex education should be included in Grade 4 through high school. However, in response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction." The SBOE also took action to add to the introductions in the TEKS new §§115.16(a)(4)(C), 115.17(a)(4)(C), 115.26(a)(4)(C), 115.27(a)(4)(C), 115.38(b)(4)(C), 115.39(b)(4)(C), and 115.40(b)(4)(C) to affirm, "the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child." Additionally, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(B), 115.17(a)(4)(B), 115.26(a)(4)(B), 115.27(a)(4)(B), 115.38(b)(4)(B), 115.39(b)(4)(B), and 115.40(b)(4)(B) to affirm, "the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction."

Comment. A teacher and two parents stated that teaching fourth graders, who are nine years old, about sexual abuse and sexual assault before they have an understanding of healthy sexual relationships within marriage is inappropriate and invades the latency period.

Response. The SBOE agrees and has determined that the health education TEKS for Grade 4 do not address sexual abuse and sexual assault but do address abuse in developmentally appropriate ways.

Comment. A teacher and a parent asked the SBOE to respect the latency period of childhood (ages 5 to puberty).

Response. The SBOE can neither agree nor disagree as it is unclear what the commenters are requesting with regard to the proposed TEKS.

Comment. Three administrators and one community member expressed concern about including language about sexuality in the proposed health education TEKS for Grades 4 and 5 because it is too early.

Response. The SBOE disagrees and has determined that sex education has been addressed in the TEKS for Grades 4 and 5 in developmentally appropriate ways.

Comment. An administrator, one parent, and one community member expressed concern that the proposed health education TEKS include information regarding sex that is inappropriate for elementary school students and should be taught by parents in the home.

Response. The SBOE agrees that sex education is not appropriate at some grade levels but has determined that sex education has been addressed in the TEKS in developmentally appropriate ways beginning at Grade 4.

Comment. A community member recommended that the SBOE reconsider their vote for the sex program.

Response. The SBOE disagrees and has determined that appropriate sex education should be included in the standards for Grades 4 through high school. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A parent expressed support for allowing local districts make decisions about sex education.

Response. The SBOE agrees that local districts have the authority to make instructional decisions about sex education. In response to this and other comments, the SBOE took action to add to the introductions to the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction.

Comment. A parent expressed concern that outside groups have an influence on sex education.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A community member stated that the current health education curriculum does much more damage than benefit. The commenter expressed concern that young lives are being compromised in part because of this woefully inadequate curriculum in the public schools, and one can look at the data to see that Texas is clearly failing young people.

Response. The SBOE disagrees that the current TEKS are damaging to young people and has determined that the health education TEKS as adopted are both adequate and supportive of young people and their decision making.

Comment. A teacher recommended that a teacher who treats students with respect and does not shame them is the best person to inform young people.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two parents and one community member expressed concern that the proposed health education TEKS include information regarding sex that is inappropriate for middle school students and should be taught by parents in the home.

Response. The SBOE disagrees and has determined that appropriate sex education should be included in the standards for Grades 4 through high school. The SBOE also took action to approve additional changes to respond to other comments.

Comment. The Texas is Ready Coalition and three community members recommended that the SBOE maintain and adopt language in the proposed health education TEKS that provides information about contraception and the prevention and treatment of STIs at middle school.

Response. The SBOE agrees and has determined that student expectations on contraception and the prevention and treatment of STIs are appropriate included in the health education TEKS for Grade 6 and Grades 7-8.

Comment. A teacher and two community members expressed opposition to the proposed new sex education curriculum.

Response. The SBOE disagrees and has determined that appropriate sex education should be included in the standards for Grades 4 through high school. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two administrators and a parent stated that sex education instruction should be age appropriate.

Response. The SBOE agrees and has determined that the health education TEKS on human sexuality education are age appropriate.

Comment. A parent and 12 community members expressed support for SBOE members who voted against a radical agenda for sex education in Texas.

Response. The SBOE disagrees that the health education TEKS as adopted present a radical agenda and has determined that appropriate sex education should be included in the standards for Grades 4 through high school.

Comment. Some 50 community members asked the SBOE to remove the student expectations in §115.27(b)(20)(A) and §115.38(c)(18)(A).

Response. The SBOE agrees that the student expectations in §115.27(b)(20)(A) and §115.38(c)(18)(A) were unnecessary and took action to delete §115.27(b)(20)(A) and §115.38(c)(18)(A).

Comment. Two parents and two community member expressed opposition to sex education in schools because parents should be able to educate their children in their own way.

Response. The SBOE disagrees and has determined that appropriate sex education should be included in the standards for Grades 4 through high school. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A parent expressed disagreement with addressing with sixth grade students the signs of pregnancy and what to do if one should become pregnant.

Response. The SBOE agrees and has determined that the signs of pregnancy are appropriately introduced in the high school course, Health I.

Comment. A teacher, 3 parents, and 50 community members stated that throughout the TEKS children should be directed to their parents or guardians, not to trusted adults. The commenters stated that young children do not have the discernment to determine who can be trusted.

Response. The SBOE agrees that children should be directed to their parents or guardians. However, the SBOE disagrees that trusted adults should not be an additional resource for children and has determined that the standards appropriately prepare students for identifying trusted adults.



Comment. A parent expressed opposition to anyone teaching her preteen daughter about fertilization through sexual intercourse.

Response. The SBOE disagrees and has determined that the process of fertilization through sexual intercourse is appropriately included in the health education TEKS for Grades 7-8.

Comment. The Texas is Ready Coalition expressed support for including language on recognizing and seeking help for postpartum depression and other pregnancy-related mood disorders.

Response. The SBOE agrees and has determined that student expectations related to seeking help for postpartum depression and other pregnancy-related mood disorders are appropriately included in the health education TEKS as proposed.

Comment. The Texas is Ready Coalition recommended that the proposed health education TEKS maintain student expectations on puberty at the currently assigned grade levels to ensure that youth have access to basic facts in a timely manner.

Response. The SBOE agrees and has determined that student expectations on puberty are appropriately included beginning at Grade 4 as proposed.

Comment. A parent and a community member expressed support for including STI prevention information in the TEKS.

Response. The SBOE agrees and has determined that STI prevention information is appropriately included in the health education TEKS.

Comment. The Medical Institute for Sexual Health, the Texas is Ready Coalition, and one community member recommended changing all references to "STDs and STIs," to "STDs/STIs." The commenters stated that the intent should be to use the terms interchangeably, which is consistent with the Centers for Disease Control and Prevention and across the field of sexuality education.

Response. The SBOE agrees and took action to change references to "STDs and STIs" throughout the TEKS to "STDs/STIs."

Comment. A community member stated that the changes to the health education standards would align with the Texas HIV Syndicate's Achieving Together plan, which is supported by the Texas Department of State Health Services HIV/STI program.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. The Texas is Ready Coalition recommended that the SBOE maintain improved and medically accurate information on STI prevention, screening, treatment, and access to medical care as proposed.

Response. The SBOE agrees that appropriate sex education that includes medically accurate information on STI prevention, screening, treatment, and access to medical care should be included in the health education TEKS for Grades 4-8 and high school courses. Additionally, in response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. A community member stated that in parts of the country where sex education is not taught, the rate of STIs, unwanted pregnancies, and abortions are significantly higher.

Response. The SBOE agrees that appropriate sex education should be included in the health education TEKS for Grades 4-8 and high school courses. Additionally, in response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. The Texas is Ready Coalition, one parent, and one community member expressed support for the language in the proposed health education TEKS that would support sexual risk reduction instruction.

Response. The SBOE disagrees and has determined that the health education TEKS addressing sexual education should not focus on sexual risk reduction. In response to this and other comments, the SBOE took action to add to the introductions in the TEKS new §§115.16(a)(4)(A), 115.17(a)(4)(A), 115.26(a)(4)(A), 115.27(a)(4)(A), 115.38(b)(4)(A), 115.39(b)(4)(A), and 115.40(b)(4)(A) to affirm, "a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC) §28.004(e)-(h))."

Comment. Two parents expressed support for the proposed new health TEKS.

Response. The SBOE agrees and took action to adopt proposed new health education TEKS for Kindergarten through high school as amended.

Comment. A parent stated that there should be an emphasis on a healthy diet (avoiding sugar and processed foods), exercise, and getting outside rather than on medications.

Response. The SBOE agrees that a healthy diet and exercise are important and has determined that diet and exercise are appropriately addressed in the TEKS for health education. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A community member expressed support for the proposed student expectation in §115.12(b)(2)(A) in Kindergarten which lists parents first as a source for seeking health guidance.

Response. The SBOE agrees that parents should be the first source for seeking health guidance. In response to other comments, the SBOE took action to amend the student expectation in §115.12(b)(2)(A) to read, "name people who can provide health care guidance such as parents, family members, other trusted adults, teachers, and health care professionals."

Comment. A parent recommended that the proposed health education TEKS include social-emotional learning at all levels.

Response. The SBOE agrees that the health education TEKS should include student expectations that support healthy social interactions and emotions and has determined that these concepts are sufficiently addressed at all grade levels in the mental health and wellness strand.

Comment. A parent expressed opposition to including mental health instruction in schools.

Response. The SBOE disagrees and has determined that developmentally appropriate mental health and wellness topics are included in the health education TEKS.

Comment. A community member expressed support for the inclusion of information regarding mental health. The commenter stated that the inclusion of positive mental health information encourages students to feel comfortable talking about problems with educators should problems arise.

Response. The SBOE agrees and has determined that mental health and wellness is appropriately included in the health education TEKS.

Comment. A community member recommended requiring that students be taught mental health information for a certain amount of time throughout the year.

Response. The SBOE provides the following clarification. TEC, §28.002, prohibits the SBOE from adopting rules that designate time spent by a teacher or a student on a particular task or subject.

Comment. The NASW-Texas Chapter expressed support for including information about mental health that is non-stigmatizing.

Response. The SBOE agrees that mental health should be included in the health education TEKS and has determined that the student expectations on mental health are non-stigmatizing.

Comment. A teacher expressed support for educating students about state and federal policies that mandate mental and physical health. The commenter stated that students should also have the opportunity to learn how to advocate for health policies.

Response. The SBOE disagrees that additional instruction on state and federal policies or health advocacy is necessary and has determined that the standards on mental and physical health are appropriate as amended. The SBOE also took action to approve additional changes to respond to other comments.

Comment. A counselor requested that the SBOE add health education to the Foundation High School Program graduation requirements. The commenter stated that revising the TEKS for health education at the high school level is not beneficial to students unless health education is a requirement for graduation.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A parent expressed support for attention drawn to mental health, general safety, and preventative care in the proposed health education TEKS.

Response. The SBOE agrees and has determined that mental health, general safety, and preventative care are appropriately included in the health education TEKS.

Comment. A teacher, two parents, and one community member expressed concern about the increase in the number of student expectations in the proposed health curriculum standards because the increased number of student expectations will take instructional time from core academic subjects.

Response. The SBOE disagrees and has determined that the health education TEKS as adopted were appropriate in length and scope.

Comment. A teacher, 5 parents, and 51 community members recommended deleting the student expectations in §115.27(b)(23)(L) in Grades 7-8 and §115.39(c)(22)(E) in Health I regarding the Human Papillomavirus (HPV) vaccine.

Response. The SBOE disagrees and has determined that the student expectations in §115.27(b)(23)(L) in Grades 7-8 and §115.39(c)(22)(E) regarding the HPV vaccine are appropriately included. However, in response to other comments, the SBOE took action to amend the student expectation in §115.27(b)(23)(L), relettered as §115.27(b)(23)(M) to read, "explain that HPV vaccines can help prevent the transmission of the most common types of HPV, a virus that can cause genital warts and cervical cancer and other cancers in males and females." Additionally, the SBOE took action to amend §115.39(c)(22)(E) to read, "identify the effectiveness of vaccines in preventing the transmission of the most common types of HPV, a virus that may cause genital warts and head and neck cancer, cervical cancer, anal cancer, or other cancers that may occur in males and females."

Comment. Some 54 community members, 3 teachers, and 11 parents requested that the SBOE remove the proposed health education student expectations related to immunizations and vaccines.

Response. The SBOE disagrees and has determined that student expectations related to immunizations and vaccines are appropriately included in the health education TEKS.

Comment. A community member objected to including the importance of immunizations as early as Kindergarten in the proposed student expectation in §115.12(b)(2)(C).

Response. The SBOE disagrees and has determined that the student expectation in §115.12(b)(2)(C) regarding the importance of immunizations in appropriately included in the health education TEKS for Kindergarten.

Comment. A teacher, five parents, and one community member recommended deleting the phrase "the importance of immunization" from the proposed student expectations in §115.12(b)(2)(C) in Kindergarten; §115.13(b)(2)(C) in Grade 1; §115.14(b)(2)(D) in Grade 2; and §115.15(b)(2)(E) in Grade 3.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the phrase "the importance of immunization" is appropriately included in the student expectations in §§115.12(b)(2)(C), 115.13(b)(2)(C), 115.14(b)(2)(D), and 115.15(b)(2)(E).

Comment. A teacher, five parents, and one community member recommended deleting the term "immunizations" from the proposed student expectation in §115.26(b)(2)(E) in Grade 6 and §115.40(c)(2)(D) in the Your Health in the Real World TEKS.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the term "immunizations" is appropriately included in the student expectations in §115.26(b)(2)(E) and §115.40(c)(2)(D).

Comment. A teacher, five parents, and one community member recommended deleting the student expectation in §115.40(c)(13)(G) in the Your Health in the Real World TEKS regarding the importance of vaccines across the lifespan.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the student expectation in §115.40(c)(13)(G) regarding the importance of vaccines across

the lifespan is appropriately included in the Your Health in the Real World TEKS.

Comment. A parent and a community member recommended maintaining language in the TEKS concerning vaccinations.

Response. The SBOE agrees and has determined that language regarding vaccines is appropriately included in the health education TEKS.

Comment. A parent and a community member asked the SBOE to research the concerns many have about vaccinations.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A community member expressed support for the Your Health in the Real World TEKS. The commenter stated that the general health information included in the course would benefit all high school students as they become adults.

Response. The SBOE agrees and took action to approve the Your Health in the Real World TEKS as amended.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§115.1 - 115.17

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§115.12. *Health Education, Kindergarten, Adopted 2020.*

#### (a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

#### (b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name the five senses.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) name people who can provide health care guidance such as parents, family members, other trusted adults, teachers, and health care professionals;

(B) identify personal hygiene and health habits that help individuals stay healthy such as hand washing and brushing teeth;

(C) discuss ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization; and

(D) identify head lice and biting insects that may cause illness and their proper removal and care.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify their own feelings and emotions;

(B) describe and practice calming and self-management strategies;

(C) discuss how friends can influence a person's behavior;

(D) demonstrate skills for making new acquaintances;

(E) demonstrate respect and communicate appropriately with individuals; and

(F) identify and practice ways to solve conflicts with a friend.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) describe positive social skills and personal qualities such as truth, kindness, reliability, and respectfulness; and

(B) discuss the meaning of goals and identify at least one health-related goal.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to discuss how to treat peers with different learning needs with dignity.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) demonstrate an understanding that the human body is composed mostly of water and explain the importance of drinking water daily;

(B) identify healthy portion sizes for common food items;

(C) identify types of foods that help the body grow, including fruits and vegetables, dairy, and protein; and

(D) identify healthy and unhealthy snack choices.

(7) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe basic facts of food allergy safety such as not sharing food and explain the importance of respecting others who have allergies; and

(B) identify habits that help individuals stay healthy such as getting the proper amount of sleep and daily physical activity.

(8) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to:

(A) discuss and demonstrate procedures for responding to emergencies, including reporting to a parent or another trusted adult or contacting 911; and

(B) identify the purpose and demonstrate the proper use of protective equipment such as seat belts, booster seats, and bicycle helmets.

(9) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) identify roles and characteristics of a trusted adult;

(B) identify and role play refusal skills such as saying "no" to protect personal space and to avoid unsafe situations; and

(C) identify personal space and appropriate boundaries.

(10) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) name safe play environments;

(B) name objects that may be dangerous such as knives, scissors, and screwdrivers and explain how they can be harmful; and

(C) recall personal home address as part of a personal safety plan.

(11) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to identify situations when one should get help from a teacher, parent, or other trusted adult when made to feel bullied, uncomfortable, or unsafe in a digital or online environment.

(12) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify bullying behaviors and the role of the bystander;

(B) identify ways to discourage bullying;

(C) describe appropriate actions to take in response to bullying such as telling a parent or another trusted adult; and

(D) explain and practice how to get help from a parent or another trusted adult when made to feel uncomfortable or unsafe by another person.

(13) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) discuss the proper usage of medications; and

(B) discuss the harmful effects of alcohol, tobacco, and drugs on physical health.

(14) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to identify refusal skills and how to get help from a parent or another trusted adult in unsafe situations involving the use or misuse of alcohol, tobacco, and other drugs.

*§115.13. Health Education, Grade 1, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making

skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to demonstrate use of the five senses.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) identify types of health care professionals and describe the services they provide such as medical checkups, dental exams, and vision and hearing screenings;

(B) describe personal hygiene and health habits that enhance individual health such as personal hygiene, oral hygiene, and getting enough sleep;

(C) describe ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization; and

(D) describe where head lice and biting insects that may cause illness, including ticks and mosquitoes, are commonly encountered and how to avoid them.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify their own feelings and emotions;

(B) discuss and explain how emotions can interrupt thinking and the self-management process;

(C) describe and practice calming and self-management strategies;

(D) describe ways in which peers and families can work together to build healthy relationships;

(E) describe ways to build and maintain friendships;

(F) identify ways to respectfully communicate verbally and nonverbally;

(G) identify feelings and emotions expressed by others; and

(H) identify and practice ways to solve conflicts with friends and peers.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to be kind to self and how to identify areas for growth; and

(B) explain the importance of goal setting and task completion.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) discuss and demonstrate how to treat peers with different learning needs with dignity and respect;

(B) identify situations that can create positive stress and positive emotions; and

(C) discuss the signs and symptoms associated with negative stress such as loss or grief.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) explain that fruits, proteins, vegetables, and dairy provide essential vitamins and minerals;

(B) identify recommended portion sizes by comparing portions to familiar objects such as a golf ball for a cookie or a frisbee for a dinner plate;

(C) identify the food groups and classify examples of foods into each group; and

(D) identify ingredients that make foods and drinks unhealthy such as added sugar and other sweeteners.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to identify examples of health information provided by various media and how the examples affect nutritional habits and physical activity.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify common food allergies and explain the importance of respecting others who have allergies; and

(B) describe habits that improve individual health such as getting enough sleep, eating nutritious foods, and exercising.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to:

(A) discuss and demonstrate strategies to keep self and others safe by staying away from dangerous situations and reporting to a parent or another trusted adult or contacting 911; and

(B) identify the purpose and demonstrate proper use of protective equipment such as seat belts, booster seats, and bicycle helmets.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) practice refusal skills to protect personal space and avoid unsafe situations;

(B) identify appropriate personal boundaries, privacy, and space; and

(C) recall parents'/caregivers' phone numbers as part of a personal safety plan.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) describe the difference between safe and unsafe environments; and

(B) identify ways to avoid weapons and harming oneself or others by staying away from dangerous situations and reporting to a parent or another trusted adult.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to demonstrate how to get help from a teacher, parent, or other trusted adult when made to feel bullied, uncomfortable, or unsafe in a digital or online environment.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe consequences for both the victim and the bully and the impact of bullying on the victim;

(B) discuss ways of discouraging bullying;

(C) explain the differences between teasing, joking, and playing around and bullying; and

(D) identify how to get help from a parent or another trusted adult when made to feel uncomfortable or unsafe by another person.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) identify the difference between over-the-counter and prescription drugs; and

(B) identify and describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants, vaping products, and household products on physical health.

(15) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe what poisoning or overdose could look like and identify how to respond, including who to contact for help.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to identify how to get help from a parent or another trusted adult related to alcohol, tobacco, and drug abuse.

(17) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to identify unsafe situations and practice strategies to avoid risky behaviors related to alcohol, tobacco, and other drugs.

§115.14. *Health Education, Grade 2, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understanding the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn

and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to describe ways to protect the five senses such as wearing sunglasses or using a safe volume setting on audio devices.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) describe the importance of individual health maintenance activities such as regular medical checkups, dental exams, and vision and hearing screenings;

(B) explain actions an individual should take when not feeling well;

(C) discuss the importance of practicing personal hygiene and health habits;

(D) explain ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization;

(E) identify common illnesses and diseases, including asthma, diabetes, and epilepsy, and their symptoms; and

(F) discuss the signs and symptoms of illness that may occur after contact with biting insects, including ticks and mosquitos.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) communicate needs, wants, and emotions in healthy ways;

(B) describe and practice calming and self-management strategies;

(C) discuss and explain how thoughts and emotions are related;

(D) explain the effect of peer influence on an individual's social and emotional health;

(E) describe the qualities of a good friend;

(F) describe and demonstrate respectful ways to communicate with family members, peers, teachers, and others;

(G) identify the feelings and perspectives of others by interpreting their verbal and nonverbal cues; and

(H) identify ways to prevent and repair broken friendships.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to be kind to self and others;

(B) define personal growth and identify areas for one's personal growth; and

(C) list the steps and describe the importance of goal setting and task completion.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) identify strategies for managing different learning needs of self and others; and

(B) identify positive and negative stressors and how they impact emotions and learning.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) identify types of nutrients;

(B) use familiar objects to identify healthy food portions from different food groups;

(C) identify healthy and unhealthy choices within the food groups; and

(D) identify the benefits of making healthy beverage choices, including water and milk, and limiting sweetened beverages such as soda and sports drinks.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to

make health-promoting decisions. The student is expected to identify various media that provide health information and how media can influence an individual's health choices such as television advertisements for fast foods and breakfast cereals.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify signs and symptoms of common food allergies; and

(B) identify the benefits of establishing healthy eating and physical activity habits that will last a lifetime.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to describe steps one can take to reduce hazards, avoid accidents, and prevent accidental injuries for self and others.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) demonstrate refusal skills to protect personal space and avoid unsafe situations; and

(B) discuss the importance of telling a parent or another trusted adult when privacy or personal boundaries are not respected or when the student is made to feel unsafe.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) describe unsafe situations, including interacting with strangers;

(B) explain ways to avoid weapons and report the presence of unsupervised weapons to a parent or another trusted adult;

(C) identify the hazards of unsupervised and improper handling of guns and other weapons; and

(D) identify two trusted adults not part of the immediate family and recall their phone numbers as part of a personal safety plan.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) identify unsafe requests made in a digital or online environment and how to take appropriate action;

(B) explain why obtaining help, especially from parents or other trusted adults, is critical when making decisions regarding digital and online use; and

(C) identify consequences that result from cyberbullying and inappropriate digital and online usage.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe consequences for the bully and the impact of bullying on the victim;



(B) describe the difference between reporting and tattling; and

(C) explain why obtaining assistance, especially from parents or other trusted adults, can be helpful when making decisions about personal safety.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) describe the purposes of prescription and over-the-counter drugs and their intended benefits; and

(B) explain the harmful effects on physical health and how to avoid alcohol, tobacco, other drugs, and dangerous substances such as inhalants, vaping products, and household products.

(15) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe what poisoning or overdose could look like and identify how to respond, including who to contact for help.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) identify unsafe requests related to alcohol, tobacco, and other drugs made by friends; and

(B) identify a trusted adult such as a parent, teacher, or law enforcement officer.

(17) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to identify ways to avoid unsafe situations related to alcohol, tobacco, and other drugs and demonstrate refusal skills.

§115.15. *Health Education, Grade 3, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and

physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and the identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name, locate, and describe the primary functions and major components of body systems, including the skeletal, muscular, circulatory, and respiratory systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

- (A) explain the importance of seeking assistance in making decisions about health;
- (B) describe methods of accessing information about health;
- (C) identify the benefits of decision making about personal health;
- (D) identify the importance of taking personal responsibility for developing and maintaining personal hygiene and health habits;
- (E) explain ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization;
- (F) identify that there are diseases such as allergies, asthma, diabetes, and epilepsy that are not caused by germs; and
- (G) identify common vectors, including ticks and mosquitos, and explain how and when to perform a self-check for vectors.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

- (A) communicate needs, wants, and emotions in healthy ways;
- (B) describe strategies for assessing thoughts and applying calming and self-management practices;
- (C) discuss and explain how the brain develops through maturation;
- (D) distinguish between healthy and harmful influences of friends and others;
- (E) describe the characteristics of healthy and unhealthy friendships;
- (F) describe the value of respectful communication;
- (G) discuss how others may experience situations differently than oneself; and
- (H) demonstrate strategies for resolving conflicts.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

- (A) define self-esteem and ways it is formed, including identifying areas for one's personal growth; and
- (B) describe the importance of seeking guidance from a parent or another trusted adult in setting goals.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student will develop and use appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

- (A) describe methods for managing challenges related to long-term health conditions;

(B) describe strategies to support others in managing different learning needs;

(C) describe positive outcomes of stress, including creativity, focus, energy, drive, and purpose;

(D) describe and practice healthy behaviors that reduce stress; and

(E) describe the importance of acceptance of oneself and others.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) classify foods by the nutrients they provide;

(B) plan a balanced meal that follows government nutrition guidelines;

(C) examine nutrition labels to identify the difference between foods containing natural sugars and foods with added sugars or sweeteners; and

(D) identify and categorize foods based on saturated and unsaturated fat content.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to describe the importance of accessing health information through a variety of credible health resources.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify the common food allergens listed on food packaging; and

(B) describe how healthy and unhealthy behaviors affect body systems and demonstrate refusal skills in dealing with unhealthy eating situations.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to develop a home-safety and emergency response plan such as a fire safety plan.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to identify refusal skills such as saying "no" when privacy, personal boundaries, or personal space are not respected.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) identify reasons for avoiding violence, gangs, weapons, and drugs;

(B) identify characteristics of safe home, school, and community environments;

(C) discuss the hazards of unsupervised and improper handling of guns and other weapons; and

(D) create a personal safety plan.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) identify and discuss the need for safety awareness in a digital or online environment;

(B) identify appropriate ways to communicate in digital and online environments;

(C) discuss who is appropriate to communicate with and what is appropriate information to share in digital and online environments; and

(D) explain consequences that result from cyberbullying and inappropriate digital and online usage.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe how to effectively respond to bullying and cyberbullying of oneself or others;

(B) explain the importance of seeking assistance in making decisions about personal safety; and

(C) define abuse and neglect.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) identify misuse and proper use of over-the-counter and prescription drugs; and

(B) describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances, including inhalants, vaping products, and household products, on physical health.

(15) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on mental and social health.

(16) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(17) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) describe how friends can influence a person's decision to use or not use alcohol or drugs; and

(B) describe the difference between reporting and tattling and why it is important to report the use of alcohol, tobacco, and other drugs by friends or peers.

(18) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to demonstrate refusal skills related to alcohol, tobacco, and other drugs using assertive communication.

§115.16. *Health Education, Grade 4, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Grade 4 and higher, students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems will lay the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and the identification of safe and unsafe situations creates empowered and ed-

ucated students able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name, locate, and describe the primary function and major components of the body systems, including the nervous, immune, digestive, and integumentary systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) explain the importance of health information and how it can be used;

(B) describe how health care decision making is influenced by external factors such as cost and access;

(C) explain strategies for maintaining personal hygiene and health habits;

(D) distinguish between communicable and noncommunicable illnesses;

(E) explain actions to take when illness occurs, including asthma, diabetes, and epilepsy; and

(F) define vector-borne illnesses and describe how to reduce their risk.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) analyze how thoughts and emotions influence behaviors;

(B) describe the importance of identifying and reframing thoughts and applying calming and self-management strategies when dealing with strong emotions, including anger;

(C) discuss and explain how the brain develops during childhood and the role the brain plays in behavior;

(D) identify positive and negative characteristics of social groups;

(E) explain the importance of being a positive role model;

(F) explain the importance of demonstrating consideration when communicating with individuals who use diverse methods to communicate such as different languages or adaptive methods;

(G) identify verbal, physical, and situational cues that indicate how others may feel; and

(H) explain the difference between assertive behavior and aggressive behavior.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to help build self-esteem of self, friends, and others, including areas for one's personal growth and ways to gather constructive feedback;

(B) explain the advantages of setting short- and long-term goals; and

(C) explain the importance of time management with respect to a goal.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe methods for managing concerns related to long-term health conditions for self and others;

(B) differentiate between positive and negative stress;

(C) define sources of stress, including trauma, loss, and grief;

(D) discuss ways to promote a healthy body image; and

(E) identify ways to express and manage overwhelming emotions without harming oneself, others, or property such as calming strategies or talking to a parent or another trusted adult.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) explain why the body needs each of the six major nutrients contained in foods;

(B) identify nutritional information on menus and food labels;

(C) determine appropriate portion sizes when eating out, including at fast food restaurants;

(D) identify the recommended guidelines for added sugar consumption and explain how excess sugar consumption can impact health, including causing dental cavities and obesity; and

(E) identify healthy fast food choices such as ordering smaller serving sizes and substituting salads for fries and grilled foods for fried foods and their associated impacts on health.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to identify the physical, mental, and social benefits of physical fitness.

(8) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) describe the importance of goal setting and set a goal for making healthy food choices; and

(B) gather data from a variety of credible sources to help make informed nutritional and physical activity choices.

(9) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe the connection between physical activity and the prevention of obesity, heart disease, and diabetes; and

(B) differentiate between healthy and unhealthy eating habits and demonstrate refusal skills in dealing with unhealthy eating situations.

(10) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to identify and demonstrate strategies for preventing and responding to injuries.

(11) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective

strategies to address conflict. The student is expected to explain the importance of using refusal skills such as saying "no" when privacy, personal boundaries, or personal space are not respected.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) identify strategies for avoiding violence, gangs, and weapons;

(B) identify characteristics of gang behavior;

(C) identify strategies that can be used to promote safety in homes, schools, and communities; and

(D) create a personal safety plan.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) differentiate between appropriate and inappropriate ways to communicate in digital and online environments;

(B) explain what information is appropriate to share and who it is appropriate to share information with in digital and online environments; and

(C) discuss the consequences of cyberbullying and inappropriate digital and online communication in relation to home and school environments.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) analyze distinguishing characteristics of cyberbullying;

(B) describe the negative impact bullying, including cyberbullying, has on both the victim and the bully;

(C) explain the importance of seeking guidance from parents and other trusted adults on critical personal safety issues; and

(D) identify types of abuse and neglect and ways to seek help from a parent or another trusted adult.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) explain why some drugs require a prescription; and

(B) identify the differences between prescription drugs, over-the-counter drugs, other drugs, and dangerous substances, including inhalants, vaping products, and household products.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) describe the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on mental and social health; and

(B) describe the legal consequences of the misuse of alcohol, tobacco, other drugs, and dangerous substances.

(17) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) distinguish between positive and negative peer influences and their effects on a person's decision to use or not use alcohol or drugs; and

(B) identify methods available to report unsafe situations related to alcohol, tobacco, and other drugs.

(19) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to:

(A) demonstrate refusal skills using assertive communication related to alcohol, tobacco, and other drugs; and

(B) identify ways to avoid drugs and discuss healthy alternative activities to the use of drugs and other substances.

(20) Reproductive and sexual health--anatomy, puberty, and reproduction. The student identifies adolescent development. The student is expected to:

(A) explain changes that occur in males and females during puberty and adolescent development; and

(B) define the menstrual cycle.

§115.17. *Health Education, Grade 5, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Grade 4 and higher, students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about

body systems will lay the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and the identification of safe and unsafe situations creates empowered and educated students able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to describe the structure, functions, and interdependence of the major body systems, including the reproductive, endocrine, and urinary systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) explain how to manage common minor illnesses such as colds and skin infections;

(B) identify how to distinguish between myth and fact when accessing information about health;

(C) identify decision-making skills that promote individual, family, and community health;

(D) describe the benefits of promoting health maintenance for individuals and households;

(E) analyze how personal hygiene helps prevent the spread of germs and communicable illnesses; and

(F) distinguish between treatments if infected by various vectors, including ticks and mosquitos.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) analyze how thoughts and emotions influence behaviors;

(B) practice and apply strategies for calming and self-management;

(C) explain ways of maintaining healthy relationships and resisting negative peer influence in social groups;

(D) analyze how to identify perspectives and respectful ways to communicate disagreement with friends, family, teachers, and others;

(E) define and differentiate between sympathy and empathy toward others; and

(F) describe ways to engage in and promote positive interactions when conflict arises.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) identify and demonstrate strategies to help build self-esteem for self, friends, and others;

(B) describe benefits of setting and implementing short- and long-term goals and perseverance to achieve those goals;

(C) discuss choices and decision making as part of goal setting; and

(D) identify goals that one wishes to achieve, including identifying areas for one's personal growth and ways to gather constructive feedback.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) identify factors such as school climate and safety measures that affect an individual's physical, emotional, and social health; and

(B) discuss how brain development during childhood affects emotions and decision making.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) compare and contrast healthy and unhealthy methods for managing concerns related to long-term health conditions for self and others;

(B) identify situations in which stress can help to achieve goals and build resiliency;

(C) examine ways to reduce the impact of stress, trauma, loss, and grief;

(D) define eating disorders and disordered eating patterns as mental health concerns and the importance of seeking help from a parent or another trusted adult for self or others if these patterns are observed;

(E) describe situations that call for professional mental health services; and

(F) discuss healthy alternatives to harming oneself, others, or property and the importance of telling a parent or another trusted adult when someone is struggling to manage overwhelming emotions or lacks support.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) identify foods that are sources of one or more of the six major nutrients;

(B) examine food labels and menus for nutritional content, calories, and serving sizes;

(C) identify the amount of sugar in common beverages and snacks and the daily recommended allowance for added sugar; and

(D) identify caffeine content of common beverages and health concerns associated with excess caffeine consumption.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to explain the physical, mental, and social benefits of fitness.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) describe the importance of goal setting and set a goal for achieving appropriate levels of physical activity; and

(B) research and evaluate health products and information about physical activity and nutritional choices.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe the connection between dietary choices and the prevention of obesity, heart disease, and diabetes; and

(B) identify attitudes and behaviors that can reduce the likelihood of developing chronic conditions such as obesity, heart disease, or diabetes.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to analyze strategies for preventing and responding to injuries.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) explain strategies for avoiding violence, gangs, and weapons and define human trafficking;

(B) examine characteristics of gang behavior;

(C) identify safety procedures that can be used in various situations, including violence in the home, school, and community; and

(D) create a personal safety plan.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) distinguish between appropriate and inappropriate boundaries for digital and online communication and research;

(B) explain the benefits of identity protection in digital and online environments; and

(C) analyze the consequences of cyberbullying and inappropriate digital and online communication in relation to home, school, and community environments.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal

violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify methods available to report bullying;

(B) identify ways to advocate for self and others to prevent bullying and cyberbullying behavior; and

(C) explain the impact of abuse and neglect and the importance of reporting abuse and neglect.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) explain the reasons to avoid the misuse of over-the-counter and prescription drugs;

(B) identify and explain the importance of each component of prescription and over-the-counter drug labels; and

(C) describe the physiological effects of alcohol, vaping products, tobacco, other drugs, and dangerous substances.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) analyze the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on the functions of the body systems and mental and social health; and

(B) describe the legal consequences of the illegal use of alcohol, tobacco, other drugs, and dangerous substances.

(17) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) analyze how positive peer influence can be used to help a person decide not to use alcohol or drugs; and

(B) describe the importance of seeking help and reporting unsafe situations related to alcohol, tobacco, and other drugs.

(19) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to:

(A) assess how being assertive, using refusal skills, and evaluating peer influence can affect decision making and problem solving;

(B) identify a variety of scenarios and the different types of refusal skills that can be used to avoid the use of alcohol, tobacco, and other drugs; and

(C) identify and describe healthy alternative activities to the use of drugs and other substances.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to



identify characteristics of healthy dating/romantic relationships and marriage, including sharing, kindness, honesty, respect, trust, patience, communication, and compatibility.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual abuse and harassment. The student is expected to:

- (A) define sexual harassment, sexual abuse, sexual assault, and sex trafficking;
- (B) identify ways of reporting suspected sexual abuse involving self or others such as telling a parent or another trusted adult;
- (C) identify refusal skills such as saying "no" to any unwanted touch that violates personal boundaries in relationships; and
- (D) discuss and explain the importance of making decisions regarding setting personal boundaries and respecting the boundaries of others.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student identifies the processes of adolescent development, fertilization, and healthy fetal development. The student is expected to:

- (A) explain the physical, social, and emotional changes that occur in males and females during puberty and adolescent development;
- (B) describe the process of the menstrual cycle;
- (C) identify and describe the role of hormones in the growth and development of secondary sex characteristics such as body hair growth and voice change in males;
- (D) define the processes of fertilization and reproduction; and
- (E) identify significant milestones of fetal development.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§115.25 - 115.27

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE

to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§115.26. *Grade 6, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support.

(3) Students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential

nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to explain how to maintain the healthy status of body systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) compare immediate and long-term effects of personal health care choices such as personal and dental hygiene;

(B) develop criteria for evaluating the validity of health information and sources;

(C) describe ways to demonstrate decision-making skills based on health information;

(D) identify current health-related issues and recommendations or guidelines;

(E) explain the role of preventive health measures, immunizations, and treatment such as wellness exams and dental check-ups in disease prevention;

(F) describe actions that should be taken when illness occurs, including asthma, diabetes, and epilepsy; and

(G) describe and recognize the signs, symptoms, and treatments of vector-borne illnesses such as Lyme disease or West Nile Virus.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) demonstrate healthy methods for communicating emotions in a variety of scenarios;

(B) assess and demonstrate healthy ways of responding to conflict;

(C) differentiate between positive and negative peer influence;

(D) describe methods for communicating important issues with and understanding perspectives of parents and peers;

(E) discuss and demonstrate how to listen and respect others' feelings and perspectives in a variety of scenarios; and

(F) identify strategies for using non-violent conflict resolution skills.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) identify how physical and social changes impact self-esteem;

(B) identify possible health benefits of setting and implementing long-term personal goals;

(C) create and discuss personal life goals that one wishes to achieve and consider the financial impact of graduating from

high school, having a full-time job, and waiting until marriage if one plans to have children; and

(D) explain the steps in the decision-making process and the importance of following the steps.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) identify and discuss how adolescent brain development influences emotions, decision making, and logic; and

(B) relate physical environmental factors such as school climate and availability of resources to individual, family, and community health.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) examine the outcomes of healthy and unhealthy methods for managing challenges related to long-term health conditions of self and others;

(B) identify and describe lifetime strategies for managing conditions that impact learning such as attention-deficit disorder (ADD), attention-deficit/hyperactivity disorder (ADHD), dyslexia, dysgraphia, and sensory issues;

(C) identify how to respond positively to develop resiliency;

(D) describe healthy and unhealthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief;

(E) identify causes and effects associated with disordered eating and eating disorders such as bulimia, anorexia, and binge eating disorder and the importance of seeking help from a parent or another trusted adult for oneself or others related to disordered eating;

(F) discuss the suicide risk and suicide protective factors identified by the Centers for Disease Control and Prevention (CDC) and the importance of telling a parent or another trusted adult if one observes the warning signs in self or others;

(G) explain the role of a healthy self-concept in avoiding self-harming behaviors that can occur when someone is struggling to manage overwhelming emotions; and

(H) identify suicide prevention resources such as the National Suicide Prevention Hotline.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) define micronutrients, including calcium and iron, and their recommended daily allowances;

(B) compare and contrast common food labels and menus for nutritional content and calories;

(C) describe healthy and unhealthy dietary practices;

(D) explain the importance of a realistic personal dietary plan; and

(E) evaluate the importance of choosing lower sodium alternatives to foods that have high levels of sodium such as salty snacks and canned vegetables.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) identify the CDC guidelines for daily physical activity throughout the lifespan; and

(B) analyze the benefits of regular physical activity on mental, physical, and social health.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) make a variety of healthy personal food choices and develop short- and long-term goals to achieve appropriate levels of physical activity and improve personal physical fitness levels; and

(B) explain the role of media and technology in influencing individual and community health related to physical activity and nutritional choices.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) analyze the impact of moderate physical activity and dietary choices on the prevention of obesity, heart disease, and diabetes;

(B) identify strategies to adopt healthy behaviors to reduce the likelihood of developing chronic conditions such as obesity, heart disease, or diabetes;

(C) analyze internal and external factors that influence healthy eating and physical activity behaviors; and

(D) discuss the nutritional differences between preparing and serving fresh or minimally processed foods and commercially prepared or highly processed foods.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to describe basic first-aid procedures.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) discuss and demonstrate strategies for avoiding violence, gangs, weapons, and human trafficking;

(B) define safe haven and identify dedicated safe haven locations in the community;

(C) describe the dangers associated with a variety of weapons;

(D) explain the importance of complying with rules prohibiting possession of weapons; and

(E) create a personal safety plan.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) discuss appropriate personal digital and online communication boundaries;

(B) develop strategies to resist inappropriate digital and online communication such as social media posts, sending and receiving photos, sexting, and pornography;

(C) discuss and analyze consequences resulting from inappropriate digital and online communication such as social media posts, sending and receiving photos, sexting, and pornography;

(D) discuss strategies and techniques for identity protection in digital and online environments;

(E) identify how technology is used to recruit or manipulate potential victims of sex trafficking; and

(F) identify the current legal consequences of cyberbullying and inappropriate digital and online communication.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify how exposure to family violence can influence behavior and the importance of reporting suspected abuse;

(B) assess healthy and appropriate ways of responding to and discouraging bullying and cyberbullying, including behavior that takes place at school;

(C) analyze the impact that bullying has on both victims and bullies;

(D) identify strategies for prevention and intervention of all forms of bullying and cyberbullying such as emotional, physical, social, and sexual; and

(E) discuss ways to seek the input of parents and other trusted adults in problem solving issues relating to violence and bullying.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) describe the misuse and abuse of prescription and over-the-counter drugs, including combining drugs, and the dangers associated with each;

(B) compare and contrast examples of prescription and over-the-counter drug labels;

(C) identify and describe practices used to safely store and properly dispose of prescription and over-the-counter drugs; and

(D) describe substance abuse and addiction to alcohol, vaping products, tobacco, other drugs, and dangerous substances.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) describe the short- and long-term health consequences of prescription and over-the-counter drug misuse and substance use disorders; and

(B) discuss the legal consequences related to the use, misuse, and possession of drugs, including prescription drugs.

(17) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) identify ways to report a suspected abuse of drugs to a parent, school administrator, teacher, or another trusted adult;

(B) identify signs and symptoms of alcohol; tobacco; drugs, including prescription drugs; and other substance use and misuse such as using medicine prescribed for someone else or for reasons other than intended;

(C) identify examples of who, when, where, and how to get help related to unsafe situations regarding the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) explain the impact of peer influence on decision making regarding the use of alcohol, tobacco, and other drugs;

(B) describe methods for differentiating between positive and negative relationships that can influence alcohol, tobacco, and other drug use;

(C) identify physical and social influences on alcohol, tobacco, and other drug use behaviors; and

(D) explain the relationships between alcohol, tobacco, drugs, and other substances and the role each can play in unsafe situations such as drinking and driving.

(19) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to:

(A) identify ways such as alternative activities and refusal skills to prevent or avoid the use of alcohol, tobacco, drugs, and other substances;

(B) demonstrate refusal skills in various scenarios where alcohol, tobacco, and other drugs may be present; and

(C) identify and describe strategies for avoiding alcohol, tobacco, and other drugs, including opioids.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) define and distinguish between friendship, infatuation, dating/romantic relationships, and marriage;

(B) describe how friendships provide a foundation for healthy dating/romantic relationships;

(C) list healthy ways to express friendship, affection, and love;

(D) describe characteristics of healthy dating/romantic relationships and marriage, including sharing, kindness, honesty, respect, trust, patience, communication, and compatibility;

(E) explain that each person in a dating/romantic relationship should be treated with dignity and respect; and

(F) describe how healthy marriages can contribute to healthy families and communities.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) identify that physical, emotional, and sexual abuse and exploitation are all forms of abuse;

(B) identify the social and emotional impacts of sexual harassment, sexual abuse, sexual assault, and sex trafficking;

(C) list the characteristics of unhealthy or harmful relationships, including anger, controlling behavior, jealousy, manipulation, and isolation;

(D) identify ways of reporting suspected sexual abuse involving self or others such as telling a parent or another trusted adult;

(E) explain how a healthy sense of self and making and respecting decisions about safe boundaries and limits promote healthy dating/romantic relationships;

(F) identify communication and refusal skills and how they can be applied in dating/romantic relationships; and

(G) explain the importance of clearly communicating and respecting personal boundaries and using refusal skills related to physical intimacy such as holding hands, hugging, and kissing.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) describe changes in male and female anatomy and physiology during puberty and how rates and patterns of development can vary between individuals;

(B) describe the process, characteristics, and variations of the menstrual cycle;

(C) analyze the role of hormones related to growth and development and personal health;

(D) describe the cellular process of fertilization in human reproduction; and

(E) explain significant milestones of fetal development.

(23) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) identify teen pregnancy as a possible outcome of sexual activity;

(B) identify life goals that one wishes to achieve prior to becoming a parent;

(C) define sexually transmitted infections (STIs) and sexually transmitted diseases (STDs) as infections or diseases that are spread through sex or sexual activity;

(D) identify what emotional risks are associated with sexual activity between unmarried persons of school age;

(E) define abstinence as refraining from all forms of sexual activity and genital contact between individuals and discuss the importance of seeking support from parents, other trusted adults, and peers to be abstinent;

(F) explain why abstinence is the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(G) identify why abstinence from sexual activity is the only method that is 100% effective in preventing pregnancy; STDs/STIs, including human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS); and the emotional risks associated with adolescent sexual activity;

(H) list the benefits of abstinence from sexual activity such as increased self-esteem, self-confidence, student academic achievement, and alignment with personal, family, and moral or religious beliefs and values; and

(I) explain how laws protect victims of sexual harassment, sexual abuse, and sexual assault.

§115.27. *Grades 7-8, Adopted 2020.*

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support.

(3) Students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings,

thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state

governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structures, functions, and relationships of body systems and their relevance to personal health. The student is expected to describe the relationships among the body systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) list specific resources or facilities where members of the community can obtain medical care;

(B) explain ways to use health information to help self and others, including seizure awareness, diabetes education, and response plans such as first aid or cardiopulmonary resuscitation (CPR);

(C) identify barriers related to solving health problems and ways to overcome barriers; and

(D) explain the course, signs, symptoms, and treatments of vector-borne illnesses such as Lyme disease or West Nile Virus.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify and analyze different emotions and causal thoughts in self;

(B) analyze the relationship between thoughts, feelings, and behaviors and demonstrate healthy techniques for managing reactions in times of emotional stress;

(C) evaluate the importance of social groups and peer influences and explain how they can affect individual mental health and wellness;

(D) demonstrate perspective-taking and communication skills for building and maintaining healthy relationships and determining when and how to end unhealthy relationships;

(E) analyze similarities and differences between one's own and others' perspectives; and

(F) practice conflict resolution and mediation skills.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) describe how internal and external factors influence self-esteem;

(B) identify and develop strategies for setting long-term personal goals;

(C) create and discuss personal life goals that one wishes to achieve and consider the financial impact of graduating from high school, having a full-time job, and waiting until marriage if one plans to have children; and

(D) identify decision-making skills that promote individual, family, and community mental health.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) explain how adolescent brain development influences cognitive processing, emotions, and decision making;

(B) identify and describe how environmental influences such as air, water, or noise can affect an individual's mental health; and

(C) discuss the influence of childhood trauma and how to recognize, process, and overcome negative events.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe methods to support others who have long-term physical health conditions;

(B) examine ways to influence peers positively and promote resiliency in others in stressful situations;

(C) differentiate between healthy and unhealthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief;

(D) describe the consequences of disordered eating and eating disorders such as bulimia, anorexia, and binge eating disorder and the importance of seeking help from a parent or another trusted adult for oneself or others related to disordered eating;

(E) discuss the suicide risk and suicide protective factors identified by the Centers for Disease Control and Prevention (CDC) and the importance of telling a parent or another trusted adult if one observes the warning signs in self or others;

(F) research and discuss protective factors and healthy self-management strategies to avoid self-harming behaviors; and

(G) examine how the use of suicide prevention resources such as the National Suicide Prevention Hotline can reduce the likelihood of suicide.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) analyze food labels and menus to determine the nutritional value of foods and make healthy decisions about daily caloric intake;

(B) develop a personal dietary plan; and

(C) identify and practice strategies for choosing healthy foods and beverages in diverse social environments, including at home, at school, and while dining out.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) explain the relationships between nutrition, physical activity, quality of life, and disease in terms of their mental, physical, and social benefits;

(B) identify how to balance caloric intake and physical activity; and

(C) apply the CDC guidelines for daily physical activity to develop a physical fitness plan using appropriate technology.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) develop and examine progress of short- and long-term goals toward achieving appropriate levels of physical activity, improving personal physical fitness level, and making healthy personal food choices; and

(B) explain how media influences buying decisions regarding physical fitness equipment or nutritional products.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) analyze the impact of moderate physical activity and healthy dietary practices in the prevention of obesity, heart disease, and diabetes;

(B) analyze risk factors that may lead to the development of chronic conditions and formulate strategies to reduce the likelihood of developing chronic conditions;

(C) identify community and digital resources that can assist in developing healthy eating and physical activity behaviors; and

(D) investigate and compare the nutritional differences between preparing and serving fresh food or minimally processed food and serving commercially prepared or highly processed foods.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to demonstrate basic first-aid procedures, including CPR and the choking rescue.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) analyze strategies for and the benefits of avoiding violence, gangs, weapons, and human trafficking;

(B) define safe haven and identify designated safe haven locations in the community;

(C) evaluate the dangers associated with a variety of weapons;

(D) evaluate the importance of complying with rules prohibiting possession of and the improper use of weapons; and

(E) create a personal safety plan.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) develop strategies to resist inappropriate digital and online communication such as social media posts, sending and receiving photos, sexting, and pornography;

(B) discuss and analyze the consequences resulting from inappropriate digital and online communication such as social media posts, sending and receiving photos, sexting, and pornography;

(C) evaluate strategies and techniques for identity protection in digital and online environments;

(D) identify how technology is used to recruit or manipulate potential victims of sex trafficking; and

(E) research the current legal consequences of cyberbullying and inappropriate digital and online communication.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify forms of family violence, including physical, mental, and emotional violence;

(B) describe the serious effects of bullying, cyberbullying, or harassment such as suicidal ideation and other effects on the individual;

(C) explain the responsibility to report bullying behavior, including cyberbullying;

(D) describe the seriousness of various forms of bullying such as harassment;

(E) analyze strategies for prevention and intervention of all forms of bullying and cyberbullying such as emotional, physical, social, and sexual; and

(F) summarize the advantages of seeking advice and feedback regarding the use of decision-making and problem-solving skills related to personal safety.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) differentiate between appropriate and inappropriate use of prescription and over-the-counter drugs, including combining drugs, and the outcomes of each;

(B) identify and describe the categories of prescription drugs and their proper uses;

(C) identify and explain the importance of each component of an over-the-counter drug warning label; and

(D) describe how substance misuse and addiction to alcohol, tobacco, vaping products, drugs, and other substances, including prescription drugs, affect the body systems and brain.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) analyze and explain the short- and long-term health consequences of addiction to alcohol and tobacco and prescription and over-the-counter drug misuse and substance use disorders;

(B) analyze the importance of alternative activities to drug and substance use and misuse on mental and social health; and

(C) analyze the legal consequences of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(17) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) identify and describe treatment options for substance abuse and addiction;

(B) identify signs and symptoms of alcohol; tobacco; drugs, including prescription drugs; and other substance use and misuse such as using medicine prescribed for someone else or for reasons other than intended; and

(C) identify at least one example of who, when, where, and how to get help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) examine the effects and role of peer influence on decision making and problem solving regarding the use and misuse of alcohol, tobacco, and other drugs;

(B) examine physical and social influences on alcohol, tobacco, and other drug use behaviors;

(C) differentiate among the relationships of alcohol, tobacco, drugs, and other substances and the roles these substances play in unsafe situations such as drinking and driving; and

(D) identify support systems and describe ways to report the suspected abuse of drugs to a parent, school administrator, teacher, or another trusted adult.

(19) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to develop and apply strategies, including demonstrating refusal skills, for avoiding alcohol, tobacco, and other drugs in various scenarios.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) compare and contrast the difference between friendship, infatuation, dating/romantic relationships, and marriage;

(B) explain how friendships provide a foundation for healthy dating/romantic relationships;

(C) describe healthy ways to express friendship, affection, and love;

(D) describe appropriate and effective methods of communicating emotions in healthy dating/romantic relationships and marriage;

(E) evaluate the importance of mutual respect, trust, support, honesty, commitment, and reliability in healthy dating/romantic relationships and marriage;

(F) describe behaviors in dating/romantic relationships that enhance dignity and respect; and



(G) describe the benefits of healthy marriages, including companionship and social, emotional, financial, and health benefits.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) explain that physical, emotional, and sexual abuse and exploitation are all forms of abuse;

(B) explain the social and emotional impacts of sexual harassment, sexual abuse, sexual assault, and sex trafficking;

(C) define dating violence and the characteristics of unhealthy or harmful relationships, including anger, controlling behavior, jealousy, manipulation, and isolation;

(D) identify protective strategies for avoiding unsafe situations that heighten the risk of sexual harassment, sexual abuse, sexual assault, sex trafficking, and teen dating violence;

(E) explain the importance of reporting to a parent or another trusted adult sexual harassment, sexual abuse, sexual assault, sex trafficking, and dating violence involving self or others;

(F) describe how a healthy sense of self and making decisions regarding setting and respecting personal boundaries promote healthy dating/romantic relationships;

(G) discuss and practice how refusal skills can be used to resist negative peer influences and reinforce personal boundaries to avoid dangerous situations and behaviors that increase sexual risk in dating/romantic relationships; and

(H) explain the importance of clearly communicating and respecting personal boundaries and why individuals have the right to refuse sexual contact.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) compare and contrast the physical, hormonal, and emotional changes in males and females that occur during puberty and adolescence;

(B) identify how the process of fertilization occurs between a man and a woman through sexual intercourse;

(C) explain significant milestones of fetal development and the harmful effects on the fetus of certain substances such as alcohol, tobacco, and prescription drugs and environmental hazards such as lead;

(D) describe the importance of telling a parent or another trusted adult, obtaining early pregnancy testing, and seeking prenatal care if signs of pregnancy occur; and

(E) define the emotional changes that may occur during and after pregnancy, including postpartum depression, and discuss resources for support and treatment.

(23) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) explain how teen pregnancy is a possible outcome of sexual activity;

(B) explain the short- and long-term educational, financial, and social impacts of pregnancy on teen parents, the child, families, and society;

(C) identify the difference between bacterial and viral sexually transmitted diseases/sexually transmitted infections (STDs/STIs), including long-term or lifetime effects such as infertility and cancer;

(D) describe various modes of transmission of STDs/STIs;

(E) identify the prevalence of STDs/STIs among teens by referencing county, state, and/or federal data sources;

(F) list the signs and symptoms of STDs/STIs, including human papillomavirus (HPV), human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), chlamydia, syphilis, gonorrhea, herpes, and trichomoniasis, and explain why not all STDs/STIs show symptoms initially;

(G) explain the importance of STD/STI screening, testing, and early treatment for sexually active individuals, including during yearly physicals or if there is a concern;

(H) identify community resources, a minor's right to consent under certain circumstances, and the importance of parent or other trusted adult support for STD/STI testing and treatment;

(I) identify emotional risks that can be associated with sexual activity for unmarried persons of school age, including stress, anxiety, and depression;

(J) identify support from parents and other trusted adults to be abstinent from sexual activity and create strategies for building peer support to be abstinent;

(K) analyze the importance of abstinence as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(L) analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods in the prevention of STDs/STIs and pregnancy;

(M) explain that HPV vaccines can help prevent the transmission of the most common types of HPV, a virus that can cause genital warts and cervical cancer and other cancers in males and females;

(N) research and explain the benefits of abstinence from sexual activity such as increased self-esteem, self-confidence, and student academic achievement;

(O) define legal implications of teen pregnancy, including the legal effects of acknowledgement and proof of paternity;

(P) describe legal aspects of sexual activity with a minor person, including the legal age of consent, statutory rape, aggravated sexual assault, sexual assault, sexual abuse, and indecency with a child; and

(Q) examine the legal ramifications of sexual offenses such as sexual harassment, sexual abuse, and sexual assault.

The agency certifies that legal counsel has reviewed the 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 April 8, 2021.

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## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§115.37 - 115.40

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (r), and (s); and 28.025(a).

§115.38. *Health I (One-Half Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate

resource, identified ahead of such instruction, for additional help and support.

(3) Students will gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empowers students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) In the reproductive and sexual health strand, students identify the characteristics of healthy and unhealthy relationships and learn to use communication and refusal skills to set personal boundaries and develop strategies for responding to sexual harassment and abuse. Students describe the changes associated with adolescent development and explain the process of fertilization, fetal development, and the importance of prenatal care. Students also learn that sexual abstinence until marriage is the only 100% effective means of avoiding unplanned pregnancies and sexually transmitted diseases/sexually transmitted infections (STDs/STIs) as well as the legal, financial, and social issues associated with sexual health and reproduction.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) analyze health information based on health-related standards;

(B) develop and analyze strategies to prevent communicable and non-communicable diseases; and

(C) discuss the importance of early detection and warning signs that prompt individuals of all ages to seek health care.

(2) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) discuss and demonstrate perspective-taking and ways to show respect for others' feelings and express empathy toward others; and

(B) analyze forms of communication such as passive, aggressive, or assertive and their impact on conflict resolution.

(3) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to explain and demonstrate decision-making skills based on health information.

(4) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors influencing mental health and wellness. The student is expected to analyze how adverse childhood experiences such as abuse, neglect, and trauma can influence brain development and how to recognize, process, and overcome negative events for overall mental health and wellness.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) discuss the suicide risk and suicide protective factors identified by the Centers for Disease Control and Prevention (CDC) and the importance of telling a parent or another trusted adult if one observes the warning signs in self or others; and

(B) discuss how the use of suicide prevention resources such as the National Suicide Prevention Hotline reduces the likelihood of suicide.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) evaluate food labels and menus to determine the nutritional content and value of foods and make healthy decisions about daily caloric intake;

(B) compare and contrast the impact of healthy and unhealthy dietary practices; and

(C) describe how a personal dietary plan affects overall health and how a plan might differ over the lifespan.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) analyze the relationships between nutrition, physical activity, and quality of life as they relate to mental, physical, and social health benefits; and

(B) analyze the relationships between body composition, diet, and physical activity, including how to balance caloric intake and physical activity.

(8) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) evaluate the nutritional differences between preparing and serving fresh or minimally processed food versus serving commercially prepared or highly processed foods; and

(B) evaluate the connection between physical activity and dietary choices as they relate to the prevention of chronic conditions.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to demonstrate basic first-aid procedures, including how to perform cardiopulmonary resuscitation (CPR) and choking rescue and how to use an automated external defibrillator (AED).

(10) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that

individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) formulate strategies for avoiding violence, gangs, weapons, and human trafficking; and

(B) assess the dynamics of gang behaviors.

(11) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) develop strategies to resist inappropriate digital and online communication such as social media posts, sending and receiving photos, sexting, and pornography; and

(B) identify appropriate responses to situations in which digital and online safety are at risk, including identity protection and recognition of predators.

(12) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) research and analyze how exposure to family violence can influence cyclical behavioral patterns;

(B) create a personal action plan, including identifying areas of support, for use when encountering bullying, cyberbullying, or harassment; and

(C) describe the ramifications of bullying behavior.

(13) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) examine examples of drug labels to determine the drug category and intended use;

(B) identify and describe the importance of the safe storage and proper disposal of prescription and over-the-counter drugs; and

(C) develop strategies for preventing the misuse of prescription and over-the-counter drugs, including recognizing the negative effects of combining drugs.

(14) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to describe the interrelatedness of alcohol and other drugs to health problems.

(15) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) investigate and identify treatment options for substance abuse and addiction and misuse, including prescription drugs; and

(B) explain how to report suspected abuse of drugs to a parent, school administrator, teacher, or another trusted adult.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence

decisions regarding substance use and the resources available for help. The student is expected to:

(A) compare and contrast physical and social influences on alcohol, tobacco, and other drug use behaviors;

(B) design materials for health advocacy such as promoting a substance-free life; and

(C) discuss ways to participate in school-related efforts to address health-risk behaviors.

(17) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to:

(A) analyze the relationship between the use of refusal skills and the avoidance of alcohol, tobacco, and other drugs; and

(B) analyze the role that alcohol and other drugs play in unsafe situations, including sexual abuse and assault.

(18) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) analyze how friendships provide a foundation for healthy dating/romantic relationships;

(B) identify character traits that promote healthy dating/romantic relationships and marriage; and

(C) describe how a healthy marriage can provide a supportive environment for the nurturing and development of children.

(19) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) describe the characteristics of sex trafficking such as grooming, controlling behavior, exploitation, force, fraud, coercion, and violence;

(B) analyze the characteristics of harmful relationships that can lead to dating violence;

(C) analyze healthy strategies for preventing physical, sexual, and emotional abuse;

(D) analyze how a healthy sense of self and making and respecting decisions about safe boundaries and limits promote healthy dating/romantic relationships;

(E) explain and demonstrate how refusal strategies can be used to say "no" assertively to unhealthy behaviors in dating/romantic relationships;

(F) examine factors, including alcohol and other substances, that increase sexual risk and that affect setting, perceiving, respecting, and making decisions about boundaries;

(G) examine and discuss influences and pressures to become sexually active and why it is wrong to violate another person's boundaries and manipulate or threaten someone into sexual activity; and

(H) explain the importance of reporting to a parent or another trusted adult sexual harassment, sexual abuse, sexual assault, and dating violence involving self or others.

(20) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent develop-

ment, the process of fertilization, and healthy fetal development. The student is expected to analyze the importance of telling a parent or another trusted adult, obtaining early pregnancy testing, and seeking prenatal care if signs of pregnancy occur.

(21) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) research and analyze the educational, financial, and social impacts of pregnancy on teen parents, the child, families, and society, including considering the effects on one's personal life goals;

(B) describe various modes of transmission of STDs/STIs;

(C) investigate and summarize the statistics on the prevalence of STDs/STIs among teens by referencing county, state, and/or federal data sources;

(D) describe signs and symptoms of STDs/STIs, including human papillomavirus (HPV), human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), chlamydia, syphilis, gonorrhea, herpes, and trichomoniasis, and identify that not all STDs/STIs show symptoms;

(E) analyze the importance of STD/STI screening, testing, and early treatment for sexually active people, including during yearly physicals or if there is a concern;

(F) analyze emotional risks that can be associated with sexual activity for unmarried persons of school age, including stress, anxiety, and depression;

(G) analyze the importance and benefits of abstinence from sexual activity as it relates to emotional health and the prevention of pregnancy and STDs/STIs;

(H) identify support from parents and other trusted adults and create strategies, including building peer support, to be abstinent or for return to abstinence if sexually active;

(I) analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work to reduce the risk of STDs/STIs and pregnancy; and

(J) explain the legal responsibilities related to teen pregnancy, including child support and acknowledgement of paternity.

§115.39. *Health II (One-Half Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. Recommended prerequisite: Health I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support.

(3) Students will gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empowers students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying prevention, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treat-

ment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and other trusted adults.

(F) In the reproductive and sexual health strand, students identify the characteristics of healthy and unhealthy relationships and learn to use communication and refusal skills to set personal boundaries and develop strategies for responding to sexual harassment and abuse. Students describe the changes associated with adolescent development and explain the process of fertilization, fetal development, and the importance of prenatal care. Students also learn that sexual abstinence until marriage is the only 100% effective means of avoiding unplanned pregnancies and sexually transmitted diseases/sexually transmitted infections (STDs/STIs) as well as the legal, financial, and social issues associated with sexual health and reproduction.

(4) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(5) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(7) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) analyze the cost, availability, and accessibility of health care services;

(B) analyze methods of overcoming barriers related to solving health problems; and

(C) analyze the influence of laws, policies, and practices, including those related to disease prevention, on health-related issues.

(2) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) evaluate positive and negative effects of various relationships on physical, emotional, and social health;

(B) apply communication skills that demonstrate consideration and respect for individual differences and perspectives; and

(C) evaluate the effectiveness of conflict resolution techniques in various situations.

(3) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to describe how internal and external factors influence self-esteem.

(4) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors influencing mental health and wellness. The student is expected to formulate strategies for combating environmental factors that have a detrimental effect on mental health.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe the impact of positive stress on building resiliency and promoting mental health and wellness;

(B) discuss the impact of choosing healthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief on mental health and wellness;

(C) research and explain the behaviors associated with eating disorders and their impact on health;

(D) discuss how the use of suicide prevention resources such as the National Suicide Prevention Hotline reduces the likelihood of suicide; and

(E) research and discuss data on and prevalence of local, state, and national suicide rates among various groups.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to design a realistic, long-term personal dietary plan that promotes individual and family health.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) compare and contrast the impact of active and sedentary lifestyles on overall health; and

(B) develop a physical fitness profile using appropriate technology.

(8) Healthy eating and physical activity--nutrition and physical activity literacy. The student will obtain, process, and understand basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) analyze the progress of short- and long-term goals in achieving appropriate levels of physical activity, improving personal physical fitness levels, and making healthy personal food choices; and

(B) analyze marketing and advertising techniques in health product and service promotion.

(9) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) research and discuss the social and economic impact of chronic conditions, including obesity, heart disease, and diabetes; and

(B) create a plan for accessing community and digital resources that can assist in developing healthy eating and physical activity behaviors.

(10) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to discuss risk-taking behaviors, including driving under the influence and distracted driving, and their associated consequences.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) discuss and evaluate ways to respond to harmful situations that involve weapons; and

(B) develop educational safety models for children and adults for use at home, school, and in the community.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) discuss and analyze consequences resulting from inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography; and

(B) assess the legal and ethical ramifications of unacceptable behaviors in digital and online environments.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify and respond to situations requiring intervention for victims of bullying, cyberbullying, or harassment; and

(B) promote strategies for prevention and intervention of all forms of bullying and cyberbullying such as emotional, physical, social, and sexual.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) analyze how substance misuse and addiction to alcohol, tobacco, drugs, and other substances impact family and community health;

(B) analyze the importance of alternative activities to drug and substance misuse and abuse; and

(C) identify individual and community protective factors and skills that prevent substance misuse and substance use disorders.

(15) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to evaluate the impact of laws relating to the use and misuse of prescription and over-the-counter drugs, alcohol, tobacco, and other substances on self and community.

(16) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to identify ways to support and assist someone who shows signs and symptoms of alcohol, tobacco, or drug use and misuse.

(17) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) discuss risk-taking behaviors such as drinking and driving with their associated legal, social, and physical consequences;

(B) analyze physical and social environmental influences on the misuse and abuse of prescription drugs in places such as school, sports, or entertainment; and

(C) design a public health information campaign related to safe havens, where to go for help, or reporting drug-related behaviors.

(18) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to develop strategies for preventing use or misuse of alcohol, tobacco, and other drugs, including opioids.

(19) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) compare and contrast effective and ineffective methods of communicating emotions in healthy dating/romantic relationships and marriage;

(B) analyze behaviors in romantic relationships that enhance dignity and respect; and

(C) examine how a healthy marriage can provide a supportive environment for the nurturing and development of children.

(20) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) identify community resources to support individuals who have experienced sexual harassment, sexual abuse, sexual assault, dating violence, and sex trafficking;

(B) evaluate the importance of reporting to a parent or another trusted adult sexual harassment, sexual abuse, sexual assault, and dating violence involving self or others;

(C) discuss how refusal skills can be used to set limits and boundaries to avoid behaviors that increase sexual risk;

(D) analyze factors, including alcohol and other substances, that increase sexual risk and that affect setting, perceiving, respecting, and making decisions about boundaries; and

(E) evaluate influences and pressures to become sexually active and why it is wrong to violate another person's boundaries and manipulate or threaten someone into sexual activity.

(21) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) analyze the significance of hormonal, physical, emotional, and social changes in males and females and their relationship to sexual health;

(B) list factors such as heredity, environment, STDs/STIs, and the mother's health and nutrition that can affect fetal development from conception through birth; and

(C) describe the emotional changes that may occur during and after pregnancy, including postpartum depression, and identify resources for support and treatment.

(22) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) analyze the options available to teenage parents such as parenting or the process of adoption and the legal rights of parties involved;

(B) evaluate long-term or lifetime effects of bacterial and viral STDs/STIs, including infertility and cancer;

(C) identify community resources, minors' right to consent under certain circumstances, and the importance of parent or other trusted adult support for STD/STI testing and treatment;

(D) analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work to reduce the risk of STDs/STIs and pregnancy;

(E) identify the effectiveness of vaccines in preventing the transmission of the most common types of HPV, a virus that may cause genital warts and head and neck cancer, cervical cancer, anal cancer, or other cancers that may occur in males and females;

(F) analyze the benefits of abstinence from sexual activity, including focusing on personal development and encouraging individuals to build healthy relationships not complicated by sexual involvement;

(G) assess support from parents and other trusted adults and create strategies, including building peer support, to be abstinent or for return to abstinence if sexually active;

(H) investigate and summarize legal aspects of sexual activity with a minor person, including the legal age of consent, statutory rape, aggravated sexual assault, sexual assault, and indecency with a child; and

(I) investigate and summarize current laws relating to sexual offenses such as sexual harassment, abuse, and assault.

§115.40. *Your Health in the Real World (One-Half Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Living your best life is understanding how to navigate the health care system. The objective of this course is to empower students and their families to sustain or improve their quality of life as it relates to their own health and the health of their community. To achieve this objective, students will understand health care terminology as it relates to insurance and public health. Further, students will acquire the knowledge and skills needed to utilize community, state, and federal health care services and related resources.

(2) Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies. In addition, areas in the standards related to abuse, neglect, violence, loss, grief, trauma, and suicide may directly affect some students in the classroom. Should the educator recognize signs of discomfort with instruction in these areas, students should be referred to the appropriate resource, identified ahead of such instruction, for additional help and support.

(3) An integral part of health education involves educators being aware of state laws relevant to human sexuality instruction. These laws include affirming:

(A) a local school district's control over the provision of human sexuality instruction to ensure that local community values are reflected in that instruction (Texas Education Code (TEC), §28.004(e)-(h));

(B) the right of a parent or legal guardian to be informed of the provision of human sexuality instruction to their child and review the content of that instruction (TEC, §28.004(i)-(j));

(C) the right of a parent or legal guardian to remove their child from any portion of human sexuality instruction without penalty to the child (TEC, §28.004(i));

(D) the centrality of abstinence education in any human sexuality curriculum (TEC, §28.004(e)); and

(E) the right of a parent or legal guardian to be informed of and consent to an abortion performed on their pregnant child (with judicially authorized or medical emergency exceptions) (Texas Family Code, Chapter 33).

(4) Educators also should be aware of and abide by the statutory prohibition on taxpayer resource transactions between state governmental entities, including public schools, and abortion providers or an affiliate of an abortion provider (Texas Government Code, Chapter 2272).

(5) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(6) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Health literacy--health consumerism. The student understands medical terminology in health decision making. The student is expected to:

(A) define medical expressions or terms used by health care professionals; and



(B) define basic terminology for general use such as reading prescription labels.

(2) Health literacy--health consumerism. The student interprets personal medical information for health decision making. The student is expected to:

(A) interpret and explain take-home instructions from a health care professional;

(B) identify normal vital signs, including temperature, blood pressure, heart rate, body mass index (BMI), oxygen, and blood glucose levels;

(C) interpret medication labels, including supplements and over-the-counter and prescription drugs; and

(D) analyze the importance of each component of personal medical history, including immunizations, previous treatments, current medical records, and family history.

(3) Health literacy--health consumerism. The student analyzes the different facets of health insurance. The student is expected to:

(A) differentiate between types of insurance, including health, vision, and dental insurance;

(B) evaluate the advantages, disadvantages, and costs of public and private insurance benefits;

(C) analyze key components of insurance, including co-pay and deductible;

(D) describe different ways to pay for health care, including paying cash, health savings accounts, and flexible spending accounts; and

(E) interpret the components of a medical bill such as the explanation of benefits (EOB).

(4) Health literacy--health consumerism. The student identifies the proper use of medications and becomes familiar with the effects of pharmaceuticals. The student is expected to:

(A) compare and contrast the differences between generic and name-brand medications;

(B) identify cost differentials of similar medications and the rights of the consumer, including the ability to ask a pharmacist for other options;

(C) explain the limitations of medications, including the differences between symptomatic treatment and treatment for a cure;

(D) identify different types of improper use of medications, including using expired medications and using, overusing, and misusing non-prescribed medications;

(E) identify ways to properly dispose of medications and equipment and explain the importance of proper disposal; and

(F) explain what Food and Drug Administration (FDA) approval means and compare with off-label use.

(5) Health literacy--patient advocacy. The student identifies alternatives to health insurance coverage. The student is expected to:

(A) research and describe available health care sharing plans;

(B) identify the options of community health care resources, including federally qualified healthcare centers (FQHC) and non-profit community clinics; and

(C) identify available health care community resources such as medical, dental, vision, pharmacy, x-ray, and laboratory services.

(6) Health literacy--patient advocacy. The student demonstrates proper patient/health care professional communication. The student is expected to:

(A) define the Health Information Privacy and Portability Act (HIPPA) and explain how it relates to confidentiality of medical records;

(B) identify patient rights, including rights to sexually transmitted disease/sexually transmitted infection (STD/STI) testing and pregnancy health care and explain physician privileges;

(C) define the role of a chaperone in a medical setting, including the patient's ability to request or remove one;

(D) demonstrate how to have a collaborative conversation with a health care professional, including asking questions and advocating for self and others;

(E) analyze the impact of medical bias on health outcomes; and

(F) evaluate resources relevant to patients' legal rights, including the Centers for Medicare and Medicaid Services' Patient's Bill of Rights (2020).

(7) Health literacy--health applications and technology. The student analyzes and evaluates software applications and other technology as they relate to personal health care. The student is expected to:

(A) compare and contrast remote (telehealth and e-medicine) and in-person health care and treatment;

(B) research and describe the effects of inequitable distribution of technology in health care, including medical facilities and home environments;

(C) differentiate between credible and false health information on the internet and social media;

(D) analyze the risks of sharing private health information; and

(E) evaluate the use and effectiveness of a personal fitness device or health application.

(8) Health literacy--navigating the health care system. The student examines and interprets various health insurance plans, government guidelines for health plans, and coverage of non-traditional health care. The student is expected to:

(A) compare and contrast insurance plans, including health maintenance organization (HMO), preferred provider organization (PPO), Medicare, Medicaid, and the Children's Health Insurance Program (CHIP);

(B) research and explain current federal, state, and local government guidelines for health insurance; and

(C) distinguish between insurable and non-insurable health services, including elective procedures and integrative and non-traditional health care.

(9) Health care occupations--working within the health care system. The student explores different careers in the health care industry and analyzes their various roles. The student is expected to:

(A) explore and describe a variety of careers in the health care industry; and

(B) analyze the various roles in the health care delivery system, including health care administration, health care professionals, public health professionals, corporate health care, and research and development.

(10) Public health--policy resources. The student understands the resources available for protecting and improving the health of people and their local, national, and international communities. The student is expected to:

(A) identify the roles of leading public health organizations such as county health departments, the Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO);

(B) compare and contrast U.S. and global health issues;

(C) explain the ways that local, state, national, and international organizations support public health; and

(D) analyze the effects of public policy on the prevention of communicable and noncommunicable diseases.

(11) Public health--policy recommendations. The student applies public health resources to create solutions to daily health challenges. The student is expected to:

(A) research and discuss an emerging health issue or topic such as health equity or a pandemic;

(B) appraise the impact of leading health organizations on emerging health issues and topics;

(C) explore and explain the effects of environmental policy on public health;

(D) analyze the interconnectedness of different sectors of the health care industry and how they improve public health; and

(E) evaluate the impact of public health policy on emergency preparedness.

(12) Public health--mental health. The student recognizes the interconnectedness of mental health and public health. The student is expected to:

(A) examine the relationship between mental health and physical health;

(B) evaluate the importance of social interaction and its impact on health;

(C) describe the connection between mental health and the increase in homelessness and incarceration; and

(D) analyze the impact of social stigma on accessing mental health services, including barriers to treatment.

(13) Prevention--healthy living. The student evaluates the effects of health behaviors on preventing disease. The student is expected to:

(A) appraise the effect of biological family medical history (genetics), including maternal and paternal, on health outcomes or risk for illness;

(B) evaluate the benefits of regular checkups;

(C) classify primary, secondary, and tertiary preventions;

(D) define comorbidities and their impact on health;

(E) examine health risk factors such as sedentary lifestyle and poor diet that can lead to negative health outcomes;

(F) research and describe preventative services covered by insurance plans;

(G) explain the importance of vaccines across the lifespan;

(H) evaluate the effectiveness of a personal health plan that includes nutrition, exercise, healthy weight, and sleep in preventing chronic disease; and

(I) evaluate the effectiveness of prevention campaigns on health behavior such as substance use, misuse, and abuse.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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## CHAPTER 116. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

The State Board of Education (SBOE) adopts new §§116.11-116.17, 116.25-116.28, and 116.61-116.64, concerning Texas Essential Knowledge and Skills (TEKS) for physical education. New §§116.11, 116.15-116.17, 116.25, and 116.61-116.64 are adopted without changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7167) and will not be republished. New §§116.12-116.14 and 116.26-116.28 are adopted with changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7167) and will be republished. The new sections update the standards to reflect current physical education research and best practices and align with changes to requirements in state statute.

**REASONED JUSTIFICATION:** In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The review of the TEKS for physical education took place concurrently with the review of the health education TEKS. In March 2019, applications to serve on the physical education TEKS review work groups were posted on the Texas Education Agency (TEA) website. At the April 2019 meeting, SBOE members were asked to designate content advisors for the physical education TEKS review. In May 2019, TEA distributed a survey to collect information from educators regarding the review and revision of

the physical education TEKS. TEA staff provided applications for the physical education review work groups to SBOE members on a monthly basis from June 2019 to May 2020.

In August 2019, physical education TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the physical education TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in September 2019 to review survey results and recommend specific topics that should be included in the proposed framework developed by the content advisors. The work group was also charged with identifying where student expectations from the current TEKS would fit into the proposed framework. Work Group B was convened in October 2019 and was charged with identifying the grade levels where topics developed by Work Group A should be taught. Work Group C was convened in December 2019 to draft recommendations for student expectations for two of the six strands in the proposed framework. Work Group D was convened at the end of February 2020 to draft recommendations for the remaining strands. Work Group E was convened for a face-to-face meeting in March 2020 and in subsequent virtual meetings in April-May 2020 to review the vertical alignment of the strands across all grade levels and to ensure horizontal alignment with the health education TEKS. In May 2020, content advisors were sent the draft recommendations for review and met virtually to develop consensus recommendations to be provided to the SBOE. At the June-July SBOE meeting, the board asked TEA to reconvene the content advisors to develop final recommendations for revisions to the physical education TEKS. The content advisors met virtually in July 2020 to develop final recommendations for revisions to the physical education TEKS for Kindergarten-Grade 8.

The new sections supersede the existing physical education TEKS for elementary, middle school, and high school in §§116.1-116.7, 116.21-116.24, and 116.51-116.56 beginning with the 2022-2023 school year.

The following non-substantive, technical edits were made since published as proposed.

#### *Subchapter A*

A clarification was made to the student expectation in §116.12(b)(7) by deleting the commas before and after and inserting the word "and" before the word "health."

A clarification was made to the student expectation in §116.13(b)(7) by deleting the commas before and after and inserting the word "and" before the word "health."

A clarification was made to the student expectation in §116.13(b)(13)(A) by inserting the word "for" after the word "respect"; inserting the word "between" after the word "cooperation"; deleting the phrase "through word and actions with"; and inserting the phrase "through words and actions" after the word "others."

The student expectation in §116.14(b)(7) was clarified by deleting the commas before and after and inserting the word "and" before the word "health."

#### *Subchapter B*

A clarification was made to the student expectation in §116.26(b)(12)(B) by deleting the phrase "accept responsibility and."

A clarification was made to the student expectation in §116.27(b)(12)(A) by deleting the phrase "accept responsibility and."

A clarification was made to the student expectation in §116.28(b)(12)(A) by deleting the phrase "accept responsibility and."

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting and for second reading and final adoption at its November 20, 2020 meeting.

The effective date of the new sections is August 1, 2022.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began October 9, 2020, and ended November 13, 2020. The SBOE also provided an opportunity for registered oral and written comments at its November 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** A teacher stated that the proposed new student expectation in subsection (b)(1)(C) in §§116.12-116.17 needs to be removed because it does not make sense.

**Response.** The SBOE disagrees and has determined that the student expectation in subsection (b)(1)(C) in §§116.12-116.17 is appropriate as proposed.

**Comment.** A teacher stated that the proposed new student expectation in subsection (b)(1)(D) in §§116.12-116.16 should be amended because it is not possible to include spinning and manipulates with rolls.

**Response.** The SBOE disagrees and has determined that the student expectation in subsection (b)(1)(D) in §§116.12-116.16 is appropriate as proposed.

**Comment.** A community member stated that before graduating from high school, boys should be required to do 30 pushups and 10 pull ups; run a 10-minute mile; and have selected at least one sport to demonstrate mastery such as tennis, golf, volleyball, basketball, or baseball that will enable the student to engage in a game with others.

**Response.** The SBOE agrees that physical activity and participation in sports and other activities is important for all students. However, the SBOE disagrees that the suggested level of specificity is appropriate for the TEKS.

**Comment.** A teacher asked if §116.52, Foundations of Personal Fitness (One-Half Credit), will be revised or if the course will be eliminated.

**Response.** The SBOE provides the following clarification. The TEKS for the current high school physical education course Foundations of Personal Fitness have been revised and the course has been renamed Lifetime Fitness and Wellness Pursuits.

**Comment.** A teacher expressed support for the proposed TEKS for the new high school physical education courses.

**Response.** The SBOE agrees and took action to approve the TEKS for Kindergarten-Grade 12 physical education as proposed.

**Comment.** A teacher asked when the revised TEKS for physical education will be implemented.

Response. The SBOE provides the following clarification. The new Kindergarten-Grade 12 physical education TEKS will be implemented beginning with the 2022-2023 school year.

Comment. A community member recommended that boys and girls should be challenged to reach their maximum physical strength and endurance but that the physical standards for boys should be greater than for girls.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A community member stated that weight and endurance training should be included in a four-year physical education regimen.

Response. The SBOE agrees that weight and endurance training are important aspects of physical education and has determined that they are appropriately addressed in the TEKS as proposed.

Comment. A community member stated that band and music should not be substitutes for physical education.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A teacher expressed support for the proposed new physical education TEKS for Kindergarten-Grade 12. The commenter stated that the TEKS have measurable goals and outcomes to teach and assess growth and that they align with national physical education standards, which provide common resources for teachers.

Response. The SBOE agrees and took action to approve the TEKS for Kindergarten-Grade 12 physical education as proposed.

Comment. A parent and a community member stated that students at the earliest ages must be educated about water safety and that this instruction must continue at every grade level.

Response. The SBOE agrees with the importance of water safety education and has determined that water safety is appropriately addressed in the TEKS as proposed.

Comment. A parent and a community member expressed support for the proposed new student expectation in subsection (b)(11)(B) in §§116.12-116.17 and 116.26-116.28 regarding water safety and recommended extending the student expectation to the high school physical education courses.

Response. The SBOE disagrees with the suggestion to add the student expectation on water safety to the high school physical education TEKS. The SBOE has determined that the topic of water safety is not applicable to all the high school physical education courses.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§116.11 - 116.17

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.002(d), which requires the SBOE to

by rule adopt essential knowledge and skills for the physical education curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), and (d).

§116.12. *Physical Education, Kindergarten, Adopted 2020.*

#### (a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environ-

ments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) practice proper foot patterns and form and maintain balance while hopping, galloping, running, sliding, skipping, and walking;

(B) practice correct technique while jumping in place, forward and backward, and side to side;

(C) demonstrate visual tracking and tracing, simple balancing, cross lateralization, and sequencing of two skills; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) maintain balance while bearing weight using different bases of support; and

(B) practice bending, stretching, twisting, and curling while maintaining balance.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) self-toss an object and throw underhand with opposite foot forward;

(B) catch a self-dropped ball before it bounces twice and catch a self-tossed object before it hits the ground;

(C) practice dribbling with one hand;

(D) tap a ball using the inside of the foot;

(E) kick a stationary ball from a stationary position;

(F) volley a lightweight object to self;

(G) strike a lightweight object using hand or short-handled implement;

(H) jump at least once with a self-turned rope; and

(I) demonstrate swinging a long rope back and forth with a partner.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) differentiate between personal and general space while moving to simple rhythms and maintaining balance;

(B) demonstrate a variety of pathways, shapes, and levels while maintaining balance; and

(C) demonstrate clear contrast when moving in different speeds and directions while maintaining balance.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to mirror and follow teacher movement and basic rhythm patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) demonstrate the skills of chasing, fleeing, and dodging to avoid or catch others during a variety of games while maintaining appropriate space and speed;

(B) practice the correct techniques for motor development skills following teacher direction; and

(C) demonstrate safe practices by following rules, procedures, and directions during class and activities.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to discuss outdoor recreation and health and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) discuss the immediate effect of physical activity on the heart and lungs;

(B) describe the importance of daily active play; and

(C) participate in exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) describe the importance of goal setting; and

(B) identify how to measure improvement in physical skills such as counting the number of times a student can hop while maintaining balance.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) recognize that eating a variety of foods produces energy for physical activity; and

(B) identify the best source of hydration during physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) identify proper clothing and footwear for physical activity; and

(B) identify safety precautions, including pedestrian, water, sun, and cycling safety, with teacher guidance.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) give examples of consequences resulting from personal actions;

(B) demonstrate respect for differences and similarities in abilities of self and others; and

(C) identify personal impulses and emotions with teacher guidance.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) demonstrate respect and cooperation through words and actions with teacher guidance; and

(B) communicate feelings and thoughts appropriately with teacher guidance.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain why some physical activities are challenging.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) identify physical activity for personal enjoyment with teacher guidance.

*§116.13. Physical Education, Grade 1, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting,

reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) practice proper foot patterns and maintain balance while hopping, galloping, running, sliding, and skipping;

(B) practice correct technique while jumping in place, forward and backward, side to side, and quarter turns while maintaining balance;

(C) demonstrate visual tracking and tracing, simple balancing, cross lateralization, and sequencing of three skills; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) maintain balance standing on one foot for five seconds while placing the free leg in a variety of different positions; and

(B) demonstrate bending, stretching, twisting, curling, and swaying while maintaining balance.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate key elements of self-tossing and throwing underhand while stepping with the opposite foot forward to a target;

(B) demonstrate key elements of catching an accurately and softly thrown large ball and a self-tossed object;

(C) practice dribbling continuously with one hand while stationary using preferred hand;

(D) tap or dribble a ball using the inside of the foot while walking;

(E) approach and kick a stationary ball;

(F) volley a lightweight object to self and partner;

(G) strike an object using a short-handled implement, projecting the object upward;

(H) jump consecutively with a self-turned rope; and

(I) turn a long rope.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) move in personal and general space to rhythms and beats while maintaining balance;

(B) travel over, under, around, and through using a variety of pathways, shapes, and levels; and

(C) differentiate between fast and slow speeds, strong and light force, and various directions.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to mirror and follow teacher movement and basic rhythm patterns in four counts.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply the skills of chasing, fleeing, and dodging to avoid or catch others while maintaining appropriate space and speed during a variety of games;

(B) identify and follow teacher instructions to improve performance for specific motor development skills; and

(C) demonstrate safe practices by using equipment appropriately and respecting personal space with teacher guidance.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to identify outdoor recreation and health and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) identify the immediate effect of physical activity on the heart and lungs;

(B) explain the importance of warm-ups and cool-downs for physical activity; and

(C) demonstrate exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop a health-related goal with teacher guidance; and

(B) explain how to measure improvement in physical skills with or without a measuring tool.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify healthy foods that produce energy for physical activity; and

(B) identify different hydration options, including water, that enhance physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) identify proper clothing, footwear, and safety equipment for a variety of physical activities; and

(B) identify and describe safety precautions, including pedestrian, water, sun, and cycling safety with teacher guidance.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) describe how personal actions may have positive or negative consequences;

(B) demonstrate respect for differences and similarities in the abilities of self and others; and

(C) identify personal impulses and emotions with teacher guidance.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) demonstrate respect for and cooperation between self and others through words and actions with teacher guidance; and

(B) communicate feelings and thoughts appropriately with teacher guidance.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain how, with practice, challenges in physical activities can turn into successes.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) describe physical activity for personal enjoyment with teacher guidance.

§116.14. *Physical Education, Grade 2, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).



(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate skills. The student is expected to:

(A) practice and apply correct technique while hopping, galloping, running, sliding, and skipping;

(B) demonstrate correct jumping and landing technique while consecutively jumping in place, forward and backward, side to side, half turns, and in tuck position;

(C) demonstrate basic balancing, cross lateralization, and sequencing of three skills with repetition; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate skills. The student is expected to:

(A) demonstrate maintaining balance standing on one foot while placing the free leg in a variety of different positions for eight seconds; and

(B) differentiate between bending, stretching, twisting, curling, pushing, pulling, and swaying.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate key elements in underhand throwing to a partner and overhand throwing to a target with opposite foot forward;

(B) demonstrate key elements when catching an accurately and softly thrown large ball without trapping against the body;

(C) demonstrate key elements of hand dribbling while walking;

(D) dribble a ball with control using both feet while walking;

(E) kick a moving ball using a continuous running approach;

(F) volley a lightweight object with consecutive hits to self or partner;

(G) strike a stationary object off the ground or an elevated surface with a hand or short- or long-handled implement consecutively;

(H) jump forward and backward with a self-turned rope; and

(I) demonstrate turning and jumping a long rope.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate locomotor, non-locomotor, and manipulative skills safely in personal and general space;

(B) combine pathways, shapes, and levels into simple sequences; and

(C) combine speed and direction as directed by the teacher.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to demonstrate simple rhythmic sequences using various locomotor and coordination skills in eight counts.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply the skills of chasing, fleeing, and dodging to avoid or catch others during a variety of games at low, middle, and high levels with appropriate speed and direction;

(B) participate in appropriate drills and activities to enhance the learning of specific motor development skills; and

(C) demonstrate safe practices by using equipment appropriately and respecting personal space with minimal teacher guidance.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to describe out-

door recreation and health and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) list the benefits of regular physical activity on the heart and lungs;

(B) define frequency and endurance as it relates to physical activities; and

(C) demonstrate correct technique of exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop health-and skill-related goals with teacher guidance; and

(B) identify how to measure improvement and track progress in physical skills with a measuring tool.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify the types of food that produce energy to enhance physical activity; and

(B) explain the need for proper hydration to enhance physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) explain how proper attire and safety equipment promote safe participation and prevent injury in a variety of physical activities; and

(B) identify and explain safety precautions, including pedestrian, water, sun, cycling, and skating safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) differentiate between the positive and negative consequences of personal actions;

(B) explain and demonstrate respect for differences and similarities in abilities of self and others; and

(C) identify self-management skills to control personal impulses and emotions.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) identify the causes of problems and propose solutions with teacher guidance; and

(B) communicate feelings and thoughts appropriately without cue.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain how practicing challenging physical activities can build confidence and minimize frustration when learning skills.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to specific corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) identify and select physical activities for personal enjoyment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§116.25 - 116.28

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§116.26. *Physical Education, Grade 6, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence

to be physically active for a lifetime (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools

annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term age appropriate means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word including reference content that must be mastered, while those containing the phrase such as are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) perform a variety of locomotor skills and combinations during dynamic activities and games; and

(B) demonstrate correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) demonstrate balance with control during dynamic activities and games; and

(B) demonstrate proper body positioning, proficiency, footwork, and offensive and defensive skills during dynamic activities and games.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate correct technique when throwing to a moving target;

(B) demonstrate correct catching technique from different levels and trajectories with a variety of objects;

(C) demonstrate correct hand dribbling technique when changing both speed and direction while maintaining ball control;

(D) demonstrate correct foot dribbling technique with control while changing both speed and direction during dynamic activities and game situations;

(E) demonstrate correct technique in kicking and punting with accuracy during dynamic activities and lead-up games;

(F) demonstrate correct technique in volleying to a target with control and accuracy;

(G) demonstrate correct technique when striking an object with speed, accuracy, force, and distance using a hand or handled implement during dynamic activities and lead-up games; and

(H) create and perform a jump rope routine using a variety of advanced skills.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) apply speed, direction, and force with a long-handled implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to perform rhythmic routines with intermediate steps and movement patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) demonstrate offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games;

(B) demonstrate combinations of locomotor, manipulative, and game skills in dynamic activities to achieve individual or team goals; and

(C) demonstrate appropriate sporting behavior with teammates, opponents, and officials.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to participate in self-selected, organized outdoor recreational skills, activities, and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) describe the long-term benefits of moderate to vigorous physical activity on overall health and wellness;

(B) describe the frequency, intensity, time, and type (FITT) principle and how it improves fitness in relation to aerobic and anaerobic activities; and

(C) describe health-related and skill-related fitness components and their impact on personal fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop an individual fitness plan using personal fitness goals; and

(B) analyze results of fitness assessments to identify strategies for self-improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify macronutrients, including carbohydrates, fats, and proteins, and examine their relationship to optimal physical performance; and

(B) identify how environmental temperature and humidity each contribute to dehydration and heat illness.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) explain the importance of and accept responsibility for personal actions that affect self and others during game situations and sports;

(B) explain the importance of and demonstrate respect for differences and similarities in abilities of self and others during dynamic activities and lead-up games; and

(C) apply self-management skills to demonstrate self-control of impulses and emotions, without cue, during games, situations, and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) explain and demonstrate effective communication to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to discuss the importance of accepting individual chal-

lenges and demonstrate self-management skills to persevere in a positive manner during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to analyze feedback to make appropriate changes to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) develop a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) describe how participation in a variety of physical activities builds confidence and increases personal enjoyment.

*§116.27. Physical Education, Grade 7, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active

lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term age appropriate means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word including reference content that must be mastered, while those containing the phrase such as are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) combine and apply a variety of locomotor skills during dynamic fitness, sport, and rhythmic activities; and

(B) apply correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) move between positions with controlled balance during dynamic activities, game situations, and sports; and

(B) demonstrate proper body positioning, proficiency, and footwork and perform offensive and defensive skills during dynamic activities, game situations, and sports.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) apply correct throwing techniques with distance, power, and accuracy while both partners are moving during dynamic activities, game situations, and sports;

(B) apply correct catching technique with a variety of objects from different levels and trajectories during dynamic activities, game situations, and sports;

(C) apply offensive and defensive patterns in game strategies while hand dribbling;

(D) apply offensive and defensive foot dribbling strategies during game situations and sports;

(E) apply correct technique in kicking and punting with control, distance, and accuracy during game situations and sports;

(F) apply correct technique in volleying with both control and accuracy during game situations and sports;

(G) apply correct technique when striking an object with speed, accuracy, force, and distance during game situations and sports; and

(H) create and perform a jump rope routine using a variety of skills that require agility, speed, and endurance.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) execute the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) execute the appropriate use of speed, direction, and force with or without an implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to perform rhythmic routines with advanced steps and movement patterns with a partner.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games and sports;

(B) apply combinations or sequences of game skills to achieve individual or team goals; and

(C) demonstrate self-responsibility and appropriate sporting behavior in game situations and sports.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to demonstrate a variety of correct techniques for outdoor recreational skills, activities, and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) analyze the long-term benefits of moderate to vigorous physical activity on overall health and wellness;

(B) apply basic frequency, intensity, time, and type (FITT) principle in a variety of aerobic and anaerobic activities; and

(C) apply health-related and skill-related fitness components and explain how each component impacts personal fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) create a collaborative physical fitness plan to target areas for improvement in health-related fitness; and

(B) monitor and evaluate personal fitness goals and make appropriate changes for improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) evaluate healthy food choices that show a balanced daily intake of macronutrients to enhance physical performance; and

(B) analyze and determine the appropriate times to consume traditional sports drinks that have the appropriate carbohydrate and sodium content.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) discuss the importance of and demonstrate respect for differences and similarities in abilities of self and others during game situations and sports; and

(B) analyze self-management skills to demonstrate self-control of impulses and emotions, without cue, during game situations and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) communicate effectively to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to develop and apply a plan of action and make effective decisions when faced with challenges, obstacles, or difficulties during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to provide constructive feedback to peers following teacher guidelines to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) implement a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) evaluate self-selected physical activities for personal enjoyment.

§116.28. *Physical Education, Grade 8, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge

and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term age appropriate means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam

balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word including reference content that must be mastered, while those containing the phrase such as are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) combine and apply a variety of locomotor skills during dynamic fitness, sport, and rhythmic activities; and

(B) combine correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) combine and apply balance with control during dynamic activities, game situations, and sports; and

(B) demonstrate proper body positioning, proficiency, and footwork and perform offensive and defensive skills during dynamic activities, game situations, and sports.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) combine appropriate throwing techniques during game situations and sports;

(B) apply appropriate catching technique from different levels and trajectories with an implement during game situations and sports;

(C) perform, without cue, key elements in hand dribbling during game situations and sports;

(D) perform, without cue, key elements in foot dribbling during game situations and sports;

(E) apply correct technique in kicking and punting during game situations and sports with control, distance, and accuracy;



(F) perform, without cue, key elements in volleying during game situations and sports;

(G) perform, without cue, key elements in striking during game situations and sports; and

(H) create and perform a jump rope routine with a partner or a small group using a variety of skills that include agility, speed, and endurance.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) perform, without cue, the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) perform, without cue, the appropriate speed, direction, and force with or without an implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to create and perform with a small group a rhythmic routine with varying tempos using advanced steps and movement patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) perform, without cue, offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games and sports;

(B) perform, without cue, combinations or sequences of game skills to achieve individual or team goals; and

(C) follow rules, demonstrate appropriate sporting behavior, self-officiate, and respect consequences for the game being played without cue.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to engage in a variety of self-selected outdoor recreational activities and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) perform a variety of lifelong physical activities and explain their effects on overall health and wellness;

(B) perform basic frequency, intensity, time, and type (FITT) principle in a variety of self-selected aerobic and anaerobic activities; and

(C) develop and analyze a personal fitness plan using health-related and skill-related fitness components.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) create and implement a personal physical fitness plan and analyze the results for effectiveness; and

(B) evaluate personal fitness goals and make appropriate changes for improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) develop a healthy food choice plan that enhances physical performance; and

(B) determine hydration needs, without cue, based on physical performance and environmental factors.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including pedestrian, water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) discuss the importance of and demonstrate respect for differences and similarities in abilities of self and others during game situations and sports; and

(B) evaluate self-management skills to demonstrate self-control of impulses and emotions, without cue, during games, situations, and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) communicate effectively to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to develop and apply a plan of action and make effective decisions when faced with challenges, obstacles, or difficulties during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to provide constructive feedback to peers using a positive tone to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) implement a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) participate in self-selected physical activities for personal enjoyment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§116.61 - 116.64

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (r), and (s); and 28.025(a).

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 152. COMMISSIONER'S RULES CONCERNING EXAMINATION REQUIREMENTS

### 19 TAC §152.1001

The Texas Education Agency (TEA) adopts an amendment to §152.1001, concerning exceptions to examination requirements for individuals certified outside the state. The amendment is adopted without changes to the proposed text as published in the January 1, 2021 issue of the *Texas Register* (46 TexReg 44) and will not be republished. The adopted amendment streamlines the process that individuals certified outside the state must follow for consideration of an exception to the state-mandated examination requirements for certification and specifies requirements for exemption to the new Science of Teaching Reading TExES examination.

**REASONED JUSTIFICATION:** Texas Education Code (TEC), §21.052, authorizes the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in this state.

Section 152.1001 provides a pathway to exempt individuals already certified in other states from Texas certification examination requirements; supports the mobility of teachers transferring from state to state; reduces the burden of repetitive testing on educators and acknowledges established demonstration of content knowledge and skills; and recognizes and respects the professionalism of credentials issued by other state departments of education or countries of licensure.

Following is a description of the adopted changes to 19 TAC §152.1001.

#### *Subsection (b), Definitions*

Adopted language in subsection (b)(2) adds the word "certificate" to the defined term "professional class" to better align with the defined term "standard certificate" also included in this subsection. The reference to "master teacher" in subsection (b)(2) is deleted since that credential is no longer issued per provisions in House Bill 3, 86th Texas Legislature, 2019.

State Board for Educator Certification (SBEC) rules have changed to require examinations for admission into an educator preparation program that are separate and distinct from the examinations that candidates take to attain Texas educator certification. Adopted changes to subsection (b)(4) provide clarification that the examinations referenced in this rule are those required for issuance of a Texas standard certificate.

The term "teacher service record" is deleted from the definitions in subsection (b) as this term will no longer be used in Chapter 152 as amended. Removing this provision assists in reducing confusion regarding verification of years of experience for salary increment purposes versus verification of experience in the role to qualify for an exception from Texas testing requirements.

Adopted new subsection (b)(5) adds the term "equivalent" to clarify that certificates issued outside of Texas are aligned to SBEC-issued certificates based on grade level, subject, and/or assignment. The alignment process allows for exemptions when SBEC issues a similar but not identical certificate to that which the individual holds in another state but ensures that the certificate areas are still closely matched. All remaining subsections are renumbered accordingly.

#### *Subsection (c), Minimum requirements*

The adopted changes to subsection (c) align educator preparation and certification requirements for applicants from outside the state with the general requirements and level of preparation expected of in-state candidates for certification. The adopted

changes also provide a pathway to exempt applicants from testing in Texas based on successful demonstration of proficiency in content and pedagogy prior to issuance of certification by the state department of education in a state other than Texas.

Adopted language in subsection (c)(1) identifies the general requirements for certification that an applicant must meet to be considered for an exception to examinations, other than the Science of Teaching Reading TExES examination, to qualify for issuance of a Texas standard certificate, including the degree, preparation, testing, and licensure requirements established in subparagraphs (A)-(D). Language relating to verifiable experience for applicants certified as classroom teachers or those certified in professional class areas only was deleted from subsection (c)(1) to eliminate redundancy. Those certification requirements are already outlined in the SBEC rules referenced in the amended language.

Adopted new subsection (c)(2) provides the requirements necessary for an applicant to be considered for an exception to the Science of Teaching Reading TExES examination required under TEC, §21.048(a-2), for all individuals being issued certification to teach Early Childhood-Grade 6. Adopted new subsection (c)(2)(A) confirms that the applicant must hold a certificate issued outside of Texas that is equivalent to an SBEC-issued certificate that requires demonstration of the science of teaching reading. To ensure that exempted individuals have passed an examination comparable in scope and rigor to the Science of Teaching Reading TExES examination, adopted new subsection (c)(2)(B) requires an applicant seeking an exception to the Science of Teaching Reading TExES examination to provide documentation of his or her passing performance on a stand-alone assessment that requires demonstration of proficiency in the five components of scientifically based reading instruction (phonemic awareness, phonics, fluency, vocabulary, and comprehension) and that the test was taken to meet licensure requirements in one of the states listed in adopted new subsection (c)(2)(B)(i)-(xx).

The states listed in adopted new subsection (c)(2)(B)(i)-(xx) have been confirmed to require demonstration of proficiency in the science of teaching reading to qualify for issuance of licensure in the respective state through a stand-alone examination that is sufficiently rigorous to be comparable with the Science of Teaching Reading TExES examination. Individuals seeking Texas certification and coming from a state not on the list will be required to take and pass the Science of Teaching Reading TExES examination to qualify for issuance of the SBEC-issued certificate that requires demonstration of teaching reading.

Subsection (c)(3)(A)(ii) and (B)(vi) are modified to allow applicants to submit documentation from a test provider or the state department of education rather than official score reports. This change broadens options for individuals to get the appropriate verification for consideration of an exception from examination requirements as applicable yet still ensures that an examination was already successfully completed for issuance of licensure outside of Texas.

#### *Subsection (d), Approval process*

The adopted amendment to subsection (d) clarifies and consolidates the requirements for years of experience for applicants. Minor technical edits change use of the term "exemption" to "exception" when referring to examination requirements, further aligning with other references in the rule. All remaining paragraphs in the subsection are renumbered accordingly to more clearly identify the documents and information necessary

to approve candidates for exceptions from required Texas examinations.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began January 1, 2021, and ended February 1, 2021. Following is a summary of the public comments received and agency responses.

**Comment:** The Texas Classroom Teachers Association (TCTA) expressed objection to the proposed revisions in §152.1001(c)(3)(A) and (B) that allow out-of-state applicants to provide documentation of passing performance on the required examinations taken for issuance of a certificate in another state in lieu of an official certification exam score report. TCTA expressed concern that streamlining the application process for an out-of-state examination exemption will cause more individuals to use the exemption and thereby allow more individuals to teach Texas students without first passing the required Texas certification examinations that test for competency in the Texas Essential Knowledge and Skills. TCTA requested that the official score report requirement be maintained in the rule.

**Response:** The agency disagrees. The amended rule still requires proof that the candidate has passed all applicable examinations in the state in which the candidate is certified; therefore, the amendment has not significantly changed the number or qualifications of individuals who will be eligible for the exemption. Rather, allowing proof of passing performance through documentation provided from a test provider or the state department of education provides equity for individuals who have passed the required examination but are unable to obtain an official score report.

**Comment:** TCTA expressed appreciation and support for the proposed revisions in §152.1001(d)(2) to require applicants certified as classroom teachers to have completed at least one academic year of verifiable, full-time experience serving in the role of teacher and to provide documentation of that experience to TEA in order to qualify for issuance of a standard certificate.

**Response:** The agency agrees that it is beneficial to have verification of the required year of experience in the role prior to issuance of a standard certificate.

**Comment:** TCTA expressed appreciation and support for the proposed revisions in §152.1001(d)(3) to require applicants certified in a professional class other than classroom teacher to have completed at least two years of full-time experience serving in the role aligned with the professional class certificate area and to provide documentation of that experience to TEA in order to qualify for issuance of a standard certificate.

**Response:** The agency agrees that it is beneficial to have verification of the required two years of experience in the role prior to issuance of a standard certificate.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.052(a-1), which permits the commissioner to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in this state.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.052(a-1).

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 April 7, 2021.

TRD-202101478

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: January 1, 2021

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER A. SUBMISSION REQUIREMENTS FOR FILINGS AND DEPARTMENTAL ACTIONS RELATED TO SUCH FILINGS

###### 28 TAC §3.1, §3.5

The Commissioner of Insurance adopts amendments to 28 TAC §3.1 and §3.5, relating to life, accident, and health insurance and annuities.

The amendments are adopted without changes to the proposed text published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8832). The rules will not be republished.

REASONED JUSTIFICATION. The amended sections are necessary to remove references to "prepaid legal services," which is comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623).

Amendments to §3.1 renumber paragraphs and redesignate a subclause in the section as appropriate to reflect the removed text. An amendment also updates an internal reference to reflect the renumbering of the paragraphs.

Amendments to renumbered §3.1(10)(A)(vi) and §3.1(10)(B)(v) remove cross-references to "Figure Number 45 of §26.27 of this title" because that figure and section were repealed, effective May 2017.

An amendment to §3.5(a) updates an internal reference to reflect the removal of paragraph (5) in the subsection.

An amendment to §3.5(a) updates the heading of an administrative code section in a citation to the section.

The amendments also include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity, including replacing "shall" with "must," changing the words "chapter" and "subchapter" to "title" in references to administrative code sections, and replacing "which" with "that." Amendments also update citations to Insurance Code provisions that have changed due to the codification of Insurance Code articles.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §3.1 and §3.5 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has nonprofit legal services removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 6, 2021.

TRD-202101440

James Person

General Counsel

Texas Department of Insurance

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Proposal publication date: December 11, 2020

For further information, please call: (512) 676-6584



## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER F. INLAND MARINE INSURANCE AND MULTI-PERIL INSURANCE

#### 28 TAC §5.5002

The Commissioner of Insurance adopts amended 28 TAC §5.5002, concerning inland marine insurance. The amendment is adopted without changes to the proposed text published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 762). The rule will not be republished.

REASONED JUSTIFICATION. The amendment to §5.5002 classifies pet insurance as inland marine insurance and gives insurers more flexibility in how they offer it. The amended language specifically allows pet insurance to be sold as individual or group insurance policies.

Pet insurance covers veterinary expenses arising from pet injury or illness. Although pet insurance represents a small fraction of the property and casualty insurance market, pet insurance is growing and becoming popular as an employer-offered benefit. It is commonly considered a type of inland marine insurance, but Texas has treated it as a miscellaneous kind of property and casualty insurance. Before this amendment insurers could not offer pet insurance through group policies.

Under its former treatment as a miscellaneous kind of property and casualty insurance, pet insurance rates had to be filed and forms had to be approved by the Texas Department of Insurance

(TDI) before they were used. In contrast, inland marine products are designated as either "filed" or "non-regulated" in §5.5002. The amended rule adds subparagraph (QQ) to designate pet insurance as a "non-regulated" inland marine product, meaning rules, rates, and forms no longer need to be filed or approved. Designating pet insurance as a non-filed type of inland marine, rather than a filed type, helps maintain a level playing field among insurers, because Lloyd's plans, reciprocals, and interinsurance exchanges are not required to file inland marine rates or forms.

In addition, the adopted amendment includes nonsubstantive editorial and formatting changes that conform the text of §5.5002 to the agency's current style and improve the rule's clarity. These changes include changing "shall" to "must" or other clearer language and removing unnecessary wording. The amendment also corrects a past typographical mistake in a reference to Property Code §59.001.

TDI posted an informal draft on its website on October 8, 2020. TDI received comments on the informal draft and considered them when drafting the proposed rule. TDI received one comment on the proposed rule published in the *Texas Register* on January 29, 2021.

#### SUMMARY OF COMMENT AND AGENCY RESPONSE.

Commenter: American Family Life Assurance Company of Columbus commented in support of the proposal with changes.

Comment on license type required to sell pet insurance.

Comment. The commenter recommends that agents who hold a specialty license or are qualified to hold a specialty license be allowed to sell pet insurance. The commenter states that many of its agents hold a life, accident, and health insurance license, which qualifies them to hold a specialty license. The commenter states that pet insurance is similar to health insurance.

Agency Response. TDI declines to amend the proposed rule. Specialty insurance licenses are regulated under Insurance Code Chapter 4055, which establishes the scope of what kinds of insurance can be sold under those licenses. Changing the scope of specialty licenses to include pet insurance would require a legislative change and is beyond the scope of this rulemaking.

STATUTORY AUTHORITY. The Commissioner adopts amended §5.5002 under Insurance Code §§2251.004, 2301.005, and 36.001.

Insurance Code §2251.004 provides that the Commissioner may adopt rules governing how rates are regulated for the various classifications of risks insured under inland marine insurance, as determined by the Commissioner.

Insurance Code §2301.005 provides that the Commissioner may adopt rules governing how forms are regulated for the various classifications of risks insured under inland marine insurance, as determined by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584

## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Commissioner of Insurance adopts amendments to 28 TAC §§7.25, 7.88, 7.1403, and 7.1909, concerning corporate and financial regulation.

The amendments are adopted without changes to the proposed text published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8834). The rules will not be republished.

REASONED JUSTIFICATION. The amendments to §§7.25, 7.88, 7.1403, and 7.1909 remove references to "nonprofit legal services corporations" from the definitions of "Eligible insurer" and "Insurer" for regulations regarding examination and financial analysis and remove references to "prepaid legal services" from regulations regarding service of process and multiple-employer welfare arrangements. "Prepaid legal services" are comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623).

In addition, the proposed amendments also include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity, which are described in the following paragraphs. These changes include correcting punctuation, updating citations to Insurance Code provisions that have changed due to the codification of Insurance Code articles, removing the word "the" before references to specific provisions in the Insurance Code, and deleting the word "shall" or replacing it with "will."

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

### SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

#### 28 TAC §7.25, §7.88

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §7.25 and §7.88 under Insurance Code §§961.002 - 961.004, as amended by SB 1623, and Insurance Code §36.001.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has nonprofit legal services providers removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 6, 2021.

TRD-202101441

James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



## SUBCHAPTER N. SERVICES OF PROCESS

### 28 TAC §7.1403

STATUTORY AUTHORITY. The department adopts amendments to §7.1403 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has nonprofit legal services removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Insurance

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## SUBCHAPTER S. MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS REQUIREMENTS FOR OBTAINING AND MAINTAINING CERTIFICATE OF AUTHORIZATION

### 28 TAC §7.1909

STATUTORY AUTHORITY. The department adopts amendments to §7.1909 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has nonprofit legal services removed from TDI's regulation. TDI proposes to remove the reference to prepaid legal services from §7.1909 to clarify that those plans are not subject to review by TDI.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Insurance

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For further information, please call: (512) 676-6584



## CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS SUBCHAPTER J. STANDARDS OF CONDUCT FOR LICENSED AGENTS

### 28 TAC §19.901, §19.902

The Commissioner of Insurance adopts amendments to 28 TAC §19.901 and §19.902, relating to the licensing and regulation of insurance professionals. The amendments are adopted without changes to the proposed text as published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8837) and will not be republished.

REASONED JUSTIFICATION. The amendments to §19.901 and §19.902 remove the reference to "nonprofit legal services corporation" from the definition of "agent" in Chapter 19 and "prepaid legal services organization" from a description of the standards of approval and disapproval of names to be used by licensed agents, respectively. "Prepaid legal services" include both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623).

The proposed amendments include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity, such as replacing "shall" with "will" or "must" and correcting instances of "State Board of Insurance" with "Texas Department of Insurance." The

proposed amendments also capitalize "Commissioner" when referring to the Commissioner of Insurance and update citations to Insurance Code provisions that have changed due to the codification of Insurance Code articles.

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to §19.901 and §19.902 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has nonprofit legal services providers removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Person

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Texas Department of Insurance

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For further information, please call: (512) 676-6584



## CHAPTER 21. TRADE PRACTICES

### SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

#### DIVISION 1. INSURANCE ADVERTISING

##### 28 TAC §21.102, §21.104

The Commissioner of Insurance adopts amendments to 28 TAC §21.102 and §21.104, concerning the scope of insurance advertising regulations. The amendments are adopted without changes to the proposed text as published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8840). The rule will not be republished.

**REASONED JUSTIFICATION.** Amendments to §21.102 and §21.104 remove references to "nonprofit legal services corporations" from the definition of "insurer" for advertising regulations in Chapter 21 and remove references to "prepaid legal services"

from identification requirements for advertisements, respectively. "Prepaid legal services" are comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623).

The amendments also include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity, including deleting unnecessary uses of the word "and."

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to §21.102 and §21.104 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004 as amended by SB 1623, has nonprofit legal services providers removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Person

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Texas Department of Insurance

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For further information, please call: (512) 676-6584



## CHAPTER 23. PREPAID LEGAL SERVICE

### 28 TAC §§23.1 - 23.7

The Commissioner of Insurance adopts the repeal of 28 TAC Chapter 23, consisting of §§23.1 - 23.7, relating to prepaid legal services regulated by the Texas Department of Insurance. "Prepaid legal services" include both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623). The repeal is necessary because these bills made 28 TAC §§23.1 - 23.7 obsolete.

The repeal is adopted without changes to the proposed repeal published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8841). TDI adopts §§23.1 - 23.7. The repeals will not be republished.

**REASONED JUSTIFICATION.** The repeal of 28 TAC Chapter 23 is necessary to remove sections made obsolete by SB 1623, which states that nonprofit legal services corporations are not in the practice of insurance. In addition, for-profit legal services corporations were removed from TDI's regulation by SB 597. The proposed repeal removes any references to "prepaid legal services," which would include both nonprofit and for-profit legal services corporations, to reflect current law.

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed repeal.

**STATUTORY AUTHORITY.** The Commissioner adopts the repeal of 28 TAC §§23.1 - 23.7 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code § 961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Insurance Code §§961.002 - 961.004 as amended by SB 1623, has nonprofit legal services removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Person

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Texas Department of Insurance

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For further information, please call: (512) 676-6584



## CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER F. FIRE ALARM RULES

### 28 TAC §34.616

The Commissioner of Insurance adopts amendments to 28 TAC §34.616, relating to fire detection sales, installation, and service standards. The amendments are adopted with changes to the proposed text as published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 549). The rule will be republished.

**REASONED JUSTIFICATION.** The amended section is necessary to clarify existing rules to eliminate confusion with respect to fire protection planning, installation, and servicing standards. The changes to the proposed text correct nonsubstantive grammatical errors.

Chapter 6002 authorizes the State Fire Marshal's Office to safeguard lives and property by regulating the planning, certifying,

leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. The amendments to §34.616 clarify that as long as all related tasks are done by licensed parties, the fire protection licensee responsible for planning the fire protection system can be different from the licensee installing the system. In addition, the amendments allow local governments more flexibility in determining the standard required for planning, installing, and servicing fire protection services by allowing the use of standards previously adopted by the local political jurisdiction as well as the currently adopted standard found in §34.607. The proposed amendments also corrected punctuation errors and included nonsubstantive editorial changes for readability.

The Texas Department of Insurance (TDI) adopts §34.616 with nonsubstantive grammatical changes to the proposed text. These changes include adding commas after the phrase "Insurance Code Chapter 6002" in the first sentence of §34.616(b)(1) and after the phrase "currently adopted standards" in the second sentence of §34.616(b)(5), and deleting an unnecessary comma in the phrase "fire alarm planning superintendent, for the work permitted by the license" in the second sentence in §34.616(b)(2). The adopted changes also include adding a space after the first hyphen in the phrase "one-or two-family dwelling" in §34.616(c)(6). This space is correctly shown in the existing rule text but was incorrectly omitted in the proposed rule text published in the *Texas Register*.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

**Commenters:** One comment was received on the proposed amendments. The City of Richardson Fire Marshal's Office asked a clarifying question regarding an amendment in §34.616(a)(4). It did not express support or disapproval for the proposal.

**Comment:** A commenter asked whether the amendment authorizing a political subdivision to use standards it had previously adopted instead of the standards published in §34.607 (relating to Adopted Standards), referred to standards adopted by a political subdivision before the commencement of the work or before the effective date of this rule.

**Agency Response:** TDI clarifies that the provision allows political subdivisions to use standards it had adopted before the commencement of work in lieu of the standards published in §34.607, relating to Adopted Standards.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to 28 TAC §34.616 under Government Code §417.005 and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6002.051(a) specifies that the department will administer Insurance Code Chapter 6002. Insurance Code §6002.051(b) provides that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(b) specifies that rules adopted under Insurance Code §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing,



installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.616. *Sales, Installation, and Service.*

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the Alarm Certificate of Registration (ACR) number of the registered firm responsible for the planning. The certifying licensee, who is licensed under the ACR number of the registered firm responsible for the installation, must be present for the final acceptance test prior to certification. The registered firm responsible for the planning of the fire devices or system can be different from the firm responsible for the installation.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system or a fire extinguisher system, the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title (relating to Adopted Standards) except when the planning and installation complies with an edition of the standard that has been previously adopted by the political subdivision in which the system is installed.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered a repair. The equipment replaced must comply with the currently adopted standards, but the entire system is not automatically required to be modified to meet the applicable adopted code. The local authority having jurisdiction (AHJ) must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.251.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm reporting an alarm or supervisory signal to a municipal or county emergency services center must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two-family dwelling, notification of the local AHJ is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

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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General Counsel  
Texas Department of Insurance  
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◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**  
**SUBCHAPTER C. CRUDE OIL PRODUCTION TAX**

**34 TAC §3.39**

The Comptroller of Public Accounts adopts amendments to §3.39, concerning credits for qualifying low-producing oil leases, without changes to the proposed text as published in the March 5, 2021, issue of the *Texas Register* (46 TexReg 1461). The rule will not be republished.

The amendments implement Senate Bill 925, 86th Legislature, 2019, effective September 1, 2019, relating to the calculation of daily production for purposes of the oil and gas production tax credits for low-producing wells and leases.

The comptroller amends the section by replacing "exemption" with "credit", "5.0% or less" with "less than 5.0%", and "well" with "lease" throughout to match statute.

In subsection (a), the comptroller alphabetizes and renumbers the terms therein, removes unnecessary capitalization, and amends the terms to match statute.

The comptroller moves the definition of the term "Average taxable price of oil" from paragraph (3) to paragraph (1). The comptroller amends the definition of the term to improve readability and replaces the statutory reference with language based on Tax Code, §202.058 (Credits for Qualifying Low-Producing Oil Leases).

In paragraph (4), the comptroller replaces "no more" with "less", and adds "or produces less than 5.0% recoverable oil per barrel of produced water" to match statute. The comptroller adds language to reflect Senate Bill 925, concerning the computation method of the daily per well production from the lease. The comptroller removes the definition of "well day" from within the definition of qualifying low-producing lease in paragraph (4) and defines this term in paragraph (5). The comptroller removes "The lease may also qualify if the recoverable oil for a 90-day period prior to qualifying is 5.0% or less per barrel of produced water" as the amendments to the first sentence of this subsection provide this information.

The comptroller amends subsection (b) to improve readability and make formatting changes, amends paragraph (3) to include the title of form AP-216 (Texas Crude Oil Lease Exemption Application), and amends paragraph (6) by replacing the statutory reference with the actual language of Tax Code, §202.058(a)(2) concerning the treatment of a lease that meets the requirement of producing less than five percent recoverable oil per barrel of produced water.

In subsection (c), the comptroller replaces the statutory reference of Tax Code, §202.058(c), (d), and (e) with language to state the amount of the credit based on specific prices of oil.

The comptroller adds paragraph (5) to state that credits for low-producing leases may be combined with credits under Tax Code, §202.054 (Qualification of Oil from New or Expanded Enhanced Recovery Project for Special Tax Rate) or Tax Code, §202.0545 (Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide).

In subsection (d), the comptroller amends language to improve readability and to include Tax Code, Chapter 201 as the credit can be taken against taxes due in Tax Code, Chapters 201 or 202, as provided by Tax Code, §202.058(g).

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, §202.058 (Credits for Qualifying Low-Producing Oil Leases).

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 April 7, 2021.

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William Hamner  
Special Counsel for Tax Administration  
Comptroller of Public Accounts  
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Proposal publication date: March 5, 2021  
For further information, please call: (512) 475-2220

◆ ◆ ◆  
**CHAPTER 9. PROPERTY TAX ADMINISTRATION**  
**SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION**

**34 TAC §9.416**

The Comptroller of Public Accounts adopts amendments to §9.416 concerning continuation of residence homestead exemption while replacement structure is constructed, without changes to the proposed text as published in the February 5, 2021, issue of the *Texas Register* (46 TexReg 900). The rule will not be republished.

The eligibility time for a property that is rendered uninhabitable or unstable as a result of a disaster is addressed and updated. The amendments implement Senate Bill 443, 86th Legislature, 2019.

In subsection (a), the comptroller updates and revises the period of time allowed for continuing homestead exemptions for property damaged by a calamity or by wind or water damage as permitted under Tax Code, §11.135(a-1).

The comptroller also removes current subsection (b) and renumbers current subsection (c) to (b).

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §11.135 (Continuation of Residence Homestead Exemption While Replacement Structure Is Constructed; Sale of Property), which requires the comptroller to adopt rules to implement this section.

This rule implements Tax Code, §11.135.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202101492

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



## CHAPTER 9. PROPERTY TAX ADMINISTRATION

### SUBCHAPTER D. APPRAISAL REVIEW BOARD

#### 34 TAC §9.804

The Comptroller of Public Accounts adopts the repeal of §9.804, concerning arbitration of Appraisal Review Board determinations issued for tax year 2017 and previous tax years, without changes to the proposed text as published in the February 5, 2021, issue of the *Texas Register* (46 TexReg 904). The rule will not be republished.

This section is being repealed because §§9.4251 - 9.4266 of this title replaced §9.804 effective May 29, 2018.

The comptroller did not receive any comments regarding adoption of the repeal.

This repeal is adopted under Tax Code, §41A.13, which provides the comptroller with the authority to adopt rules relating to the implementation and administration of the provisions of Tax Code, §41A.

The repeal implements Tax Code, §41A.13.

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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Victoria North

General Counsel for Fiscal and Agency Affairs

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER C. PROGRAM SERVICES DIVISION 4. HEALTH CARE SERVICES

##### 37 TAC §380.9183

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9183, concerning Health Care Services for Youth, without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8285). The amended rule will not be republished.

##### JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the rule will be to provide for better transitioning of youth from halfway houses back into the community.

##### SUMMARY OF CHANGES

The amended rule clarifies the manner in which youth in halfway houses receive medical care, including that: 1) nurses provide case management; 2) medical, psychiatric, and dental services are completed by providers in the community; and 3) fees for services are covered through Medicaid or by TJJD.

The amended rule also: 1) specifies that several statements regarding health care arrangements apply to TJJD institutions but not to TJJD halfway houses; 2) clarifies that procedures for medical care outside of TJJD's normal criteria must be approved by the TJJD medical director in consultation with the executive director *or designee*; 3) establishes that the *facility administrator* (instead of the medical provider or psychiatric provider) may authorize medical and pharmacological intervention when required in a life-threatening situation; and 4) clarifies that TJJD staff immediately notifies a youth's parent/guardian if *emergency* surgery is recommended.

In addition, with regard to medical concerns reported by youth, the amended rule: 1) clarifies that at *TJJD institutions*, staff contact a nurse if a youth reports a health concern or if the staff is concerned about a youth's health; and 2) adds that, at TJJD halfway houses, staff call the primary care physician or 911.

##### PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

##### STATUTORY AUTHORITY

The amended section is adopted under: Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 April 8, 2021.



TRD-202101494

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: May 1, 2021

Proposal publication date: November 20, 2020

For further information, please call: (512) 490-7278

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Agriculture

### Title 4, Part 1

The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 30, Subchapter A, Texas Community Development Block Grant Program, comprised of §§30.1-30.103. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Susana G. Esparza, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847 or by email at [Susana.Esparza@TexasAgriculture.gov](mailto:Susana.Esparza@TexasAgriculture.gov). The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202101480

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: April 7, 2021



## Adopted Rule Reviews

Office of the Governor

### Title 1, Part 1

The Office of the Governor ("OOG") has completed the rule review of 1 TAC Chapter 3, concerning the Public Safety Office. The review was conducted in accordance with Texas Government Code §2001.039.

Notice of the review of 1 TAC Chapter 3, was published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7724). The OOG

received no comments in response to that notice. The OOG considered whether the reasons for adoption of these rules continue to exist.

After its review, the OOG finds that the reasons for adopting rules 1 TAC §§3.25, 3.77, 3.83, 3.2023, 3.2521, 3.8100, 3.8120, 3.8300, 3.8315, and 3.9300 continue to exist and readopts 1 TAC §§3.25, 3.77, 3.83, 3.2023, 3.2521, 3.8100, 3.8120, 3.8300, 3.8315, and 3.9300 without changes.

As a result of the rule review, the OOG determined certain amendments to 1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.23, 3.73, 3.75, 3.79, 3.81, 3.85, 3.87, 3.2001, 3.2009, 3.2013, 3.2021, 3.2025, 3.2501, 3.2503, 3.2505, 3.2507, 3.2509, 3.2513, 3.2515, 3.2517, 3.2519, 3.2523, 3.2525, 3.2527, 3.2529, 3.2601, 3.2603, 3.8105, 3.8115, and 3.8305 were appropriate and necessary. The changes to 1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.23, 3.73, 3.75, 3.79, 3.81, 3.85, 3.87, 3.2001, 3.2009, 3.2013, 3.2021, 3.2025, 3.2501, 3.2503, 3.2505, 3.2507, 3.2509, 3.2513, 3.2515, 3.2517, 3.2519, 3.2523, 3.2525, 3.2527, 3.2529, 3.2601, 3.2603, 3.8105, 3.8115, and 3.8305 were adopted elsewhere in this issue of the *Texas Register*.

The Commission also determined the repeal of 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, and 3.8220 is appropriate and necessary. The repeal of 1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, and 3.8220 is adopted elsewhere in this issue of the *Texas Register*.

This concludes the review of 1 TAC Chapter 3 under Texas Government Code §2001.039.

The agency certifies that the adoptions have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-202101466

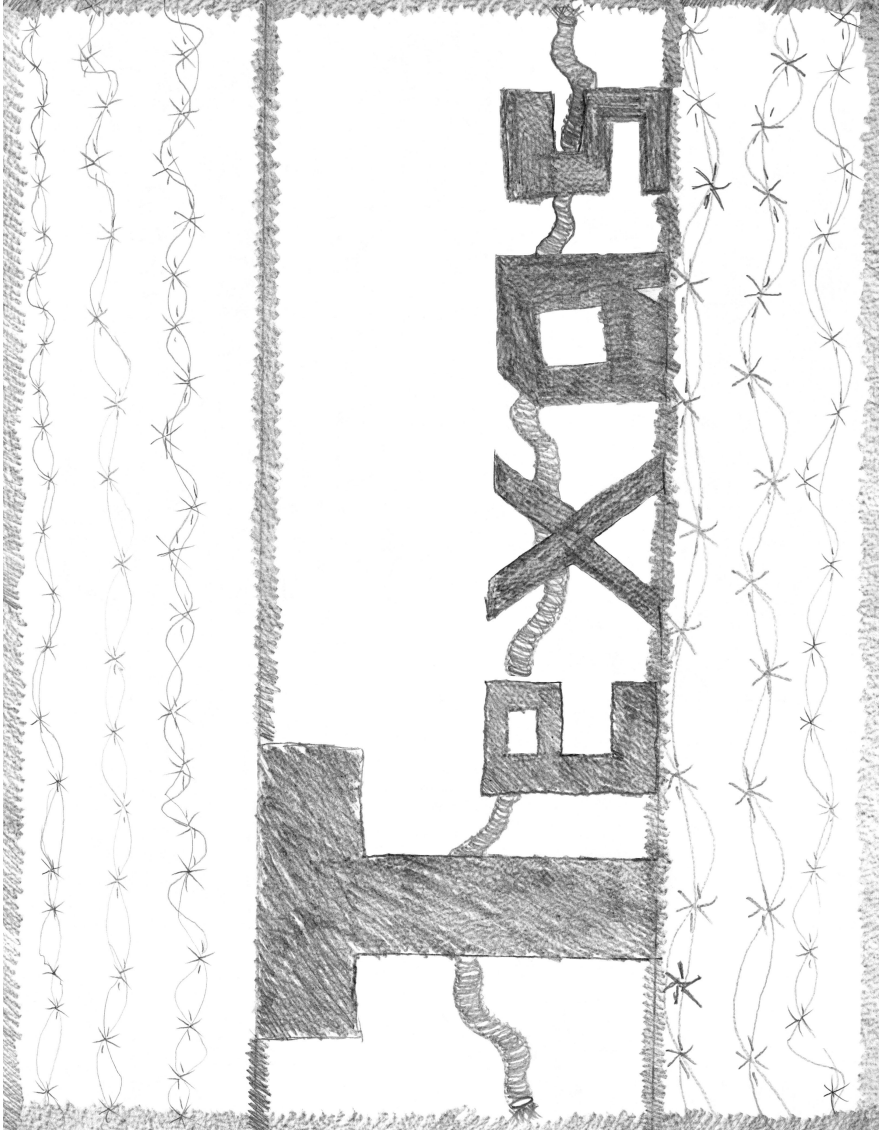
Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

Filed: April 7, 2021





# TABLES & GRAPHICS

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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.

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**TEXAS DEPARTMENT OF INSURANCE  
 MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
 FOR THE CALENDAR YEAR \_\_\_\_\_**

TYPE<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of Texas \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_  
 Person Completing this Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone \_\_\_\_\_

This company did not have any Medicare supplement business written or policies or certificates in force in Texas during the reporting year.

	(I) Earned Premium <sup>3</sup>	(II) Incurred Claims <sup>4</sup>
Line		
1. Current Year's Experience		
a. Total (all policy years)		
b. Current year's issues <sup>5</sup>	_____	_____
c. Net (for reporting purposes) (line 1a - line 1b)	_____	_____
2. Past Year's Experience (all policy years)	_____	_____
3. Total Experience (line 1c + line 2)	_____	_____
4. Refunds Last Year (excluding interest)	_____	
5. Refunds From all Previous Reporting Years (excluding interest)	_____	
6. Refunds Since Inception (excluding interest) (line 4 + line 5)	_____	
7. Benchmark Ratio Since Inception (Ratio 1 automatically calculated from Benchmark form)	_____	

<sup>1</sup> Individual, Group, Individual Medicare Select, or Group Medicare Select only. (Ensure you have chosen the correct "Type." Changing the "Type" after data has been entered in the Benchmark page will result in the deletion of all data entered in the Benchmark page.)

<sup>2</sup> SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

<sup>3</sup> Includes Modal Loadings and Fees Charged.

<sup>4</sup> Excludes Active Life Reserves.

<sup>5</sup> This will be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios."



**TEXAS DEPARTMENT OF INSURANCE  
 MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
 FOR THE CALENDAR YEAR \_\_\_\_\_  
 (Continued)**

TYPE <sup>6</sup> \_\_\_\_\_ SMSBP<sup>7</sup> \_\_\_\_\_  
 Company Name \_\_\_\_\_

8. Experienced Ratio Since Inception (Ratio 2) \_\_\_\_\_  
 (line 3, col. II) / (line 3, col. I - line 6)
9. Life Years Exposed Since Inception \_\_\_\_\_  
 If (line 8 < line 7) AND (line 9 > 499), proceed; otherwise, stop.
10. Tolerance Permitted (obtained from credibility table) \_\_\_\_\_

Medicare Supplement Credibility Table	
Life Years Exposed Since Inception	Tolerance
10,000+	0.0%
5,000 – 9,999	5.0%
2,500 – 4,999	7.5%
1,000 – 2,499	10.0%
500 – 999	15.0%
If less than 500, no credibility	

11. Adjustment to Incurred Claims for Credibility (Ratio 3) \_\_\_\_\_  
 (line 8 + line 10)
- If (line 11 > line 7), a refund/credit is not required; otherwise, proceed.
12. Adjusted Incurred Claims \_\_\_\_\_  
 (line 3, col. I - line 6) x (line 11)

<sup>6</sup> Individual, Group, Individual Medicare Select, or Group Medicare Select only.  
<sup>7</sup> SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

**TEXAS DEPARTMENT OF INSURANCE  
MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
FOR THE CALENDAR YEAR \_\_\_\_\_  
(Continued)**

TYPE <sup>8</sup> \_\_\_\_\_ SMSBP<sup>9</sup> \_\_\_\_\_  
Company Name \_\_\_\_\_

13. Refund \_\_\_\_\_  
[line 3, col. I - line 6 - (line 12 / line 7)]

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year (the de minimis amount), then there is no refund. Otherwise, the amount on line 13 will be refunded or credited, and a description of the refund or credit against premiums to be used must be provided in the Distribution Methodology field.

De minimis Amount \_\_\_\_\_  
(.005 x annualized premium in force on 12/31)

Distribution Methodology
-----------------------------

By checking this box, I attest that all information contained in this form is a full and true statement in accordance with the instructions provided to the best of my information, knowledge, and belief.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

<sup>8</sup> Individual, Group, Individual Medicare Select, or Group Medicare Select only.  
<sup>9</sup> SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

**TEXAS DEPARTMENT OF INSURANCE  
 REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
 RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES  
 FOR THE CALENDAR YEAR \_\_\_\_\_**

TYPE <sup>10</sup> \_\_\_\_\_ SMSBP<sup>11</sup> \_\_\_\_\_  
 Company Name \_\_\_\_\_

(a) <sup>12</sup>	(b) <sup>13</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>14</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
		2.770		0.442		0.000		0.000		0.40
		4.175		0.493		0.000		0.000		0.55
		4.175		0.493		1.194		0.659		0.65
		4.175		0.493		2.245		0.669		0.67
		4.175		0.493		3.170		0.678		0.69
		4.175		0.493		3.998		0.686		0.71
		4.175		0.493		4.754		0.695		0.73
		4.175		0.493		5.445		0.702		0.75
		4.175		0.493		6.075		0.708		0.76
		4.175		0.493		6.650		0.713		0.76
		4.175		0.493		7.176		0.717		0.76
		4.175		0.493		7.655		0.720		0.77
		4.175		0.493		8.093		0.723		0.77
		4.175		0.493		8.493		0.725		0.77
		4.175		0.493		8.684		0.725		0.77
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n) / (k+m): \_\_\_\_\_ (Ratio 1)

**TEXAS DEPARTMENT OF INSURANCE**

<sup>10</sup> Individual, Group, Individual Medicare Select, or Group Medicare Select only.

<sup>11</sup> SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

<sup>12</sup> Data entered must be for the calendar year displayed.

<sup>13</sup> For the calendar year on the appropriate line in column (a), the premium earned during that year is for policies issued in that year.

<sup>14</sup> These loss ratios are not explicitly used in computing the benchmark ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

**REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR GROUP POLICIES  
FOR THE CALENDAR YEAR \_\_\_\_\_**

TYPE <sup>15</sup> \_\_\_\_\_ SMSBP<sup>16</sup> \_\_\_\_\_

Company Name \_\_\_\_\_

(a) <sup>17</sup>	(b) <sup>18</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>19</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
		2.770		0.507		0.000		0.000		0.46
		4.175		0.567		0.000		0.000		0.63
		4.175		0.567		1.194		0.759		0.75
		4.175		0.567		2.245		0.771		0.77
		4.175		0.567		3.170		0.782		0.80
		4.175		0.567		3.998		0.792		0.82
		4.175		0.567		4.754		0.802		0.84
		4.175		0.567		5.445		0.811		0.87
		4.175		0.567		6.075		0.818		0.88
		4.175		0.567		6.650		0.824		0.88
		4.175		0.567		7.176		0.828		0.88
		4.175		0.567		7.655		0.831		0.88
		4.175		0.567		8.093		0.834		0.89
		4.175		0.567		8.493		0.837		0.89
		4.175		0.567		8.684		0.838		0.89
Total :		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n) / (k+m): \_\_\_\_\_ (Ratio 1)

<sup>15</sup> Individual, Group, Individual Medicare Select, or Group Medicare Select only.

<sup>16</sup> SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

<sup>17</sup> Data entered must be for the calendar year displayed.

<sup>18</sup> For the calendar year on the appropriate line in column (a), the premium earned during that year is for policies issued in that year.

<sup>19</sup> These loss ratios are not explicitly used in computing the benchmark ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.





# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

Texas Health and Safety Code and Texas Water Code  
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Castle Water, Inc, Texas Rain Holding Company, Inc., Bennett Boone, and Lauren Boone*; Cause No. D-1-GN-19-006207; in the 200th Judicial District Court, Travis County, Texas.

Background: Defendant Castle Water owned the public drinking water system located in Weatherford, Parker County, Texas, from at least October 2012 until approximately June 10, 2020. Defendant Texas Rain operated the water system since at least July 2011 until July 2019. The State filed suit in 2019 on behalf of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas ("PUC") for Defendants' alleged failure to comply with numerous operational, maintenance, and reporting requirements pertaining to public water systems under chapter 341 of the Texas Health and Safety Code and chapters 7 and 13 of the Texas Water Code. Defendants Bennett and Lauren Boone were non-suited from the case. In July 2020, approval was granted to proceed with the sale and transfer of the water system, and that transaction closed in October 2020. The Sale Transfer Merger application is pending final approval by the PUC. Castle Water will continue to hold the Certificate of Convenience and Necessity for the service area subject to the transaction until final regulatory approval is granted. The water system is now being operated by Horseshoe Bend Water Company L.L.C., the purchaser of the water system, who is addressing the violations alleged in the State's lawsuit.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of \$123,750.00 in civil penalties and \$7,259.81 in unpaid public health services fees from Defendant Castle Water, \$98,600.00 in civil penalties from Defendant Texas Rain, and \$14,875.00 total in attorney's fees against both Defendant Castle Water and Defendant Texas Rain.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ixchel Parr, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: [ixchel.parr@oag.texas.gov](mailto:ixchel.parr@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

Entered this 13th day of April, 2021.

TRD-202101531  
Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: April 13, 2021



Texas Water Code and Texas Health and Safety Code  
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Ted Johnson and Gary Johnson*, Cause No. 2019-46351, in the 113th Judicial District, Harris County, Texas.

Nature of the Suit: Defendants Gary Johnson and Ted Johnson ("Defendants") owned and operated The Heavens Mobile Home Park at 12750 Aldine Westfield Road, Houston, Harris County, Texas. Defendants also owned and operated a public water system to provide sewer and drinking water to the mobile park residents. Harris County initiated suit alleging violations of state water quality and clean drinking water regulations, such as failure to chlorinate drinking water, failure to provide systems with an operator, and discharging wastewater without authorization. This is in violation of rules promulgated by the Texas Commission on Environmental Quality ("TCEQ"). The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Agreed Judgment: The proposed Agreed Final Judgment assesses against Defendant Ted Johnson civil penalties in the amount of \$7,500 to be equally divided between Harris County and the State; and attorney's fees and costs in the amount of \$2,000 to Harris County and \$2,000 to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: [tyler.ryska@oag.texas.gov](mailto:tyler.ryska@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202101539

Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: April 14, 2021

◆ ◆ ◆  
**Capital Area Rural Transportation System**

**Community Engagement -- Request for Proposals**

Capital Area Rural Transportation System (CARTS) is soliciting proposals for Community Engagement/Public Outreach for the Project "Connecting Communities in the CARTS District."

Beginning at 5:30 p.m., Thursday April 8, 2021, the RFP will be available in digital format on our website at <http://www.ride-carts.com/about/procurement>.

The schedule is:

Release of RFP April 8, 2021

Responses due at 2:00 p.m. May 11, 2021

Interviews (if necessary) May 19, 2021

Award Anticipated June 3, 2021

Work Begins June 10, 2021

Final Report & Board Meeting January 27, 2022

Proposals will be evaluated on qualifications, management approach/experience, scope of work and the completeness and quality of submittal.

TRD-202101486

David L. Marsh

General Manager

Capital Area Rural Transportation System

Filed: April 8, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/19/21 - 04/25/21 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/19/21 - 04/25/21 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202101527

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 13, 2021

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

**Agreed Orders**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 24, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building 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 24, 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: BASF Corporation; DOCKET NUMBER: 2020-1062-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 8074A, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1928, General Terms and Conditions (GTC) and Special Terms and Conditions Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1928, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$34,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$17,375; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-1304-AIR-E; IDENTIFIER: RN102018322; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 4437A, PSDTX808, and N014M2, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1315, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 18, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate (MAER); and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), 117.310(c)(1)(B), and 122.143(4), NSR Permit Numbers 4437A, PSDTX808, and N014M2, SC Number 1, FOP Number O1315, GTC and STC Numbers 1.A and 18, and THSC, §382.085(b), by failing to comply with the concentration limit, and



failing to comply with the MAER; PENALTY: \$19,689; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,876; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-1181-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 21101 and PSDTX1248, Special Conditions Number 1, Federal Operating Permit Number O1235, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$7,387; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,955; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Rosebud; DOCKET NUMBER: 2019-1123-MWD-E; IDENTIFIER: RN101918423; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010731001, Definitions and Standard Permit Conditions Number 2.e, by failing to properly analyze effluent samples according to the permit; 30 TAC §305.125(1), and TPDES Permit Number WQ0010731001, Sludge Provisions Section I.B.1, by failing to conduct a Toxicity Characteristic Leaching Procedure test for the sewage sludge once during the permit term; 30 TAC §§305.125(1), 317.4(a)(8), and 317.7(i), and TPDES Permit Number WQ0010731001, Operational Requirements Number 1, by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; 30 TAC §§305.125(1), 319.6, and 319.9(d), and TPDES Permit Number WQ0010731001, Monitoring and Reporting Requirements Numbers 2.a and 5, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010731001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §§305.125(1), (5), and 11(C), 319.6, 319.7(a) and 319.9(d), and TPDES Permit Number WQ0010731001, Monitoring and Reporting Requirements Numbers 2.a, 3.c, and 5, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes, and failing to properly record monitoring activities during effluent sampling; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0010731001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (12), and TPDES Permit Number WQ0010731001, Permit Conditions Number 1.a, by failing to accurately report monitoring activities; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010731001, Effluent Limitations and Monitoring Requirements Number 6, by failing to comply with permitted effluent limitations; and 30 TAC §317.6, by failing to make a self-contained breathing apparatus available for use by facility personnel and located at a safe distance from the chlorine facilities to ensure accessibility; PENALTY: \$46,351; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$37,081; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Toyah; DOCKET NUMBER: 2020-1352-PWS-E; IDENTIFIER: RN101225001; LOCATION: Toyah, Reeves County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9) and TCEQ Agreed Order Docket Number 2019-0591-PWS-E, Ordering Provision Number 2.b.v, by failing to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the executive director (ED) by the tenth day of the month following the end of the reporting periods for April 2020 - August 2020; and 30 TAC §290.112(e)(1) and (f)(2) and TCEQ Agreed Order Docket Number 2019-0591-PWS-E, Ordering Provision Number 2.a, by failing to submit a Total Organic Carbon Monthly Operating Report with the required total organic carbon and alkalinity sampling data to the ED each month by the tenth day of the month following the end of the reporting period during the second quarter of 2020; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: City of Tyler; DOCKET NUMBER: 2020-1254-MWD-E; IDENTIFIER: RN102916459; LOCATION: Tyler, Smith 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 WQ0010653002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Coca-Cola Southwest Beverages LLC; DOCKET NUMBER: 2020-1371-AIR-E; IDENTIFIER: RN102346277; LOCATION: Houston, Harris County; TYPE OF FACILITY: beverage distribution plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$6,663; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2020-1105-AIR-E; IDENTIFIER: RN102557931; LOCATION: Bishop, Nueces County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.620(a)(12), and 122.143(4), 40 Code of Federal Regulations §60.18(d), Standard Permit Registration Number 37831, Federal Operating Permit Number O2590, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 14.C, and Texas Health and Safety Code, §382.085(b), by failing to ensure that flares are operated and maintained in conformance with their designs; PENALTY: \$6,450; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: DELGADO & SON TRUCKING, LLC; DOCKET NUMBER: 2020-0972-WQ-E; IDENTIFIER: RN110632379; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL

OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2020-1140-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 4477 and 18978, PSDTX752M5, and N162, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Numbers O1606 and O2223, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 17 and 18, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O2223, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions; 30 TAC §101.201(b)(1)(D), (G), and (H) and §122.143(4), FOP Number O1606, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), FOP Number O2223, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §101.201(c) and §122.143(4), FOP Number O2223, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: \$15,939; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,376; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: GRAVES TRUCK STOP, INC; DOCKET NUMBER: 2020-1295-PST-E; IDENTIFIER: RN101929180; LOCATION: Carthage, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: IACX Rock Creek LLC; DOCKET NUMBER: 2020-1305-AIR-E; IDENTIFIER: RN100216613; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O2449, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 3131A, Special Conditions Number 1, FOP Number O2449, GTC and STC Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,880; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: Pettus Municipal Utility District; DOCKET NUMBER: 2019-0774-MWD-E; IDENTIFIER: RN102079100; LOCATION: Pettus, Bee County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010748001, Monitoring and Reporting Requirements

Number 1, by failing to correctly report the number of excursions on discharge monitoring reports (DMRs); 30 TAC §305.125(1) and TPDES Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 4, by failing to indicate an increased frequency of sampling on self-reported DMRs; 30 TAC §305.125(1) and (5) and 317.3(e)(5), and TPDES Permit Number WQ0010748001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 7, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (11)(c) and §319.7(a) and (c), and TPDES Permit Number WQ0010748001, Monitoring Requirements Number 3.c and Operational Requirements Number 1, by failing to maintain complete and accurate records of monitoring activities; 30 TAC §§305.125(1), 319.6, and 319.9(d), and TPDES Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 2, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; 30 TAC §305.125(1) and §319.11(c), 40 Code of Federal Regulations Part 136, and TPDES Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 2.a, and Definitions and Standard Permit Conditions Numbers 2.e and 2.f, by failing to properly analyze effluent according to the permit; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010748001, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010748001, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$64,675; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$64,675; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2020-1320-PWS-E; IDENTIFIER: RN101274165; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligram per liter for haloacetic acids based on the locational running annual average; PENALTY: \$1,462; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Scout Energy Management LLC; DOCKET NUMBER: 2020-1209-AIR-E; IDENTIFIER: RN100211580; LOCATION: Borger, Carson County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, 116.115(c), 116.615(2), 116.615(10), and 122.143(4), 40 Code of Federal Regulations §63.6603(a), Standard Permit Registration Number 154439, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Numbers (e)(1) and (3)(D), Federal Operating Permit Number O3161, General Terms and Conditions and Special Terms and Conditions Numbers 4, 7, and 10(B), and Texas Health and Safety Code, §382.085(b), by failing to comply with the maintenance requirements for an existing stationary reciprocating internal combustion engine; PENALTY: \$10,689; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT:

\$4,276; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2020-0991-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 3219 and PSDTX974, Special Conditions Number 1, Federal Operating Permit Number O1668, General Terms and Conditions and Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,625; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Simmons Custom Rigging, LLC; DOCKET NUMBER: 2020-1259-AIR-E; IDENTIFIER: RN103039822; LOCATION: Bacliff, Galveston County; TYPE OF FACILITY: fiberglass boat manufacturing; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: SJWTX, Incorporated dba Canyon Lake Water Service Company; DOCKET NUMBER: 2020-0514-MWD-E; IDENTIFIER: RN107867194; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0015320001, Effluent Limitations and Monitoring Requirements, Section A, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (9)(A) and TCEQ Permit Number WQ0015320001, Monitoring Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitations by more than 40% within five working days of becoming aware of the noncompliance; and 30 TAC §305.125(1) and §330.7(a) and TCEQ Permit Number WQ0015320001, Sludge Provisions, Section 1, General Requirements Number 1, by failing to dispose of sludge at a properly permitted or registered site; PENALTY: \$46,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,400; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: SJWTX, Incorporated dba Canyon Lake Water Service Company; DOCKET NUMBER: 2020-0124-MWD-E; IDENTIFIER: RN102806924; LOCATION: Spring Branch, Comal County; TYPE OF FACILITY: wastewater treatment facility and disposal site; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0014131001, Special Provisions, Number 7, by failing to provide equipment to determine application rates and to maintain accurate records of the volume of effluent applied to the irrigated land; and 30 TAC §305.125(1) and (7) and §305.126(b) and TCEQ Permit Number WQ0014131001, Permit Conditions Number 4.a, by failing to notify the executive director as soon as possible of any planned physical alterations or additions to the permitted facility; PENALTY: \$2,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$850; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: SSM Business Enterprises dba Chilly Mart; DOCKET NUMBER: 2019-1354-PST-E; IDENTIFIER: RN102411329; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(iv) and (v) and §334.72, by failing to report a suspected release to the TCEQ within 72 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: \$18,043; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: United States Department of Transportation; DOCKET NUMBER: 2020-0884-PWS-E; IDENTIFIER: RN107069122; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) and haloacetic acids (HAA5) at Site 1 during the first quarter of 2020; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 and 0.080 milligrams per liter for TTHM and HAA5 based on the locational running annual average; PENALTY: \$1,987; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(22) COMPANY: Utilities Investment Company, Incorporated; DOCKET NUMBER: 2020-1367-PWS-E; IDENTIFIER: RN102694247; LOCATION: Crosby, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(6), by failing to provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point; 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 §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$970; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202101520

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 13, 2021



#### Enforcement Orders

An agreed order was adopted regarding RCI HOLDINGS, INC., Docket No. 2019-0603-PWS-E on April 13, 2021 assessing \$173 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Real Estate, LLC, Docket No. 2019-0912-MSW-E on April 13, 2021 assessing \$5,812 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Vas Manthos, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RCI HOLDINGS, INC., Docket No. 2019-1741-PWS-E on April 13, 2021 assessing \$1,489 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WORLD ENERGY BIOX BIOFUELS LLC, Docket No. 2020-0063-IWD-E on April 13, 2021 assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tynan Water Supply Corporation, Docket No. 2020-0497-MWD-E on April 13, 2021 assessing \$6,500 in administrative penalties with \$1,300 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Property Works of Central Texas LLC, Docket No. 2020-0581-MSW-E on April 13, 2021 assessing \$2,500 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Vic & Jee LLC dba Z Mart, Docket No. 2020-0732-PST-E on April 13, 2021 assessing \$1,205 in administrative penalties with \$241 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Samuel O. Klaerner dba Chaparral Water System, Docket No. 2020-0749-PWS-E on April 13, 2021 assessing \$300 in administrative penalties with \$60 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Volente Vision, LLC, Docket No. 2020-0855-PWS-E on April 13, 2021 assessing \$452 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Roslyn Dubberstein, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BOBCAT TRUCKING, INC. dba Alamo Recycle Centers San Antonio Southwest Facility, Docket No. 2020-0913-MSW-E on April 13, 2021 assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Caldwell, Docket No. 2020-0926-MWD-E on April 13, 2021 assessing \$6,250 in administrative penalties with \$1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crosbyton, Docket No. 2020-0937-PWS-E on April 13, 2021 assessing \$6,159 in administrative penalties with \$1,231 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding REC TIME, INC., Docket No. 2020-0940-PWS-E on April 13, 2021 assessing \$2,484 in administrative penalties with \$496 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shivay LLC dba Mike's Quick Stop, Docket No. 2020-0951-PST-E on April 13, 2021 assessing \$4,175 in administrative penalties with \$835 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midcoast G & P (East Texas) L.P., Docket No. 2020-0974-AIR-E on April 13, 2021 assessing \$2,888 in administrative penalties with \$577 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rochester, Docket No. 2020-1020-PWS-E on April 13, 2021 assessing \$846 in administrative penalties with \$169 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MS & SS SERVICES LLC dba Jiffy Junction, Docket No. 2020-1094-PST-E on April 13, 2021 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ennis ISD, Docket No. 2020-1355-PST-E on April 13, 2021 assessing \$2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202101544  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 14, 2021

◆ ◆ ◆  
Enforcement Orders

An order was adopted regarding Garrison Maurer, Docket No. 2019-0219-MLM-E on April 14, 2021, assessing \$4,258 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jon S. Mercurief, II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ozona Retail, Inc. and Platinum SA Properties, LLC, Docket No. 2019-0245-MWD-E on April 14, 2021, assessing \$36,242 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Agrium U.S. Inc., Docket No. 2019-1463-AIR-E on April 14, 2021, assessing \$160,063 in administrative penalties with \$32,012 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District No. 23, Docket No. 2019-1539-MWD-E on April 14, 2021, assessing \$50,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Livingston, Docket No. 2020-0190-PWS-E on April 14, 2021, assessing \$17,507 in administrative penalties with \$3,500 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding McClelland Water Supply Corporation, Docket No. 2020-0323-MLM-E on April 14, 2021, assessing \$8,550 in administrative penalties with \$1,710 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Pipeline Mid-Continent WestTex LLC, Docket No. 2020-0517-AIR-E on April 14, 2021, assessing \$19,393 in administrative penalties with \$3,878 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Redeeming Materials Landscape Supply and Recycling, LLC, Docket No. 2020-0549-MSW-E on April 14, 2021, assessing \$10,347 in administrative penalties with \$2,069 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Kerrville, Docket No. 2020-0718-MWD-E on April 14, 2021, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Mingus, Docket No. 2020-0987-PWS-E on April 14, 2021, assessing \$1,725 in administrative penalties with \$1,725 deferred. Information concerning any aspect

of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tiki Leasing Company, Ltd., Docket No. 2020-1001-PWS-E on April 14, 2021, assessing \$952 in administrative penalties with \$952 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Utilities Investment Company, Inc., Docket No. 2020-1046-PWS-E on April 14, 2021, assessing \$2,055 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Lovelady, Docket No. 2020-1167-MWD-E on April 14, 2021, assessing \$8,125 in administrative penalties with \$1,625 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Lovelady, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202101545

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 14, 2021



#### Notice of Commission Action on General Permit TXG130000

The Texas Commission on Environmental Quality (TCEQ) reissued Texas Pollutant Discharge Elimination System General Permit Number TXG130000 during its public meeting on March 31, 2021. This general permit authorizes the discharge of wastewater from aquaculture facilities and other activities related to aquaculture into or adjacent to water in the state. The issued permit is available at the TCEQ Central File Room and on the TCEQ website at: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

TRD-202101528

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 13, 2021



#### Notice of Correction to Agreed Order Number 6

In the December 18, 2020, issue of the *Texas Register* (45 TexReg 9305), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 6, for Debbie Sharp dba Clipper Point Apartments and Ronnie W. Sharp dba Clipper Point Apartments, Docket Number 2020-0946-PWS-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Debbie Sharp dba Chipper Point Apartments and Ronnie W. Sharp dba Chipper Point Apartments."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202101521



## Notice of District Petition

Notice issued April 8, 2021

TCEQ Internal Control No. D-02262021-037; Townsend Reserve, Ltd., (Petitioner) filed a petition for creation of Montgomery County Municipal Utility No. 185 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 249.7 acres located within Montgomery, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (3) control, abate and amend local storm waters or other harmful excesses of waters; (4) purchase, construct, acquire, maintain, own, operate, repair, improve and extend additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$36,100,000 (\$30,200,000 for water, wastewater, and drainage plus \$1,900,000 for recreation plus \$4,000,000 for roads ). However, the financial analysis in the application was based on an estimated \$ 33,266,000 (\$27,366,000 for water, wastewater, and drainage plus \$1,900,000 for recreation plus \$4,000,000 for roads) at the time of submittal.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition un-

less a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202101532

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 13, 2021



## Notice of District Petition

Notice issued April 8, 2021

TCEQ Internal Control No. D-03222021-027; DGA Family LLC, a Texas limited liability corporation, ("Petitioner") filed a petition for creation of Stonehill Ranch Municipal Utility District No. 1 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 161.614 acres, more or less, located within Denton County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Denton, Texas. By Ordinance No. 21-376, passed and adopted on March 2, 2021, the City of Denton, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; to collect, transport, process, dispose of and control domestic and commercial wastes; to gather, conduct, divert, abate, amend, and control local storm water or other harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to purchase, construct acquire, improve, or extend insider or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes of the proposed District. It further states that the planned water supply and distribution system, sanitary sewer system, and drainage system along with the roadway system will promote the purity and sanitary condition of the State's waters and the public health and welfare of the present and future inhabitants of the area. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$4,801,095.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202101533  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 13, 2021



Notice of Hearing on HK Real Estate Development LLC:  
SOAH Docket No. 582-21-1893; TCEQ Docket No.  
2021-0053-MWD; Permit No. WQ0015784001

**APPLICATION.**

HK Real Estate Development LLC, 24607 Fairway Springs, San Antonio, Texas 78260 has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015784001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. TCEQ received this application on April 10, 2019.

The facility will be located approximately 4,600 northeast of the intersection of Old Bastrop Road and Staples Road, in Hays County, Texas 78666. The treated effluent will be discharged to an unnamed tributary of the San Marcos River, thence to an unnamed impoundment, thence to John F. Baugh Reservoir, thence to an unnamed tributary of the San Marcos River, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water

uses are limited aquatic life use for both the unnamed tributary and unnamed impoundment as well as high aquatic life use for the John F. Baugh Reservoir. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.897222%2C29.846666&level=12>. For the exact location, refer to the application.

In accordance with 30 Texas Administrative Code (TAC) § 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in John F. Baugh Reservoir and the San Marcos River, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the San Marcos Public Library, 625 East Hopkins Street, San Marcos, Texas.

**CONTESTED CASE HEARING.**

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

**10:00 a.m. - May 20, 2021**

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/j/1617923837?pwd=Y3VheUp0SXxyvTURuZDFoL2l0S3BkQT09>

**Meeting ID:** 161 792 3837

**Password:** HRad95

or

To join the Zoom meeting via telephone:

(346) 248-7799

**Meeting ID:** 161 792 3837

**Password:** 440951

**Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on March 19, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

#### **INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained from HK Real Estate Development LLC at the address stated above or by calling Mr. Daniel Ryan, P.E., LJA Engineering, at (512) 439-4700.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: April 8, 2021

TRD-202101502

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 8, 2021



#### **Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 24, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required

to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 24, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Irwin Zane Miller; DOCKET NUMBER: 2019-1064-PST-E; TCEQ ID NUMBER: RN102277167; LOCATION: 511 South Divide Street, Eldorado, Schleicher County; TYPE OF FACILITY: underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$3,938; STAFF ATTORNEY: Christopher Mullins, Litigation, MC 175, (512) 239-0141; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202101526

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 13, 2021



#### **Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 24, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 24, 2021**.



Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Lucious Josey; DOCKET NUMBER: 2019-0355-MLM-E; TCEQ ID NUMBER: RN110441565; LOCATION: north-west corner of the Campo Santo Street and Farm-to-Market Road 1458 intersection, San Felipe, Austin County; TYPE OF FACILITY: property with an unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas - specifically, approximately four cubic yards of MSW consisting of cans, wood, metal wire, paper, glass, plastic, and other material were burned in various piles at the site; and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW - specifically, approximately six cubic yards of MSW consisting of furniture, mattresses, cardboard, a bathtub, filled trash bags, clothing, bottles, plastic, wall paneling, wood planks, and other construction and household waste were disposed of at the site; PENALTY: \$2,671; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Mehroz Enterprises Inc dba Nasa Food Mart; DOCKET NUMBER: 2019-1061-PST-E; TCEQ ID NUMBER: RN101436038; LOCATION: 4024 Nasa Parkway #1, El Lago, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system - specifically, respondent had not conducted the annual line leak detector and piping tightness tests for UST Number 3; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$7,647; STAFF ATTORNEY: Christopher Mullins, Litigation, MC 175, (512) 239-0141; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: William Templeton; DOCKET NUMBER: 2019-0617-MSW-E; TCEQ ID NUMBER: RN110435260; LOCATION: 5301 West Business 83, Harlingen, Cameron County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$4,312; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202101525

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 13, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of William D.

Kirshy: SOAH Docket No. 582-21-1905; TCEQ Docket No. 2018-1741-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 13, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 12, 2020, concerning assessing administrative penalties against and requiring certain actions of William D. Kirshy, for violations in Harris County, Texas, of: Texas Water Code §§26.456 and 37.003, and 30 Texas Administrative Code §§334.401(a), 334.407(b), and 334.424(a).

The hearing will allow William D. Kirshy, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford William D. Kirshy, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of William D. Kirshy to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** William D. Kirshy, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7, 26, and 37, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701.**

**When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 13, 2021

TRD-202101543

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 14, 2021



### Notice of Public Meeting on an Application to Amend a Certificate of Adjudication: Application No. 18-2026C

Curtis J. and Christina Wheatcraft seek to amend Certificate of Adjudication No. 18-2026 to add mining purposes of use and two diversion points on the Guadalupe River, Guadalupe River Basin in Kerr County. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below.

**APPLICATION.** Curtis J. and Christina Wheatcraft, 6133 Highway 27, Center Point, Texas 78010, Applicants, have applied to the Texas Commission on Environmental Quality (TCEQ) to amend Certificate of Adjudication No. 18-2026 pursuant to Texas Water Code (TWC) § 11.122 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§295.1, et seq. Notice is being mailed to the co-owners of the certificate pursuant to 30 TAC §§295.158(c)(2)(B), and to the interjacent water rights holders of record in the Guadalupe River Basin pursuant to 30 TAC §§295.158(c)(3)(D).

A portion of Certificate of Adjudication No. 18-2026 authorizes Curtis J. and Christina Wheatcraft to divert and use not to exceed 153.225 acre-feet of water per year from two points on the Guadalupe River, Guadalupe River Basin, for agricultural purposes to irrigate 53.560 acres of land in Kerr County.

The authorization to divert a 100 acre-foot portion of the authorized water is subject to the maintenance of a Subordination Agreement between Owners and the Guadalupe-Blanco River Authority. Owners submitted evidence of an Upstream Diversion Contract dated November 4, 2020 with the Guadalupe-Blanco River Authority for the 100 acre-foot portion of water.

The authorization to divert 100 acre-feet out of the 153.225 acre-feet of water has a time priority of August 1, 1996 and the authorization to divert the remaining 53.225 acre-feet of water has a time priority of 1961.

Multiple diversion rates are authorized as follows: 49.916 acre-feet of water at a maximum diversion rate of not to exceed 0.7 cfs (300 gpm), 3.309 acre-feet of water at a maximum diversion rate of not to exceed 1.2 cfs (525 gpm), and the 100 acre-foot portion of water that is authorized pursuant to the Upstream Diversion Contract at a maximum diversion rate of not to exceed 0.7 cfs (300 gpm).

Applicants seek to amend their portion of Certificate of Adjudication No. 18-2026 to add mining purposes for use in Kerr County.

Applicants also seek to add two diversion points currently authorized by Certificate of Adjudication No. 18-2024, and located on the Guadalupe River, Guadalupe River Basin at Latitude 29.940994° N, Longitude 99.019453° W, and at Latitude 29.941306° N, Longitude 99.017715° W in Kerr County, Zip Code 78010.

Consent to access the proposed diversion points was provided by Wheatcraft, Inc, Owner of Certificate of Adjudication No. 18-2024.

The application was received on November 3, 2015. Additional information and fees were received on on May 11, June 6 and July 21, 2017, May 21, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 22, 2018. Additional information was received on August 1, 2019, August 4, and November 13, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, maintenance of an Upstream Diversion Contract with the Guadalupe Blanco River Authority for 100 acre-feet of the authorized water. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/wr-apps-pub-notice](https://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.

**PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** 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 is encouraged to ask questions of the applicant and TCEQ staff concerning the permit application and the Executive Director's recommendations, but the comments and questions submitted orally during the Informal Discussion Period will not be considered by the Commissioners and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. The Executive Director will subsequently summarize the formal comments and prepare a written response which will be considered by the Commissioners before they reach a decision on the application. The Executive Director's written response will be available to the public online or upon request. The public comment period on this application concludes at the close of the public meeting.

**The Public Meeting is to be held:**

**Thursday, May 13, 2021 at 7:00 PM**

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 191-224-163. 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, (631) 992-3221 and enter access code 151-530-099. 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. Citizens may mail their comments to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or submit them electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 2026 in the search field before the public comment period closes. 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](http://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>.*

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued: April 09, 2021

TRD-202101504

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 9, 2021



### Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 2185A

Application. USA Waste of Texas Landfills, Inc., 24275 Katy Freeway, Suite 450, Katy, Harris County, Texas 77494, has submitted an application to the Texas Commission on Environmental Quality (TCEQ) for a permit major amendment authorizing the name change of the facility to Hawthorn Park Recycling and Disposal Facility and the lateral and vertical expansion of the facility. The Hawthorn Park Recycling and Disposal Facility is located at 10550 Tanner Road, Houston, Harris County, Texas 77041. The TCEQ received this application on February 23, 2021. The permit application is available for viewing and copying at the Fairbanks Landfill, 8205 Fairbanks N. Houston Road, Houston, Harris County, Texas 77064, Monday through Friday 6:00 a.m. - 5:00 p.m. and Saturday 6:00 - 2:00 p.m. and may be viewed online at <https://www.wm.com/wm/permits-texas/permits.jsp>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/DLTvn>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <https://www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your

name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from USA Waste of Texas Landfills, Inc. at the address stated above or by calling Mr. Charles A. Rivette, Director, Planning and Development at (713) 253-4497.

TRD-202101483

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 8, 2021

## Texas Ethics Commission

List of Late Filers

April 8, 2021

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

### Deadline: Personal Financial Statement due October 15, 2020

Eddy Betancourt, 805 N. Ware Road, McAllen, Texas 78501

### Deadline: Personal Financial Statement due November 16, 2020

Stephanie Nellons-Paige, 14022 Hampton Cove Drive, Houston, Texas 77077

### Deadline: Personal Financial Statement due December 2, 2020

Daniel W. Parish, 500 Wisterglen Drive, Desoto, Texas 75115

TRD-202101503

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: April 9, 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 April 5, 2021 to April 9, 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 web site. The notice was published on the web site on Friday, April 16, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, May 16, 2021.

## FEDERAL AGENCY ACTIONS:

**Applicant:** Houston Oil Producing Enterprises, Inc.

**Location:** The project site is located in East Bay Bayou and the Intra-coastal Waterway, in Galveston County, Texas.

**Latitude & Longitude (NAD 83):** 29.563117, -94.428098

**Project Description:** The applicant proposes to discharge 54 cubic yards of fill material into 0.15 acres of waters of the US, specifically estuarine wetlands, to construct a 0.32-acre well pad for oil and gas exploration and production activities associated with the Cade 1E well.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2020-00598. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**CMP Project No:** 21-1250-F1

**Applicant:** U.S. Fish and Wildlife Service

**Location:** The project site is located in the Gulf Intracoastal Waterway (GIWW), along a 1.4-mile section of the northern bank, adjacent to the San Bernard Wildlife Refuge, near Sargent, in Matagorda County, Texas.

**Latitude & Longitude (NAD 83):** 28.779603, -95.601853

**Project Description:** The applicant proposes to construct a rock breakwater along a 1.4-mile section of the northern bank of the GIWW. Approximately 12,556 cubic yards of 8-inch graded riprap will be placed within a 3.6-acre area of the GIWW. The toe of the breakwater will be at least 172.5 feet from the centerline of the channel in depths of 1.5 feet. The breakwater is intended to prevent shoreline erosion of the San Bernard Wildlife Refuge marsh complex adjacent to the GIWW. The breakwater will accrete marsh behind it and prevent saltwater intrusion.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2012-00707. 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. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 21-1251-F1

**Applicant:** LBC Houston, L.P.

**Location:** The project site is located in Bayport Ship Channel, at 11666 Port Road, in Seabrook, Harris County, Texas.

**Latitude & Longitude (NAD 83):** 29.614189, -95.023169

**Project Description:** The applicant requests an extension of time to conduct maintenance dredging activities to previously authorized depths for all docks at the LBC Houston, L.P. terminal (Ship Docks 1-5 and Barge Docks 1-5), until 31 December 2030. All maintenance dredge material is proposed to be placed within existing confined placement areas, as previously authorized. Maintenance dredging depths for Ship Docks 1 and 2 would be -41.57 feet Mean High Water (MHW), while maintenance dredging depths for Ship Docks 3, 4 and 5 would be -45.57 feet MHW +2-foot overdredge. The maintenance dredge depths for all of the LBC Barge Docks (1-5) would be -16 feet MHW.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2016-00832. 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:** 21-1258-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 [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202101542

Mark A. Havens

Chief Clerk

General Land Office

Filed: April 14, 2021



Notice of Availability and Request for Comments on a Proposed Draft Damage Assessment and Restoration Plan for the August 2004 Torm Mary Oil Spill into the Neches River, City of Port Neches, Jefferson County, Texas

AGENCIES: The Texas General Land Office (GLO), Texas Commission on Environmental Quality (TCEQ), and Texas Parks and Wildlife Department (TPWD) (collectively, the Trustees).

ACTION: Notice of availability of a Draft Damage Assessment and Restoration Plan (Draft DARP) for natural resource damages resulting from the release of Intermediate Fuel Oil 380 from the vessel *Torm Mary* into the navigable waters of the Neches River, Gray's Bayou, Bessie Heights Marsh within the Nelda Stark Unit of the Texas Parks and Wildlife Lower Neches River Wildlife Management Area (Bessie Heights Marsh), and numerous small sloughs that terminate in the Neches River in Jefferson and Orange Counties (the Incident), and of a 30-day period for public comment on the Draft DARP beginning on the date of publication of this notice.

SUMMARY: This notice serves to inform the public that the Trustees have developed a Draft DARP to describe how the Trustees propose to use recovered funds to address natural resources and services that were injured, lost, or destroyed due to the Incident. The Draft DARP also presents the restoration alternatives considered and identifies the preferred restoration alternatives to compensate for the injuries to natural resources and services.

The opportunity for public review and comment on the Draft DARP announced in this notice is pursuant to Section 1006 of the Oil Pollution Act (OPA) (33 U.S.C. §2706) and 31 TAC §20.44.

ADDRESSES: Interested members of the public may request a copy of the Draft DARP by contacting Allison Fischer at the GLO, Coastal Resources Division, P.O. Box 12873, Austin, Texas 78711-2873; by phone at (512) 463-5271; or by email at [allison.fischer@glo.texas.gov](mailto:allison.fischer@glo.texas.gov).

DATES: Comments must be submitted in writing within 30 days of the publication date of this notice to Allison Fischer of the GLO at the address listed in the previous paragraph. The Trustees will consider all written comments received during the comment period prior to finalizing the Draft DARP.

SUPPLEMENTARY INFORMATION: On August 2, 2004, the anchored ship *Torm Mary* discharged approximately 600 barrels of Intermediate Fuel Oil 380 after being struck by a barge. Fuel oil discharged into navigable waters of the Neches River, Gray's Bayou, the Bessie Heights Marsh, and numerous small sloughs that terminate in the Neches River in Jefferson and Orange Counties. Impacts included oiling of marsh vegetation, rip rap, and sediments along the Neches River, Gray's Bayou, and Bessie Heights Canals. Shoreline oiling

was also observed along the southwestern edge of the Bessie Heights Marsh. Recreational access to the lower Neches River was restricted due to clean-up operations, and the Port Neches Riverfront Park boat ramp was closed to the public for use in clean-up operations.

The GLO, TCEQ, and TPWD are designated as Trustees for natural resources under OPA (33 U.S.C. §2706) and the National Contingency Plan (40 CFR §300.605). The Trustees are authorized to act on behalf of the public under state and federal laws to assess and recover natural resources and resource services injured or lost as the result of a discharge or substantial threat of discharge of oil. The Trustees determined that the discharge of fuel oil, in conjunction with response actions, resulted in ecological injuries and recreational service losses of the navigable waters of the Neches River and the Bessie Heights Marsh.

The Trustees and A/S Dampskibsselskabet TORM (the Responsible Party) performed an expedited natural resources damage assessment. The Trustees and the Responsible Party entered into a Settlement Agreement in 2007 under which the Responsible Party reimbursed Trustee assessment costs and provided \$121,435.00 to the Trustees to compensate the public for injuries.

Per the Settlement Agreement, the Trustees anticipate using \$6,435.00 to construct a minimum of 0.1 acres of salt marsh and the remaining \$115,000.00 to construct a recreational use project in the vicinity of the Incident. The Trustees anticipate using any interest accrued on the settlement funds for restoration implementation.

In accordance with the OPA Natural Resource Damage Assessment regulations (15 CFR Part 990), the Trustees evaluated a reasonable range of restoration alternatives to compensate for injuries to natural resources and ecological services and for lost recreational opportunities. The Trustees identified the Bessie Heights Marsh Restoration project as the preferred restoration alternative to compensate the public for ecological injuries and the Port Neches Riverfront Park Boat Ramp and Park Improvements project to compensate the public for recreational use losses.

The Draft DARP provides information on the restoration alternatives considered and describes the methods used to select the preferred restoration actions that would be implemented to restore, replace, or acquire the resources or services equivalent to those lost.

For further information, contact Allison Fischer at (512) 463-5271, or by email at [allison.fischer@glo.texas.gov](mailto:allison.fischer@glo.texas.gov).

TRD-202101541

Mark A. Havens

Chief Clerk

General Land Office

Filed: April 14, 2021



## Texas Health and Human Services Commission

### Correction of Error

The Health and Human Services Commission (HHSC) proposed new 26 TAC §564.28 in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9108). The new rule was adopted in the April 9, 2021 issue of the *Texas Register* (46 TexReg 2435).

Due to an error by HHSC, the rule was published in the incorrect subchapter. The rule should be included in Subchapter C, relating to Operational Requirements.

TRD-202101530

Mack Harrison  
Attorney  
Texas Health and Human Services Commission  
Filed: April 13, 2021



## Notice of Public Hearing on Proposed Medicaid Payment Rates for the Special Review of Medical Transportation Program

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 4, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Transportation Program (MTP).

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for MTP to be held on May 4, 2021, 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/9158923477462333451>

After registering, you will receive a confirmation email containing information about joining the webinar.

**Proposal.** The payment rates for MTP are proposed to be effective June 1, 2021.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

Section 355.8441, which addresses reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP); and

Section 355.8561, which addresses the reimbursement methodology for medical transportation.

**Rate Hearing Packet.** A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after April 23, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [PFDAcuteCare@hhsc.state.tx.us](mailto:PFDAcuteCare@hhsc.state.tx.us).

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to [PFDAcuteCare@hhsc.state.tx.us](mailto:PFDAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

**Preferred Communication.** During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For 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 participate in 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-202101534  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 13, 2021



## Public Notice: EVV Appendix K Winter Storm Uri

Due to a statewide emergency resulting from Winter Storm Uri, the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare and Medicaid Services (CMS) to amend the waiver application for the following waivers through an Appendix K:

Deaf Blind with Multiple Disabilities (DBMD);

Youth Empowerment Services (YES);

Texas Home Living (TxHmL);

Home and Community-based Services (HCS); and

Medically Dependent Children Program (MDCP).

HHSC administers the above waiver programs under the authority of §1915(c) of the Social Security Act. The proposed effective date for the amendment is February 10, 2021, with an end date of February 24, 2021.

The DBMD, YES, TxHmL, HCS, and MDCP waivers require that a claim for an EVV-required service ("EVV claim") be denied if critical data elements on the EVV claim don't match the EVV visit transaction. HHSC is requesting a waiver of this requirement so that the claims matching process will be temporarily suspended, allowing HHSC or the managed care organization in the MDCP waiver to pay an EVV claim for a date of service during the period of February 10, 2021 to February 24, 2021 that doesn't match the EVV visit transaction. The claims matching process compares an EVV visit transaction to an EVV claim of a provider or financial management services agency prior to the payment of the claim.

A temporary suspension of the claims matching process would allow providers and financial management services agencies to receive payment while they collect and manually enter EVV visit transactions that could not be entered during the storm. HHSC is not requesting that CMS waive the requirement that providers use the EVV system to document service delivery.

Although the EVV systems remained functional throughout the disaster, massive power and communication network outages prevented some service providers from using the EVV systems to clock in and out in real time, resulting in a backlog of manual entries for program providers, financial management services agencies, and consumer directed services employers.

CMS has determined that public notice requirements normally applicable under 1915(c) do not apply to information contained in an Appendix K. Therefore, states applying for §1915(c) Appendix K amendments are not required to conduct a public notice and input process.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by contacting Luis Solorio by telephone or email.

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Luis Solorio, Waiver Coordinator, Policy Development Support  
P.O. Box 13247  
Mail Code H-600  
Austin, Texas 78711-3247

**Telephone**

(512) 487-3449

**Fax**

Attention: Luis Solorio, Waiver Coordinator, at (512) 206-3975

**Email**

[TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us)

TRD-202101537

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 14, 2021



**Public Notice - Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver**

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The current waiver is approved through September 2030. The proposed effective date for this amendment is October 1, 2021.

Senate Bill 1096, 86th Legislature, Regular Session, 2019 directs HHSC to seek a waiver of comparability to exempt STAR Kids members from all preferred drug list (PDL) prior authorizations (PA) to meet the requirements of Section 533.005, Government Code (a)(23)(L), as added by SB 1096, 86th Texas Legislature.

**Proposed Changes**

Specifically, SB 1096 removes all the Preferred Drug List (PDL) prior authorizations (PAs) for all members of the STAR Kids program except those PAs based on evidence-based clinical criteria and nationally recognized peer-reviewed information, and those PAs designed to minimize waste, fraud, or abuse. This amendment will not result in any changes to the formulary. This amendment will give a member the opportunity to be prescribed any drug whether there is preferred or non-preferred status although a member will not have access to drugs not covered by Medicaid.

HHSC is proposing to waive requirements in 42 CFR §440.240, related to comparability of services for groups, because only members of the STAR Kids program will be allowed this option. 42 CFR §440.240 requires the services available to any categorically needy beneficiary under the plan are not less in amount, duration, and scope than those services available to a medically needy beneficiary; and the services must be available to any individual in the following groups are equal in amount, duration, and scope for all beneficiaries within the group: (1) The categorically needy and (2) A covered medically needy group.

**Financial Analysis**

Preferred drugs are medications recommended by the Texas Drug Utilization Review Board for their efficaciousness, clinical significance, cost effectiveness, and safety. The primary impact due to this change

results in a loss of federal and supplemental rebate revenues absent a PDL for these members. However, budget neutrality (BN) does not consider rebate revenues so this aspect of the policy change has no impact to BN. The only potential impact to budget neutrality would be due to shift in utilization of prescribed drugs; that impact is unable to be estimated.

**Evaluation Design**

Per Standard Term and Condition 82 of the Ten-Year THTQIP Demonstration Extension, HHSC must submit a draft Evaluation Design to CMS by July 14, 2021 (180 calendar days after the approval of the demonstration). At time of writing, HHSC was still formulating evaluation design questions and hypotheses for the Ten-Year THTQIP Demonstration Extension. As a result, the impact of the STAR Kids PDL PA exemption on the forthcoming evaluation design is unknown.

HHSC anticipates the STAR Kids PDL PA exemption may result in increased utilization of prescription drugs. Increased utilization of prescription drugs may impact medication adherence measures, if such measures are included in the evaluation design, as well as With Waiver and Without Waiver costs, which may be used in the evaluation's assessment of Demonstration cost outcomes.

HHSC is not considering specific evaluation questions or hypotheses related to STAR Kids prescription drug use under the Ten-Year THTQIP Demonstration Extension evaluation. However, if evaluation measures are impacted by the STAR Kids PDL PA exemption, and contingent on data availability, HHSC will provide the external evaluator with vendor drug claims for STAR Kids members. This information will allow the external evaluator to identify influences associated with the STAR Kids PDL PA exemption and, if necessary, adjust analytic methods to account for impacts where possible.

**Enrollment, Cost Sharing and Service Delivery**

There is no anticipated impact on enrollment, and there will not be beneficiary cost sharing for this benefit. This benefit would fall outside the current objectives and goals of the approved demonstration but will increase access to non-preferred prescribed drugs. This amendment will allow a STAR Kids member to access any drug on the Medicaid formulary without requiring the prescriber to obtain a PDL PA except those PAs based on evidence-based clinical criteria and nationally recognized peer-reviewed information, and those PAs designed to minimize waste, fraud, or abuse.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments by May 24, 2021, regarding this amendment by contacting Luis Solorio by U.S. mail, telephone, fax, or email. The addresses are as follows:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Luis Solorio, Waiver Coordinator, Policy Development Support  
P.O. Box 13247  
Mail Code H-600  
Austin, Texas 78711-3247

**Email**

[TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us)

**Telephone**

(512) 487-3449

**Fax**

(512) 206-3975

TRD-202101540

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 14, 2021

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**Texas Department of Housing and Community Affairs**

Aviso de Audiencia Pública sobre el Anteproyecto de la Solicitud y los Planes Estatales para el Año Fiscal Federal 2022-2023 del Community Services Block Grant (CSBG) y para el Año Fiscal Federal 2022 del Low Income Home Energy Assistance Program (LIHEAP)

Conforme con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para el programa federal del Community Services Block Grant (CSBG, por sus siglas en inglés) y el programa federal del Low Income Home Energy Assistance Program (LIHEAP, por sus siglas en inglés) y el Capítulo 2105, Subcapítulo B del Código del Gobierno de Texas, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en inglés) conducirá varias audiencias públicas. El propósito principal de estas audiencias es para solicitar comentario público sobre los anteproyectos de la Solicitud y el Plan Estatal para los Años Fiscal Federal (FFY, por sus siglas en inglés) 2022-2023 del CSBG (Anteproyecto del Plan Estatal CSBG) y del anteproyecto de la Solicitud y el Plan Estatal LIHEAP para el FFY 2022 (Anteproyecto del Plan Estatal LIHEAP).

El Anteproyecto del Plan Estatal CSBG detalla el propuesto uso y distribución de los fondos federales CSBG para los años fiscales federales (FFY) 2022-2023. Según requiere la ley federal, no más del 90% de los fondos serán distribuidos a las agencias elegibles que reciben fondos de CSBG y no más del 5% se utilizará para la administración estatal del programa, incluyendo actividades para la planificación, seguimiento del progreso o cumplimiento y para proveer entrenamiento y asistencia técnica. El restante 5% se utilizará para proyectos e iniciativas especiales y de demostración de CSBG y para proveer asistencia en casos de desastres naturales or artificiales.

El Anteproyecto del Plan Estatal LIHEAP detalla el propuesto uso y distribución de los fondos federales LIHEAP para el FFY 2022. El programa de LIHEAP provee fondos para los programas de Comprehensive Energy Assistance Program (CEAP, por sus siglas en inglés) y el Weatherization Assistance Program (WAP, por sus siglas en inglés).

Los Anteproyectos de los Planes Estatales de CSBG y de LIHEAP fueron presentados y aprobados por la junta directiva del TDHCA el 8 de abril del 2021. Como seguimiento a la provision de información pública, asesoramiento y los requisitos de las audiencias públicas para las programas CSBG y LIHEAP, la División de Asuntos Comunitarios del TDHCA publicará los anteproyectos de los planes estatales federal en el sitio web del TDHCA Public Comment Center en <http://www.tdhca.state.tx.us/public-comment.htm>.

Los documentos se pueden obtener comunicandose al TDHCA, P.O. Box 13941, Austin, Texas 78711-3941 o por teléfono al (512) 475-3905.

Debido a la declaración de desastre del 13 de marzo de 2020 por parte de la Oficina del Gobernador y las subsiguientes exenciones de partes del Capítulo 2105, Subcapítulo B del Código del Gobierno de Texas, una audiencia pública para el Anteproyecto del CSBG y el

Anteproyecto de los Planes Estatales LIHEAP será accesible al público a través de la información del seminario web a continuación. Para participar en una comunicación bidireccional durante la audiencia, las personas primero deben registrarse (sin costo) para asistir al seminario web a través del enlace proporcionado. Cualquiera que llame a la audiencia sin registrarse en línea no podrá hacer comentarios, pero la audiencia seguirá siendo audible.

Las audiencias públicas sobre los Anteproyectos de los Planes Estatales de CSBG y de LIHEAP se ha programado de la manera siguiente:

miércoles, 12 de mayo, 2021, 2:00-3:00 p.m.

- Via GoToWebinar

- Para Registrar: <https://attendee.gotowebinar.com/register/7383217695375202320>

- Tambien se puede llamar por teléfono.

-- United States: +1 (562) 247-8422, código de acceso: 267-578-547 (Personas que quieren hablar durante la audiencia, tienen que registrarse.)

jueves, 13 de mayo, 2021, 6:00-7:00 p.m.

- Via GoToWebinar

- Para Registrar: <https://attendee.gotowebinar.com/register/1364361302557537552>

- Tambien se puede llamar por teléfono.

--United States: +1 (415) 655-0052, código de acceso: 990-433-162 (Personas que quieren hablar durante la audiencia, tienen que registrarse.)

Después de registrarse, recibirá un correo electrónico de confirmación con información sobre cómo unirse al seminario web de audiencia pública.

Durante las audiencias los Anteproyectos de los Planes Estatales CSBG y LIHEAP seran presentados para solicitar comentario público. Personas interesadas pueden proveer comentario public sobre los Anteproyectos del Plan Estatal CSBG y/o LIHEAP en forma escrita o testimonio oral. Un representante del TDHCA explicará el proceso de planificación y recibir comentario público de personas y grupos interesadas respecto a los anteproyectos de los planes estatales.

El período de comentario público para aceptar comentarios sobre los anteproyectos de los planes estatales comienza el viernes, 23 de abril del 2021 hasta el lunes, 24 de mayo del 2021 a las 5:00 de la tarde hora local. Comentarios escritos sobre los anteproyectos de los planes estatales tambien pueden ser presentados por correo al Texas Department of Housing and Community Affairs, Atención: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941 o pueden enviarse a través de correo electrónico a [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us) o por fax al (512) 475-3935. Comentario público no será aceptado luego de las 5:00 de la tarde hora local el 24 de mayo del 2021. Si tiene preguntas sobre este proceso, comuníquese con Gavin Reid, al (512) 936-7828 o envíe un correo electrónico a: [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us).

Personas que necesiten equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la ley sobre la Ley de los Estados Unidos de Personas con Discapacidades (ADA, por sus siglas en inglés), al (512) 475-3905 o al Relay Texas al 1-800-662-4954 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza al siguiente número (512) 475-3905 o enviarle



un correo electrónico a [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202101524  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 13, 2021



### Notice of Public Comment Period and Public Hearings on the Draft 2022-2023 Community Services Block Grant State Plan and Draft 2022 Low Income Home Energy Assistance Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 32-day public comment period for the draft 2022-2023 Community Services Block Grant (CSBG) State Plan and the draft 2022 Low Income Home Energy Assistance Program (LIHEAP) State Plan. The public comment period begins Friday, April 23, 2021, and ends Monday, May 24, 2021, at 5 p.m. Austin local time.

The CSBG Draft Plan describes the proposed use and distribution of CSBG funds for 2022 and 2023. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to the State's CSBG eligible entities and not more than five percent will be used for state administration, including support for planning, for monitoring, and for the provision of training and technical assistance. The remaining five percent will be utilized to fund state discretionary activities and for disaster assistance recovery.

The LIHEAP Draft Plan describes the proposed use and distribution of LIHEAP funds for 2022. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the LIHEAP Weatherization Assistance Program (WAP).

The CSBG Draft Plan and the LIHEAP Draft Plan were presented and approved by the TDHCA Board of Directors on April 8, 2021. As part of the public information, consultation, and public hearing requirements for CSBG and LIHEAP, the Community Affairs Division of TDHCA has posted the proposed plans on the TDHCA website.

Please visit the TDHCA Public Comment Center at: <http://www.tdhca.state.tx.us/public-comment.htm> to access the draft 2022-2023 CSBG State Plan and the draft 2022 LIHEAP State Plan.

Written comments concerning the Draft Plans may be submitted to TDHCA, Attn: Gavin Reid, P.O. Box 13941, Austin, TX 78711-3941, or by email to [gavin.reid@tdhca.state.tx.us](mailto:gavin.reid@tdhca.state.tx.us), but must be received by Monday, May 24, 2021, at 5 p.m. Austin local time.

In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551, public hearings for the Draft CSBG and Draft LIHEAP State Plans will be accessible to the public via webinar information below. In order to engage in two-way communication during the hearings, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the hearings without registering online will not be able to provide comment, but the hearings will still be audible.

Public hearings for the CSBG Draft Plan and the LIHEAP Draft Plan will be held virtually as follows:

--Wednesday, May 12, 2021, from 2:00 p.m.-3:00 p.m.

--Via GoToWebinar

--To Register: <https://attendee.gotowebinar.com/register/7383217695375202320>

--You can also dial in using your phone. United States: +1 (562) 247-8422, Access Code: 267-578-547

(Persons using the dial in number and access code without registering online will only be able to hear the hearing and will not be able to provide comment)

--Thursday, May 13, 2021, from 6:00 p.m.-7:00 p.m.

--Via GoToWebinar

--To Register: <https://attendee.gotowebinar.com/register/1364361302557537552>

--You can also dial in using your phone. United States: +1 (415) 655-0052, Access Code: 990-433-162

(Persons using the dial in number and access code without registering online will only be able to hear the hearing and will not be able to provide comment)

After registering, you will receive a confirmation email containing information about joining the Public Hearing Webinar.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the 2022-2023 CSBG and 2022 LIHEAP Plans.

Individuals who require auxiliary aids, services or sign language interpreters for these hearings should contact Rita Gonzales-Garza at (512) 475-3905, at least five days before the hearing so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for these hearings should contact Rita Gonzales-Garza, (512) 475-3905, at least five days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza, al siguiente número (512) 475-3905 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

If you have any questions, please contact Rita Gonzales-Garza via email at [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

TRD-202101523  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 13, 2021



### Notice of Public Hearing and Public Comment Period on the Draft 2021 State of Texas Consolidated Plan: One-Year Action Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold one public hearing during a 31-day Public Comment period to accept public comment on the draft 2021 State of Texas Consolidated Plan: One-Year Action Plan (the Plan). The Public Comment period for the draft Plan will be held Monday, April 26, 2021 - Wednesday, May 26, 2021.

The one public hearing for the 2021 One-Year Action Plan is scheduled to take place as follows:

Wednesday, May 5, 2021 - 2:00 p.m.

Via GoToWebinar

<https://attendee.gotowebinar.com/register/3293607285601450768>

Dial-in number: +1 (213) 929-4212, access code 110-094-260 (persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments)

TDHCA, Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the Draft 2021 State of Texas Consolidated Plan: One-Year Action Plan (the Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Solutions Grants (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2021. The Program Year begins on September 1, 2021, and ends on August 31, 2022. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2020-2024 State of Texas Consolidated Plan.

The Plan may be accessed from TDHCA's Public Comment Web page at: <http://www.tdhca.state.tx.us/public-comment.htm>. The public comment period for the Plan will be open from Monday, April 26, 2021, through Wednesday, May 26, 2021. Anyone may submit comments on the Plan in written form or oral testimony at the May 5, 2021, public hearing. In addition, written comments concerning the Plan may be submitted in the following ways:

1. by mail to: The Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941,
2. by email to: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or
3. by fax to (512) 475-0070

Comments may be submitted at any time during the comment period. Comments must be received no later than Wednesday, May 26, 2021, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Elizabeth Yevich, at (512) 463-7961 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at [elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us) at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a [elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202101522

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 13, 2021

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**Panhandle Regional Planning Commission**

Region A Panhandle Water Planning Group - Notice of Request for Qualifications - 2026 Regional Water Plan

The Region A Panhandle Water Planning Group acting through the Panhandle Regional Planning Commission (PRPC), is seeking proposals to provide professional services to assist in the sixth cycle of regional water planning and development of the 2026 Regional Water Plan for the Panhandle Water Planning Area (Region A). The successful firm(s) will demonstrate knowledge of large-scale water planning in general, the specific requirements of water planning as defined by 31 TAC Chapters 355, 357, and 358. Firm(s) with experience in the general geographic area and conditions of the Region A Planning Area are preferred.

Statement of Qualifications - The Region A Panhandle Water Planning Group (PWPG), through the PRPC, is seeking to contract with a competent firm(s) or individual(s), with the necessary credentials and qualifications, that has specific experience and knowledge in providing technical services including research, analysis, and documentation in the field of large-scale water planning. Please provide with your statement of qualifications including the approach to executing the work associated with this project, a list of at least five (5) projects with a similar scope of work, resumes for team members associated with the project should you receive the contract award, and a list of proposed sub-consultants or team members who are or may be involved in your proposal.

Scope of Services - Regional Water Plan Development

Consultant will provide all required planning services in accordance with the developed Scope of Work for the Regional Water Plan except those services that have been specifically exempted. The Scope of Work may be viewed here:

[https://www.twdb.texas.gov/waterplanning/rwp/planning-docu/2026/rfa\\_docs.asp](https://www.twdb.texas.gov/waterplanning/rwp/planning-docu/2026/rfa_docs.asp)

Consultant will provide the required coordination necessary in the development of the Regional Water Plan.

Consultant will integrate and coordinate any work performed by local entities into the Regional Water Plan.

Consultant will provide, at a minimum, monthly reporting to the Panhandle Water Planning Group on the progress of the regional water planning effort.

Consultant will develop and present a draft Regional Water Plan to present to the Panhandle Water Planning Group.

Consultant will assist with the adoption of the Panhandle Regional Water Plan.

Consultant will ensure the Regional Water Plan adheres to the guidance principles and requirements as defined by 31 TAC Chapters 355, 357, and 358.

Consultant will attend advisory meetings as necessary regarding tasks being performed separate from the Consultant's contract.

Submission

Proposals will only be accepted from firms or individuals having requested an RFQ package. RFQ Packages are available by written request from the PRPC, contact information below. Faxed ((806) 373-3268) or emailed ([dmeyer@theprpc.org](mailto:dmeyer@theprpc.org)) requests will be accepted; however, the requesting entity must verify receipt. All inquiries and requests must be directed to the attention of Dustin Meyer ((806) 372-3381).

The deadline for responses to this request is 5:00 p.m., Thursday, May 20, 2021.

One (1) electronic copy in PDF format and five (5) hardcopies, which shall include four (4) bound copies and one (1) unbound copy by U.S. mail or FedEx/UPS of each submittal shall be mailed or delivered to:

Panhandle Regional Planning Commission

Attn: Dustin Meyer

P.O. Box 9257

Amarillo, Texas 79105

Physical Address: 415 SW 8th Ave., Amarillo, Texas 79101

*Proposals received after the stated deadline will not be considered.*

The Panhandle Water Planning Group reserves the right to negotiate with any and all individuals and firms that submit proposals and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFQ are subject to approval by the Texas Water Development Board and are contingent upon receiving funding from the Texas Water Development Board for the approved tasks.

TRD-202101519

Dustin Meyer

Local Government Services Director

Panhandle Regional Planning Commission

Filed: April 12, 2021

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**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transactions

**Acquisition of Land - Somervell County**

**Approximately 106 Acres at Dinosaur Valley State Park**

In a meeting on May 27, 2021, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 106 acres for the addition to Dinosaur Valley State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to [trey.vick@tpwd.texas.gov](mailto:trey.vick@tpwd.texas.gov), or via the department's web site at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information.

**Grant of Utility Easement - Galveston County**

**Approximately 0.1 Acre at Galveston Island State Park**

In a meeting on May 27, 2021, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a utility easement of approximately 0.1 acre at Galveston Island State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to [jason.estrella@tpwd.texas.gov](mailto:jason.estrella@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Please be aware that public participation options may change due to the COVID-19 pan-

demie. Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information.

**Grant of Interagency Easement - Jefferson County**

**Approximately 21 Acres at the J.D. Murphree Wildlife Management Area**

In a meeting on May 27, 2021, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an easement for water control infrastructure of approximately 21 acres at the J.D. Murphree Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to [jason.estrella@tpwd.texas.gov](mailto:jason.estrella@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information.

**Grant of Pipeline Easement - Orange County**

**Approximately 5 Acres at the Lower Neches Wildlife Management Area**

In a meeting on May 27, 2021, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a pipeline easement of approximately 5 acres at the Lower Neches Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to [ted.hollingsworth@tpwd.texas.gov](mailto:ted.hollingsworth@tpwd.texas.gov), or via the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov). Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at [tpwd.texas.gov](http://tpwd.texas.gov) for the latest information.

TRD-202101535

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: April 13, 2021

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**Texas Water Development Board**

Notice of Public Hearing and Public Comment Period

Notice for Public Hearing and Public Comment Period for the Draft 2022 State Water Plan and intent to adopt the 2022 State Water Plan

The Texas Water Development Board (Board) will conduct a public hearing beginning at 1:00 p.m. on May 24, 2021, in room 170 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas and via GoToWebinar at <https://attendee.gotowebinar.com/register/597586040445666574>.

The public hearing is to receive public comments on the *Draft* 2022 State Water Plan in accordance with Texas Water Code §16.051 and 31 Texas Administrative Code §358.4(a). Relevant and material comments concerning the *Draft* 2022 State Water Plan will be accepted in person and through virtual attendance of the public hearing. If you would like to provide a public comment, please fill out the online reg-

istration form at <http://www.twdb.texas.gov/board/visitor.asp> and send it to [melinda.smith@twdb.texas.gov](mailto:melinda.smith@twdb.texas.gov) by 12:00 p.m. on May 24, 2021.

In addition, persons may provide written comments on or before 5:00 p.m. May 26, 2021, to Melinda Smith, Water Supply Planning Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or by e-mail to [PUBLIC-COMMENT@twdb.texas.gov](mailto:PUBLIC-COMMENT@twdb.texas.gov). A copy of the *Draft 2022 State Water Plan* is available on the Board's website at <http://www.twdb.texas.gov/waterplanning/swp/2022/index.asp>.

After consideration of comments submitted in accordance with this notice, the Board will consider adopting the 2022 State Water Plan at a regularly noticed and scheduled Texas Water Development Board meeting tentatively scheduled to be held in July, 2021.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons

who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Cheryl Arredondo at (512) 463-7686 or at [Cheryl.Arredondo@twdb.texas.gov](mailto:Cheryl.Arredondo@twdb.texas.gov) two (2) work days prior to the meeting so that appropriate arrangements can be made.

TRD-202101484

Ashley Harden

General Counsel

Texas Water Development Board

Filed: April 8, 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 46 (2021) is cited as follows: 46 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 "46 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 46 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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