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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.805

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.805, concerning State Medicaid Managed Care Advisory Committee.

BACKGROUND AND PURPOSE

The purpose of the proposal is to extend the State Medicaid Managed Care Advisory Committee (SMMCAC) and align the rule with HHSC advisory committee rule standards. Under the general authority of the Executive Commissioner, the SMMCAC was re-established in 2016 to consider managed care issues and make recommendations to HHSC. The SMMCAC is currently set to abolish on December 31, 2024. The proposed rule amendment changes the SMMCAC abolish date from December 31, 2024, to December 31, 2028, which will allow SMMCAC to continue providing recommendations and ongoing input to HHSC on the statewide operation of Medicaid managed care programs for an additional four years. Additionally, the rule amendment restructures membership subcategories to increase representation for youth and adult populations and adds a new membership subcategory for persons transitioning from children to adult Medicaid managed care programs. The rule amendment will align §351.805 with agency standards for advisory committees by including a subsection on how eligible SMMCAC members may be reimbursed for travel.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.805: (1) updates language and structure for better readability and understanding; (2) clarifies what tasks the SMMCAC performs; (3) clarifies the frequency of SMMCAC meetings; (4) clarifies how many members constitute a quorum; (5) restructures the membership subcategories for persons enrolled in Medicaid managed care and adds a new membership subcategory for youth transitioning from children to adult Medicaid managed care programs; (6) expands the membership subcategory for persons dually eligible for both Medicare and Medicaid to allow persons of any age to be represented; (7) restructures the membership subcategory for providers contracted with a Medicaid managed care organization and clarifies requirements for the membership subcategory of a community-based organization; (8) clarifies the membership subcategory for managed care organizations that are national and community-based; (9) adds requirements that the SMMCAC members complete training on the HHS Ethics Policy, the Advisory Committee Member Code of Conduct; and other relevant HHSC policies; (10) adds a subsection to describe when HHSC may reimburse a SMMCAC member for travel; (11) extends the SMMCAC abolishment date from December 31, 2024, to December 31, 2028; and (12) updates the numbering of the subsections and paragraphs accordingly.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, Chief Medicaid and CHIP Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved public and stakeholder engagement with the agency as a result of SMMCAC (1) serving as a central source for stakeholder input on Medicaid managed care programs, policies, and concerns; (2) reviewing issues related to the implementation and operation of Medicaid managed care; and (3) making recommendations to HHSC on Medicaid managed care program improvements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule amendment relates only to advisory committee expiration and adding language to align the rule with HHSC advisory committee rule standards. There is no cost of compliance as the amendment does not create any substantive changes for the SMMCAC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Medicaid and CHIP Services Office of Policy, P.O. Box 13247, Mail Code H600, Austin, Texas 78711, or street address 701 W. 51st Street, Austin, Texas 78751; or by e-mail to OPP_SMMCAC@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R043" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule.

The amendment affects Texas Government Codes §531.0055 and §531.012.

§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established under [~~in accordance with~~] Texas Government Code §531.012 and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose.

[~~(1)~~] The SMMCAC advises the Texas Health and Human Services Commission (HHSC) executive commissioner [~~Executive Commissioner~~] and the health and human services system (HHS) [~~the Texas Health and Human Services Commission (HHSC)~~] on the statewide operation of Medicaid managed care, including:

(1) program design and benefits; [~~benefits,~~]

(2) systemic concerns from consumers and providers; [~~providers,~~]

(3) efficiency and quality of services; [~~services,~~]

(4) contract requirements; [~~requirements,~~]

(5) provider network adequacy; [~~adequacy,~~]

(6) trends in claims processing; [~~processing,~~] and

(7) other issues as requested by the HHSC executive commissioner. [~~Executive Commissioner.~~]

[~~(2) The SMMCAC assists HHSC with Medicaid managed care issues.~~]

[~~(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.~~]

(c) Tasks. The SMMCAC performs the following tasks: [~~The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.~~]

(1) makes recommendations to HHSC;

(2) advises HHSC on Medicaid managed care issues;

(3) disseminates Medicaid managed care best practice information as appropriate;

(4) adopts bylaws to guide the operation of the SMMCAC; and

(5) performs other tasks consistent with its purpose.

(d) Reporting requirements.

(1) Report to the HHSC executive commissioner. [~~Executive Commissioner.~~] No later than [~~By~~] December 31st of each year, the SMMCAC files an annual [~~a~~] written report with the HHSC executive commissioner [~~Executive Commissioner~~] covering the meetings and activities in the immediately preceding fiscal year. The report includes: [~~:~~]

(A) a list of [~~lists~~] the meeting dates;

(B) [~~provides~~] the members' attendance records;

(C) a brief description of actions taken by the SMMCAC [~~briefly describes actions taken by the committee~~];

(D) a description of how the SMMCAC [~~describes how the committee has~~] accomplished its tasks;

(E) a summary of [~~summarizes~~] the status of any recommendations that the SMMCAC made to HHSC;

(F) a description of activities the SMMCAC [~~describes activities the committee~~] anticipates undertaking in the next fiscal year;

(G) [~~describes~~] recommended amendments to this section; and

(H) [~~describes~~] the costs related to the SMMCAC, [~~committee,~~] including the cost of HHSC staff time spent supporting the SMMCAC's [~~committee's~~] activities and the source of funds used to support the SMMCAC's [~~committee's~~] activities.

(2) Report to the Texas Legislature. By December 31st of each even-numbered year, the SMMCAC files a written report with the Texas Legislature of any policy recommendations made to the HHSC executive commissioner. [Executive Commissioner.]

(e) Meetings.

(1) Open meetings. The SMMCAC complies with the requirements [requirement] for open meetings under Texas Government Code Chapter 551 [551.] as if it were a governmental body.

(2) Frequency. The SMMCAC will meet quarterly.

(3) Quorum. Thirteen members constitute a quorum.

(f) Membership.

(1) The SMMCAC is composed of no more than 24 members appointed by the HHSC executive commissioner. [Executive Commissioner. Except as may be necessary to stagger terms, the term of office of each member is three years. A member may apply to serve one additional term.] In selecting members to serve on the SMMCAC, HHSC: [committee, HHSC]

(A) considers the [an] applicant's qualifications, background, and interest in serving; and [serving.]

(B) [HHSC] tries to choose committee members who represent the diversity of all Texans, including ethnicity, gender, and geographic location.

[(1) Members are appointed for staggered terms so that terms of an equal or almost equal number of members expire on August 31st of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.]

[(2) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.]

(2) [(3)] The SMMCAC consists of representatives of the following categories:

(A) ten people who are enrolled in Medicaid managed care or represent a person enrolled in Medicaid managed care and who are appointed from one or more of the following subcategories:

(i) a person who has low-income, a family member of the person, or an advocate representing people with low-income;

(ii) a person [age 21 or older] with an intellectual, a developmental, or a physical disability, including a person with autism spectrum disorder, or a family member of the person, or an advocate representing people with an intellectual, a developmental, or a physical disability, including persons with autism spectrum disorder;

(iii) a person using mental health services, a family member of the person, or an advocate representing people who use mental health services;

(iv) a person using non-emergency medical transportation services, a family member of the person, or an advocate representing persons using non-emergency medical transportation;

(v) a person who is dually enrolled in Medicaid and Medicare, a family member of the person, or an advocate representing persons who are dually enrolled in Medicaid and Medicare;

(vi) [(iii)] a family member of a child who is a Medicaid recipient or an advocate representing children who are Medicaid recipients, except for a child with special health care needs listed in clause (vii) [(iv)] of this subparagraph;

(vii) [(iv)] a family member of a child with special health care needs or an advocate representing children with special health care needs;

[(v) a person who is 65 years of age or older, the person's family member, or an advocate representing persons who are 65 years of age or older;]

(viii) a person who is 18 years of age or older who will transition or has transitioned from a child and adolescent managed care program to an adult managed care program, a guardian of the person, or an advocate representing persons transitioning from a child and adolescent managed care program to an adult managed care program; or

[(vi) a person 21 or older who is dually enrolled in Medicaid and Medicare, a family member of the person, or an advocate representing people 21 or older who are dually enrolled in Medicaid and Medicare;]

[(vii) a person using mental health services, a family member of the person, or an advocate representing people who use mental health services; or]

(ix) a person who is 65 years of age or older, the person's family member, or an advocate representing persons who are 65 years of age or older;

[(viii) a person using non-emergency medical transportation services, a family member of the person, or an advocate representing persons using non-emergency medical transportation;]

(B) ten providers contracted with Texas Medicaid managed care organizations, appointed from one or more of the following subcategories:

(i) rural providers;

(ii) hospitals;

(iii) primary care providers;

(iv) pediatric health care providers;

(v) dentists;

[(vi) community-based organizations either:]

[(I) serving children enrolled in Medicaid who are low-income and their families;]

[(II) serving people age 65 or older and people with disabilities; or]

[(III) engaged in perinatal services and outreach;]

(vi) [(vii)] obstetrical care providers;

(vii) [(viii)] providers serving people dually enrolled in Medicaid and Medicare;

(viii) [(ix)] providers serving people who are 21 years of age or older and have a disability;

(ix) [(x)] non-physician mental health providers; [or]

(x) [(xi)] long-term services and supports providers, including nursing facility providers and direct service workers; or [and]

(xi) an organization, association, corporation that is representative of and located in, or in close proximity to, a community where it serves or conducts outreach for:

(I) people enrolled in Medicaid;

(II) children from families that are low-income;

(III) children with special health care needs;

(IV) people with disabilities;

(V) people 65 years of age or older; or

(VI) people needing perinatal care; and

(C) four managed care organizations participating in Texas Medicaid, including:

(i) [both] national plans; [and]

(ii) community-based plans; and

(iii) [(ii)] dental maintenance organizations (for the purpose of this section).

(3) HHSC appoints members for staggered terms so that terms of an equal or almost equal number of members expire on August 31st of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the HHSC executive commissioner will appoint a person to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is three years. A member may apply to serve one additional term.

(g) Officers. The SMMCAC selects a chair and vice chair of the committee from among its members.

(1) The chair serves until December 1st of each even-numbered year. The vice chair serves until December 1st of each odd-numbered year.

(2) A member may serve up to [serves no more than] two consecutive terms as chair or vice chair. [A chair or vice chair may not serve beyond their membership term.]

(h) Required Training. Each member must complete training, which will be provided by HHSC, [all training HHSC will provide] on relevant statutes and rules, including:

(1) this section;

(2) §351.801 of this division; [subchapter;]

(3) Texas Government Code §531.012; [and]

(4) Texas Government Code Chapters 551, 552, and 2110;[2110.]

(5) the HHS Ethics Policy;

(6) the Advisory Committee Member Code of Conduct; and

(7) other relevant HHS policies.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, HHSC may reimburse a SMMCAC member for his or her travel to and from SMMCAC meetings only if:

(1) funds are appropriated and available; and

(2) the member:

(A) receives Medicaid services or is a family member of a client that receives Medicaid services; and

(B) submits the request for travel reimbursement in accordance with the HHSC Travel Policy.

(j) [(i)] Date of abolition. The SMMCAC is abolished, and this section expires, on December 31, 2028 [December 31st, 2024].

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402978
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-2910

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1 TAC §351.815

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.815, concerning the Policy Council for Children and Families.

BACKGROUND AND PURPOSE

The Policy Council for Children and Families (PCCF) was established by the HHSC Executive Commissioner under the authority of Texas Government Code §531.012. This statute requires the HHSC Executive Commissioner to establish and maintain advisory committees, establish rules for the operation of advisory committees, and for advisory committees to provide recommendations to the HHSC Executive Commissioner and the Texas Legislature.

The PCCF advises the HHSC Executive Commissioner and Health and Human Services system agencies (HHS agencies) to improve the coordination, quality, efficiency, and outcomes of services provided to children and the families of children with disabilities and special health care needs, including mental health needs, through the state's health, education, and human services systems. Members meet approximately four times a year in Austin.

Section 351.815 is set to expire on December 31, 2024, which will abolish the PCCF. The proposed amendment would extend the committee by four years to December 31, 2028, and update existing membership categories for one voting and one ex-officio members. Other edits align the rule with current HHSC advisory committee rulemaking guidelines.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.815 adds "HHSC" in front of "Executive Commissioner" and uses the acronym "PCCF" for the "Policy Council for Children and Families" or "committee." The section is revised to ensure it conforms with HHSC's advisory committee rule template guidelines.

The proposed amendment to subsection (a) adds that the section is subject to §351.801, relating to Authority and General Provisions.

The proposed amendment adds a new paragraph (8) in subsection (c) providing that the PCCF adopts bylaws to guide the operation of the committee.

The proposed amendment updates subsection (d) for clarity.

The proposed amendment adds new paragraphs (2) and (3) in subsection (e), regarding frequency of meetings and quorum, respectively.

The proposed amendment adds language to subsection (f) regarding membership requirements and terms of service, including adding HHSC's Community Services Division as an ex-officio representative and specifying that a previously "at large" voting membership category should be for a person with cross-system experience supporting children and the families of children with a disability.

The proposed amendment adds language to subsection (g) regarding the selection of a chair and vice chair and the terms of the officers.

The proposed amendment edits subsection (h) to update training requirements.

New subsection (i) explains the travel reimbursement policy.

The proposed amendment to subsection (j) extends the date of abolition of the PCCF from December 31, 2024, to December 31, 2028.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state government because there is no change to state procedures or additional costs.

The rule does not have any fiscal implications to local governments because the rule does not apply to any local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed amendment applies only to HHSC.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect the local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be that the PCCF will continue to advise HHS agencies on opportunities to improve services for children with disabilities and their families.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Quality and Program Improvement, Medicaid and CHIP Services, P.O. Box 13247, Mail Code H250, Austin, Texas 78711-3247; or street address 701 West 51st Street, Austin, 78751; or by email to mcsrulespubliccomments@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R037" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012(c)(1), which requires the Executive Commissioner to adopt rules consistent with Texas Government Code Chapter 2110 to govern an advisory committee's report requirements.

The amendment affects Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.815. Policy Council for Children and Families.

(a) Statutory authority. The Policy Council for Children and Families (PCCF) [~~(Policy Council)~~] is established in accordance with Texas Government Code §531.012 and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The PCCF [~~Policy Council~~] works to improve the coordination, quality, efficiency, and outcomes of services provided to children with disabilities and their families through the state's health, education, and human services systems.

(c) Tasks. The PCCF [~~Policy Council~~] performs the following tasks:

(1) studies and makes recommendations to improve coordination between the state's health, education, and human services systems to ensure that children with disabilities and their families have access to high quality services;

(2) studies and makes recommendations to improve long-term services and supports, including community-based supports for children with special health and mental health care needs, as well as children with disabilities and their families receiving protective services from the state;

(3) studies and makes recommendations regarding emerging issues affecting the quality and availability of services available to children with disabilities and their families;

(4) studies and makes recommendations to better align resources with the service needs of children with disabilities and their families;

(5) studies and makes recommendations to ensure that the needs of children with autism spectrum disorder and their families are addressed, and that all available resources are coordinated to meet those needs;

(6) makes recommendations regarding the implementation and improvement of the STAR Kids managed care program; [~~and~~]

(7) performs other tasks consistent with its purpose as requested by the HHSC Executive Commissioner; and [~~.~~]

(8) adopts bylaws to guide the operation of the committee.

(d) Reporting requirements.

(1) Not later than [~~Reporting to Executive Commissioner. By~~] December 31 of each year, the PCCF [~~Policy Council~~] files a written report with the HHSC Executive Commissioner covering [~~that covers~~] the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the PCCF [~~committee~~];

(D) a description of how the PCCF [~~committee~~] accomplished its tasks;

(E) a summary of the status of any PCCF [~~committee~~] recommendations to HHSC;

(F) a description of activities the PCCF [~~committee~~] anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the PCCF [~~committee~~], including the cost of HHSC staff time spent supporting the PCCF's [~~committee's~~] activities and the source of funds used to support the PCCF's [~~committee's~~] activities.

(2) Not later than November 1 of each even-numbered year [~~Reporting to Executive Commissioner and Texas Legislature. By November 1 of each even-numbered year~~], the PCCF [~~Policy Council~~] submits a written report to the HHSC Executive Commissioner and Texas Legislature that:

(A) describes current gaps and barriers to the provision of services to children with disabilities and their families through the state's health and human services system; and

(B) provides recommendations consistent with the PCCF's [~~Policy Council's~~] purposes.

(e) Meetings.

(1) Open Meetings. The PCCF [~~Policy Council~~] complies with the requirements for open meetings under Texas Government Code Chapter 551, as if it were a governmental body.

(2) Frequency. The PCCF will meet at least twice each year.

(3) Quorum. Thirteen members constitutes a quorum.

(f) Membership.

(1) The PCCF [~~Policy Council~~] is composed of 24 members, with 19 voting members and five ex officio members appointed by the HHSC Executive Commissioner. In selecting the voting members, the HHSC Executive Commissioner considers the applicants' qualifications, background, and interest in serving. The membership comprises:

(A) eleven voting members from families with a child under the age of 26 with a disability, including [~~five nonvoting, ex officio members, one from each of the following state programs and agencies or their successors, as selected by the represented agency~~]:

(i) at least one adolescent or young adult under the age of 26 with a disability receiving services from the health and human services system [~~HHSC Medicaid and CHIP Services~~];

(ii) at least one member of a family of a child with mental health care needs; and

(iii) at least one member of a family of a child with autism spectrum disorder;

~~*[(ii)* HHSC Health, Developmental & Independence Services;]~~

~~*[(iii)* Texas Council on Developmental Disabilities;]~~

~~*[(iv)* Texas Department of Family and Protective Services; and]~~

~~*[(v)* Texas Department of State Health Services;]~~

~~[(B) eleven voting members selected by the Executive Commissioner from families with a child under the age of 26 with a disability, including:]~~

~~*[(i)* at least one adolescent or young adult under the age of 26 with a disability receiving services from a health and human services system agency; and]~~

~~*[(ii)* at least one member of a family of a child with mental health care needs; and]~~

~~*[(iii)* at least one member of a family of a child with autism spectrum disorder;]~~

(B) [~~(C)~~] eight professional voting members, [~~selected by the Executive Commissioner,~~] one each to represent the following types of organizations or areas of expertise:

(i) a faith-based organization;

(ii) an organization that is an advocate for children with disabilities;

(iii) a physician providing services to children with complex needs;

(iv) an individual with expertise providing mental health services to children with disabilities;

(v) an organization providing services to children with disabilities and their families;

(vi) an organization providing community services;

(vii) an organization or professional that advocates for or provides services or resources to children and the families of children with autism spectrum disorder; and

(viii) one individual with expertise or experience providing cross-system, holistic support for children and the families of children with disabilities; [~~one at large position for an individual with expertise or experience relevant to the purposes and tasks of the Policy Council.~~]

(C) five non-voting, ex officio members, one from each of the following state programs and agencies or their successors, as nominated by the represented agency, and appointed by the HHSC Executive Commissioner:

(i) HHSC Medicaid and CHIP Services;

(ii) HHSC Community Services Division;

(iii) Texas Council for Developmental Disabilities;

(iv) Texas Department of Family and Protective Services; and

(v) Texas Department of State Health Services.

[~~(2) In selecting members, the Executive Commissioner considers ethnic and minority representation and diverse disability representation.~~]

(2) [~~(3)~~] Members appointed under paragraphs (1)(A) and (1)(B) [~~paragraph (1)(B) and (C)~~] of this subsection serve staggered terms so that the terms of approximately one-quarter of these members' terms expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(3) If a vacancy occurs, the HHSC Executive Commissioner will appoint a person to serve the unexpired portion of that term.

(4) Except as may be necessary to stagger terms, the term of [~~office of~~] each [~~non-agency~~] member [~~, described in paragraph (1)(B) and (C) of this subsection,~~]is four years. A member may apply to serve one additional term. This paragraph does not apply to members serving under paragraph (1)(C).

[~~(5) A member with an expiring term may apply to serve one additional term.~~]

[~~(6) A member with an expiring term may continue to serve on the Policy Council until a new member is appointed.~~]

(g) Officers. The PCCF [~~Policy Council~~] selects a chair and vice chair of the PCCF from among its members [~~from among its members a presiding officer and an assistant presiding officer~~].

(1) The chair and vice chair of the PCCF will serve a term of two years, with the chair serving until December 31 of each odd-numbered year and the vice chair serving until December 31 of each even-numbered year [~~presiding and assistant presiding officers must be appointed family representatives~~].

(2) A member may serve up to two consecutive terms as chair or vice chair [~~The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year~~].

[~~(3) A presiding officer or assistant presiding officer remains in his or her position until the Policy Council selects a successor; however, the individual may not remain in office past the individual's membership term.~~]

(h) Required Training. Each member must [~~shall~~] complete all training on relevant statutes and rules, including this section and §351.801 of this division [~~subchapter~~] (relating to Authority and General Provisions); [~~and~~] Texas Government Code §531.012; [~~, and~~] Texas Government Code Chapters 551, 552, and 2110; the HHS Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. HHSC will provide the training.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, a member of the committee who receives services from HHSC or is a family member of a client may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the HHSC Travel Policy. Other committee members are not reimbursed for travel to and from committee meetings.

(j) [~~(i)~~] Date of abolition. The PCCF [~~Policy Council~~] is abolished, and this section expires [~~,~~] on December 31, 2028 [~~2024~~].

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 438-2910

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CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.421

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.421, concerning Special Disease Management for Health Care MCOs.

BACKGROUND AND PURPOSE

The purpose of proposal is to implement House Bill (H.B.) 2658, 87th Legislature, Regular Session, 2021. H.B. 2658 amended Texas Government Code §533.009(c), to require a Medicaid health care managed care organization (MCO) with low active participation rates in the MCO's special disease management program to identify the reason for the low rates and develop approaches to increase active participation in the program for high-risk recipients.

The proposed amendment to §353.421 includes a new subsection (a) to organize the definition of "special disease management" with the new definitions "active participation" and "high-risk member" into one rule. The proposed definitions identify what these terms mean when used in the section.

The proposed amendment adds a new paragraph (5) in subsection (b) to require a health care MCO to include mechanisms

to identify low active participation rates in the MCO's special disease management program and the reason for the low rates and to increase active participation in the program for high-risk members. This is proposed to implement Texas Government Code Section 533.009(c)(3) added by H.B. 2658.

The proposed amendment, throughout the section and in the rule title, includes editorial changes to use correct formatting, use consistent terminology, and correct the use of acronyms to improve the readability of the section.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from this rule project by having access to more effective and accountable special disease management programs which may positively impact health outcomes for Medicaid recipients enrolled in or eligible for special disease management programs.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because Medicaid health care MCOs already have mechanisms in place to implement the proposed rule amendment.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R048" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §533.009, which requires the Executive Commissioner of HHSC, by rule, to prescribe the minimum standards that a managed care organization must meet in providing special disease management.

The amendment affects Texas Government Code §531.0055, Texas Government Code §533.009, and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§353.421. Special Disease Management for a Health Care Managed Care Organization [~~MCOs~~].

(a) Definitions. The following words and terms, when used in this section have the following meanings, unless the context clearly indicates otherwise.

(1) Active participation--One or more encounters in a calendar year, either face-to-face or by an approved telehealth modality, between the disease management staff of a health care managed care organization (MCO) and a member or the member's representative. In determining active participation, a member who is assessed and provided supports and services that address a chronic disease, but is not participating in the MCO's special disease management program as described in Texas Government Code §533.009 should not be counted as participating in the disease management program.

(2) High-risk member--A member at high-risk for non-adherence to the member's plan of care that addresses the member's disease or other chronic health condition, such as heart disease; chronic kidney disease and its medical complications; respiratory illness, including asthma; diabetes; end-stage renal disease; human immunodeficiency virus infection (HIV), or acquired immunodeficiency syndrome (AIDS). A high risk member has multiple or complex medical or be-

havioral health conditions, or both, with clinical instability undergoing active treatment and at risk of avoidable emergency room visits or hospitalizations.

(3) Special disease management--Coordinated healthcare interventions and communications for populations with conditions in which patient self-care efforts are significant.

[(a) For purposes of this rule, "Special Disease Management" means a program of coordinated healthcare interventions and communications for populations with conditions in which patient self-care efforts are significant.]

(b) A [In order for a] health care MCO must [to receive a contract from HHSC to] provide special disease management services. A [, the] health care MCO must:

(1) implement [Implement] policies and procedures to ensure that a member who requires [members requiring] special disease management services are identified and enrolled into the MCO's special [a] disease management program;

(2) develop [Develop] and maintain screening and evaluation procedures for the early detection, prevention, treatment, or referral of a member [participants] at risk for or diagnosed with chronic conditions such as heart disease;[,] chronic kidney disease and its medical complications;[,] respiratory illness, including asthma;[,] diabetes;[, and] HIV infection; or AIDS;

(3) ensure a member who is enrolled in the MCO's [Ensure that all members identified for] special disease management program has [are enrolled in and have] the opportunity to disenroll from the program [opt out of special disease management services] within 30 days while still maintaining access to all other covered services; [and]

(4) show [Show] evidence of the ability to manage complex diseases in the Medicaid population by demonstrating [. Such evidence shall be demonstrated by] the health care MCO's ability to comply [compliance] with this section; and [subchapter.]

(5) include mechanisms to:

(A) identify:

(i) low active participation rates in the MCO's special disease management program; and

(ii) the reason for the low rates; and

(B) increase active participation in the disease management program for high-risk members.

(c) A special [Special] disease management program [programs] must include:

(1) patient [Patient] self-management education;

(2) patient [Patient] education regarding the role of the provider;

(3) evidence-supported [Evidence-supported] models, standards of care in the medical community, and clinical outcomes;

(4) standardized [Standardized] protocols and participation criteria;

(5) physician-directed [Physician-directed] or physician-supervised care;

(6) implementation [Implementation] of interventions that address the continuum of care;

(7) mechanisms [Mechanisms] to modify or change interventions that have not been proven effective;

(8) mechanisms [Mechanisms] to monitor the impact of the special disease management program over time, including both the clinical and the financial impact;

(9) a [A] system to track and monitor all members enrolled in a special disease management program [participants] for clinical, utilization, and cost measures;

(10) designated [Designated] staff to implement and maintain the program and assist members in accessing program services;

(11) a [A] system that enables providers to request specific special disease management interventions; and

(12) provider [Provider] information, including:

(A) the differences between recommended prevention and treatment and actual care received by a member enrolled in a special disease management program; [participants,]

(B) information concerning the member's [participant's] adherence to a service plan; and

(C) reports on changes in each member's [participant's] health status.

(d) A health care MCO's special [Special] disease management program [programs] must have performance measures for particular diseases. HHSC reviews [will review] the performance measures submitted by a special disease management program for comparability with the relevant performance measures in Texas Government Code §533.009, relating to contracts for disease management programs.

(e) A health care MCO implementing a special disease management program for chronic kidney disease and its medical complications that includes screening for and diagnosis and treatment of this disease and its medical complications, must, for the screening, diagnosis and treatment, use generally recognized clinical practice guidelines and laboratory assessments that identify chronic kidney disease on the basis of impaired kidney function or the presence of kidney damage.

(f) A health care MCO that develops and implements a special disease management program must coordinate participant care with a provider of a disease management program under Texas Human Resources Code §32.057, [Human Resources Code,] during a transition period for patients that move from one disease management program to another program.

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
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SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1311

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to

§353.1311, concerning Quality Metrics for the Texas Incentives for Physicians and Professional Services Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to amend §353.1311 to implement the quality reporting necessary for the pay-for-performance component of §353.1309.

Each directed payment program (DPP) has a quality rule and a financial rule. Effective January 28, 2024, HHSC amended the Texas Incentives for Physicians and Professional Services (TIPPS) financial rule to add a pay-for-performance component to TIPPS beginning with state fiscal year 2026. The proposed changes amend the TIPPS quality rule to implement the quality reporting necessary for the pay-for-performance component of the TIPPS financial rule. The amendment will also align the TIPPS quality rule with the quality rules for other DPPs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.1311 implements the quality reporting necessary for the TIPPS pay-for-performance component in §353.1309. The amendment also makes the language in this TIPPS quality rule more consistent with the language in the Comprehensive Hospital Increase Reimbursement Program quality rule in §353.1307, a directed payment program with a pay-for-performance component.

Subsection (a) of the rule makes nonsubstantive changes to the text of the rule to make the rule language mirror the quality rules for other DPPs.

Subsection (b) of the rule makes nonsubstantive changes to the text of the rule to make the rule language mirror the quality rules for other DPPs.

Subsection (c) of the rule makes nonsubstantive changes to the text of the rule to make the rule language mirror the quality rules for other DPPs, provides that metrics may change from one program period to the next, and provides that quality metrics will be presented to the public for comment.

Subsection (d) of the rule provides that HHSC will specify performance requirements for each quality metric, that achievement of performance requirements will trigger payments, and that quality metrics will be presented to the public for comment.

Subsection (e) of the rule specifies that HHSC will use reported performance of quality metrics to evaluate the degree to which the program advances certain goals and objectives. The proposed amendment renumbers the remaining subsections in §353.1311 accordingly, given the addition of subsection (e).

Subsection (f) of the rule consists of language previously contained in former subsection (d) and makes nonsubstantive changes to the text of the rule to make the rule language mirror the quality rules for other DPPs.

Subsection (g) of the rule consists of language previously contained in former subsection (e), changes the dates by which the proposed metrics and performance requirements will be published, and increases the number of days that interested parties may comment on the proposed metrics.

Subsection (h) of the rule consists of language previously contained in former subsection (f) and changes the date by which the final metrics and performance requirements will be published to give participating physician groups more notice of the final measures and requirements.

Subsection (i) of the rule consists of language previously contained in former subsection (f) and adds language to authorize HHSC to substitute measures for those suggested or published by HHSC if CMS requires the substituted measures.

Subsection (j) renumbers former subsection (g).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be the ability of Medicaid managed care clients to have continued access to care and to incentivize providers to improve the quality of services provided.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to DPPQuality@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R069" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner 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; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Texas Government Code, Chapters 531 and 533, and Texas Human Resources Code, Chapter 32.

§353.1311. Quality Metrics for the Texas Incentives for Physicians and Professional Services Program.

(a) Introduction. This section establishes the quality metrics for [~~that may be used in~~] the Texas Incentives for Physician and Professional Services (TIPPS) program.

(b) Definitions. Terms that are used in this and other sections of this subchapter [~~section~~] may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1309 of this subchapter (relating to the Texas Incentives for Physicians and Professional Services).

(c) Quality metrics. For each program period, HHSC will designate one or more quality metrics for each TIPPS capitation rate component as described in §353.1309(g) of this subchapter. Any quality metric included in TIPPS will be evidence-based and

[~~(1) Each quality metric will be~~] identified as a structure, process, or outcome measure [~~, improvement over self (IOS) measure, or benchmark measure~~]. HHSC may modify quality metrics from one program period to the next. The proposed quality metrics for a program period will be presented to the public for comment in accordance with subsection (g) of this section.

[~~(2) Any metric developed for inclusion in TIPPS will be evidence-based.~~]

(d) Performance [~~Quality metric~~] requirements. For each program period, HHSC will specify the performance requirements [~~that will be~~] associated with [~~the~~] designated quality metrics. The proposed performance requirements for a program period will be presented to the public for comment in accordance with subsection (g) of this section. Achievement of performance requirements will trigger payments as described in §353.1309 of this subchapter [~~metric~~].

(e) Quality metrics and program evaluation. HHSC will use reported performance of quality metrics to evaluate the degree to which the arrangement advances at least one of the goals and objectives that are incentivized by the payments described under §353.1309(g) of this subchapter.

(1) All [~~A physician group must report all~~] quality metrics for [~~in~~] any Component in which a physician group [~~it~~] is participating must be reported by the participating physician group as a condition of participation.

(2) Participating physician groups must stratify any reported data by payor type and must report data according to requirements published under subsection (f) of this section.

(f) Participating physician group reporting frequency.

(1) [~~(2)~~] Participating physician groups will be required to report on quality [~~Reporting frequency. Quality~~] metrics [~~will be reported~~] semi-annually unless otherwise specified by the [~~quality~~] metric.

(2) Participating physician groups will also be required to furnish information and data related to quality metrics [~~measures~~] and performance requirements established in accordance with subsection (g) [~~(e)~~] of this section within 30 calendar days after a request from HHSC for more information.

(g) [~~(e)~~] Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated performance requirements no later than August 10 of the calendar year that precedes [~~January 31 preceding~~] the first month of the program period. The notice must be published either by publication on the HHSC [~~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 within 30 calendar [~~for 15 business~~] days of [~~following~~] publication. There will also be a public hearing within that 30-day [~~15-day~~] period to allow interested persons to present comments on the proposed metrics and performance requirements.

(h) [~~(f)~~] Quality metric publication [~~Publication of Final Metrics and Requirements~~]. Final quality metrics and performance requirements will be provided through the TIPPS quality webpage on the HHSC [~~HHSC's~~] website on or before October 1 [~~February 28~~] of the calendar year that precedes [~~also contains~~] the first month of the program period.

(i) Alternate measures may be substituted for measures proposed under subsection (g) of this section or published under subsection (h) of this section if required by the Centers for Medicare and Medicaid Services for federal approval of the program. If the Centers for Medicare and Medicaid Services requires changes to quality metrics or performance requirements after October 1 [~~February 28 of the calendar year~~], HHSC will provide notice of the changes through the HHSC [~~HHSC's~~] website.

(j) [~~(g)~~] Evaluation Reports.

(1) HHSC will evaluate the success of the program based on a statewide review of reported metrics. HHSC may publish more detailed information about specific performance of various participat-

ing physician groups, classes of physician groups, or service delivery areas.

(2) HHSC will publish interim evaluation findings regarding the degree to which the arrangement advanced the established goal and objectives of each capitation rate component.

(3) HHSC will publish a final evaluation report within 270 days of the conclusion of the program period.

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

Filed with the Office of the Secretary of State on July 3, 2024.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-2910

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CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Subchapter A, concerning Program Purpose and Scope, comprising of §§375.101 - 375.103; Subchapter B, concerning Contractor Requirements for the Refugee Cash Assistance Program (RCA), comprising of §§375.201, 375.203, 375.205, 375.207, 375.209, 375.211, 375.213, 375.215, 375.217, 375.219, 375.221; Subchapter C, concerning Program Administration for the Refugee Cash Assistance Program (RCA), comprising of §§375.301, 375.303, 375.305, 375.307, 375.309, 375.311, 375.313, 375.315, 375.317, 375.319, 375.321, 375.323, 375.325, 375.327, 375.329, 375.331, 375.333, 375.335, 375.337, 375.339, 375.341, 375.343, 375.345, 375.347, 375.349, 375.351, 375.353; Subchapter D, concerning Refugee Cash Assistance Participant Requirements, comprising of §§375.401, 375.403, 375.405, 375.407, 375.409, 375.411, 375.413, 375.415, 375.417, 375.419; Subchapter E, concerning Refugee Medical Assistance, comprising of §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531; Subchapter F, concerning Modified Adjusted Gross Income Methodology, comprising of §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613, 375.615, and an amendment to §375.701 in Subchapter G, concerning Local Resettlement Agency Requirements, in Title 1, Part 15, Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove rules which are no longer necessary and to update a rule that is required by statute. On September 30, 2016, the State of Texas withdrew from the administration of federally funded refugee services and benefits program effective January 31, 2017, following refusal by the federal Office of Refugee Resettlement to unconditionally approve Texas' amended state refugee plan. Texas Government Code §531.0411 requires rules regarding refugee resettlement program; therefore, §375.701 will be retained and updated.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter A, Program Purpose and Scope; Subchapter B, Contractor Requirements for The Refugee Cash Assistance Program (RCA); Subchapter C, Program Administration for the Refugee Cash Assistance Program (RCA); Subchapter D, Refugee Cash Assistance Participant Requirements; Subchapter E, Refugee Medical Assistance; and Subchapter F, Modified Adjusted Gross Income Methodology, deletes the rules because they are no longer necessary as HHSC no longer administers the federally funded refugee services and benefits in Texas.

The proposed amendment to §375.701 deletes subsection (i) which no longer applies. The terms "C.F.R." and "refugee" are defined and minor non-substantive edits are made to correct formatting to align with HHSC rulemaking guidelines.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will repeal existing regulations;

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed amended rule and repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the amended rule and repeals because the amended rule and repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Rob Ries, Deputy Executive Commissioner for Family Health Services has determined that for each year of the first five years the amended rule and repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code and updating a rule to improve clarity of rule requirements.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the amended rule and repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed amended rule and repeals because the amendments do not change any current requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or by email to FHSPublicComments@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R034" in the subject line.

SUBCHAPTER A. PROGRAM PURPOSE AND SCOPE

1 TAC §§375.101 - 375.103

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.101. What is the scope of the chapter?

§375.102. What is the purpose of this chapter?

§375.103. How are the terms in this chapter defined?

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS FOR THE REFUGEE CASH ASSISTANCE PROGRAM (RCA)

1 TAC §§375.201, 375.203, 375.205, 375.207, 375.209, 375.211, 375.213, 375.215, 375.217, 375.219, 375.221

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.201. What is the purpose of this subchapter?

§375.203. Who can apply for a RCA contract?

§375.205. What is the financial responsibility of the contractor's board of directors?

§375.207. Are there accounting requirements the contractor must meet to receive a contract?

§375.209. Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?

§375.211. What are the confidentiality requirements of a contract?

§375.213. Are contractors responsible for having a nepotism policy?

§375.215. Are contractors responsible for having a conflict of interest policy?

§375.217. Are contractors required to comply with the Limited English Proficiency (LEP) provisions of Title VI of the Civil Rights Act?

§375.219. What are the record keeping requirements of the contract?

§375.221. How long are contractors required to keep records?

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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SUBCHAPTER C. PROGRAM ADMINISTRATION FOR THE REFUGEE CASH ASSISTANCE PROGRAM (RCA)

1 TAC §§375.301, 375.303, 375.305, 375.307, 375.309, 375.311, 375.313, 375.315, 375.317, 375.319, 375.321, 375.323, 375.325, 375.327, 375.329, 375.331, 375.333, 375.335, 375.337, 375.339, 375.341, 375.343, 375.345, 375.347, 375.349, 375.351, 375.353

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.301. What is the purpose of this subchapter?

§375.303. Who is eligible for Refugee Cash Assistance (RCA) benefits?

§375.305. What is the income eligibility standard for months one through four of the eight months of eligibility?

§375.307. What is the income eligibility standard for months five through eight of the eight months of eligibility?

§375.309. What income must be disregarded when determining eligibility?

§375.311. Are contractors required to report changes in a participant's income to the Texas Department of Human Services (DHS)?

§375.313. Who determines a refugee's eligibility for Refugee Cash Assistance (RCA) benefits?

§375.315. Are there special provisions when enrolling families with children in Refugee Cash Assistance?

§375.317. How long can a participant receive Refugee Cash Assistance (RCA) benefits?

§375.319. What is the beginning date of the eligibility period for Refugee Cash Assistance (RCA) benefits?

§375.321. How does the contractor determine eligibility for a refugee who has moved from another state to Texas?

§375.323. What happens if a participant has a child after arriving in the U.S.?

§375.325. Can a contractor consider participants as a family unit if they do not live together?

§375.327. If two or more unrelated participants live together, are they considered a family unit?

§375.329. What is the start date for benefits for approved applicants entering the program?

§375.331. What payment levels and types of payments will the contractor use when providing cash assistance?

§375.333. Who is eligible to receive an incentive payment?

§375.335. How is the incentive payment disbursed for a family unit larger than one?

§375.337. What happens if a participant is underpaid?

§375.339. What happens if a participant is overpaid?

§375.341. Are contractors responsible for translating materials for participants?

§375.343. What information and materials must a contractor provide to the participant upon enrollment?

§375.345. What procedures must a contractor follow when authorizing or denying an applicant benefits?

§375.347. When may a contractor reduce, suspend, or terminate benefits?

§375.349. What must a contractor do when reducing, suspending, or terminating benefits?

§375.351. Can a contractor reduce, suspend, or terminate cash assistance if the participant requests a hearing?

§375.353. How must contractors participate in coordination activities with other refugee providers?

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. REFUGEE CASH ASSISTANCE PARTICIPANT REQUIREMENTS

1 TAC §§375.401, 375.403, 375.405, 375.407, 375.409, 375.411, 375.413, 375.415, 375.417, 375.419

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.401. What is the purpose of this subchapter?

§375.403. Are there employment requirements for participants in this program?

§375.405. What are the exemptions for employment participation requirements?

§375.407. What are the temporary good cause exemptions from employment participation requirements?

§375.409. What happens if a non-exempt participant fails to meet employment requirements?

§375.411. What happens to a family unit's benefits if one member of a family unit fails to meet employment requirements?

§375.413. What action does a contractor take if an applicant voluntarily quits employment within 30 days of applying for Refugee Cash Assistance (RCA) benefits?

§375.415. What action does a contractor take if a participant voluntarily quits employment after enrolling in Refugee Cash Assistance (RCA) benefits?

§375.417. If a Refugee Cash Assistance (RCA) contractor denies, terminates, or reduces benefits, how may an applicant or participant appeal the decision?

§375.419. If a participant's benefits are denied, terminated, or reduced because the employment provider has reported that the participant is not meeting the employment requirements of the program, how can a participant appeal the decision?

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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Karen Ray
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SUBCHAPTER E. REFUGEE MEDICAL ASSISTANCE

1 TAC §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.501. What is the purpose of this subchapter?
§375.503. Who is eligible for Refugee Medical Assistance (RMA) benefits?
§375.505. How does a person apply for Refugee Medical Assistance (RMA)?
§375.507. Are Refugee Medical Assistance (RMA) applicants required to apply for Refugee Cash Assistance (RCA)?
§375.509. Are there special considerations when Refugee Cash Assistance (RCA) participants apply for Refugee Medical Assistance (RMA)?
§375.511. Who determines eligibility for Refugee Medical Assistance (RMA)?
§375.513. How is the beginning date of the eight-month period of eligibility for Refugee Medical Assistance (RMA) benefits determined?
§375.515. What are the income and resource considerations for Refugee Medical Assistance (RMA) eligibility?
§375.517. How does having a child after arrival affect Refugee Medical Assistance (RMA) benefits?
§375.519. If two or more unrelated applicants live together, can they be certified as a family unit?
§375.521. Are benefits continued if a participant's income increases due to employment?
§375.523. Is a refugee who has been terminated from Medicaid because of earnings eligible for Refugee Medical Assistance (RMA)?
§375.525. What changes are Refugee Medical Assistance (RMA) participants required to report?
§375.527. What services are provided under Refugee Medical Assistance (RMA)?
§375.529. What happens if the refugee becomes covered by employer-provided insurance?
§375.531. What notices will HHSC provide to Refugee Medical Assistance (RMA) participants?

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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Karen Ray
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SUBCHAPTER F. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613, 375.615

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§375.601. Purpose and Scope.
§375.603. Definitions.
§375.605. Methodology
§375.607. Determination of Household Composition.
§375.609. Calculation of Individual Income.
§375.611. Determination Regarding Inclusion of Individual Income in the Household Income.
§375.613. Calculation of Household Income.
§375.615. Modification.

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 G. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §375.701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The amendment implements Texas Government Code §531.0055 and §531.0411.

§375.701. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply.[~~:~~]

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) C.F.R.--Code of Federal Regulations.

(3) [~~(2)~~] HHSC--Texas Health and Human Services Commission, or its designee.

(4) [~~(3)~~] Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(5) [~~(4)~~] National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(6) Refugee--An individual admitted to the United States under section 207 of the Immigration and Nationality Act.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies; and

(2) community stakeholders, including:

(A) major providers under the local health care system; and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within 10 [~~ten~~] business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within 10 [~~ten~~] business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 20 [~~twenty~~] business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section in reporting annual refugee placement information to the local refugee resettlement agency's national voluntary agency for purposes of 8 United States Code (U.S.C.) §1522(b)(7)(E) [~~U.S.C. Section 1522(b)(7)(E)~~].

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of proposed annual refugee placement data for purposes of 8 U.S.C. §1522(b)(7)(E) [~~Section 1522(b)(7)(E)~~].

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. §1522(b)(7)(E) [~~Section 1522(b)(7)(E)~~].

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

[~~(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements for the Refugee Cash Assistance Program), Subchapter C of this chapter (relating to Program Administration for the Refugee Cash Assistance Program), and Subchapter E of this chapter (relating to Refugee Medical Assistance), a contract with a local resettlement agency to provide Refugee Cash Assistance services must comply with the requirements of this subchapter.~~]

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (737) 867-7585

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CHAPTER 376. REFUGEE SOCIAL SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Subchapter A, concerning Purpose and Scope, comprised of §§376.101 - 376.104; Subchapter B, concerning Contractor Requirements, comprised of §§376.201, 376.203, 376.205, 376.207, 376.209, 376.211, 376.213, 376.215, 376.217, 376.219, 376.221, 376.223, 376.225, 376.227, 376.229, 376.231, 376.233, 376.235, 376.237; Subchapter C, concerning General Program Administration, comprised of §§376.301, 376.303, 376.305, 376.307, 376.309, 376.311, 376.313, 376.315, 376.317, 376.319, 376.321, 376.323, 376.325, 376.327, 376.329, 376.331, 376.333; Subchapter D, concerning Employment Services: Refugee Social Services (RSS), comprised of §§376.401, 376.403, 376.405, 376.407, 376.409, 376.411, 376.413, 376.415, 376.417, 376.419, 376.421, 376.423, 376.425, 376.427; Subchapter E, concerning Employment Services: Refugee Cash Assistance (RCA), comprised of §§376.501, 376.503, 376.505, 376.507, 376.509, 376.511, 376.513, 376.515, 376.517, 376.519; Subchapter F, concerning English as a Second Language (ESL) Services, comprised of §376.601 and §376.602; Subchapter G, concerning Other Employability Services, comprised of §§376.701, 376.703, 376.705, 376.707, 376.709, 376.711, 376.713, 376.715, 376.717, 376.719, 376.721; Subchapter H, concerning Targeted Assistance Grant (TAG) Services, comprised of §§376.801 - 376.806; Subchapter I, concerning Unaccompanied Refugee Minor (URM) Program, comprised of §§376.901 - 376.907; and an amendment to §376.1001 in Subchapter J, concerning Local Resettlement Agency Requirements, in Title 1, Chapter 376, concerning Refugee Social Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove rules which are no longer necessary and to update a rule that is required by statute. On September 30, 2016, the State of Texas withdrew from the administration of federally funded refugee services and benefits program effective January 31, 2017, following refusal by the federal Office of Refugee Resettlement to unconditionally approve Texas' amended state refugee plan. Texas Government Code §531.0411 requires rules regarding refugee resettlement program; therefore, §376.1001 will be retained and updated.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter A, Purpose and Scope; Subchapter B, Contractor Requirements; Subchapter C, General Program Administration; Subchapter D, Employment Services: Refugee Social Services (RSS); Subchapter E, Employment Services: Refugee Cash Assistance (RCA); Subchapter F, English As a Second Language (ESL) Services; Subchapter G, Other Employability Services; Subchapter H, Targeted Assistance Grant (TAG) Services; and Subchapter I, Unaccompanied Refugee Minor (URM) Program, deletes the rules because they are no longer necessary as HHSC no longer administers the federally funded refugee services and benefits in Texas.

The proposed amendment to §376.1001 deletes subsection (i) which no longer applies. The terms "C.F.R." and "refugee" are defined and minor non-substantive edits are made to correct formatting to align with HHSC rulemaking guidelines.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will repeal existing regulations;

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these amended rule and repeals because the amended rule and repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Rob Ries, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the amended rule and repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code and updating a rule to improve clarity of rule requirements.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the amended rule and repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments do not change any current requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; by email to FHSPublicComments@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 24R034" in the subject line.

SUBCHAPTER A. PURPOSE AND SCOPE

1 TAC §§376.101 - 376.104

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.101. What is the basis of this chapter?

§376.102. What is the purpose of this chapter?

§376.103. How are the terms in this chapter defined?

§376.104. Is the term "refugee" used throughout this chapter to designate all those eligible for refugee social services?

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

1 TAC §§376.201, 376.203, 376.205, 376.207, 376.209, 376.211, 376.213, 376.215, 376.217, 376.219, 376.221, 376.223, 376.225, 376.227, 376.229, 376.231, 376.233, 376.235, 376.237

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.201. What is the purpose of this subchapter?
§376.203. Who can apply for a refugee social services contract?
§376.205. How are refugee social services contracts awarded?
§376.207. What is the financial responsibility of the contractor's board of directors?
§376.209. What accounting requirements must the contractor meet?
§376.211. Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?
§376.213. What are the confidentiality requirements of a contractor?
§376.215. Are contractors responsible for having a nepotism policy?
§376.217. Are contractors responsible for having a conflict of interest policy?
§376.219. What issues must the conflict of interest policy address?
§376.221. Are contractors required to comply with the Limited English Proficiency provisions of Title VI of the Civil Rights Act?
§376.223. With what Limited English Proficiency (LEP) provisions is a contractor required to comply?
§376.225. What are the staffing requirements for contractors?
§376.227. Are there requirements for hiring bilingual or bicultural women?
§376.229. What are the record keeping requirements of the contract?
§376.231. How long are contractors required to keep records?
§376.233. What are the reporting requirements for contractors?
§376.235. If a refugee is receiving services under another program funded by the Office of Refugee Resettlement, can similar services be provided under a contract funded by a Refugee Social Services Grant (RSS) or a Targeted Assistance Grant (TAG)?
§376.237. Can a contractor subcontract services?

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

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SUBCHAPTER C. GENERAL PROGRAM ADMINISTRATION

1 TAC §§376.301, 376.303, 376.305, 376.307, 376.309, 376.311, 376.313, 376.315, 376.317, 376.319, 376.321, 376.323, 376.325, 376.327, 376.329, 376.331, 376.333

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.301. What is the purpose of this subchapter?

§376.303. What services may be provided to assist refugees with employability skills?

§376.305. Can additional services be provided?

§376.307. Who is eligible for refugee social services?

§376.309. Are individuals applying for asylum through the Immigration and Naturalization Service eligible for refugee social services assistance?

§376.311. Can refugees younger than 16 years of age receive refugee social services?

§376.313. Who determines a refugee's eligibility for refugee social services benefits?

§376.315. Are there equal opportunity requirements for refugee women?

§376.317. How long can a participant receive refugee social services?

§376.319. Can employability services be provided after a refugee finds a job?

§376.321. How does a contractor determine eligibility for a refugee who has moved to Texas from another state?

§376.323. Is coordination with other refugee providers required?

§376.325. Can participants who do not speak English participate in employment services?

§376.327. Are contractors required to report changes in a participant's income or address to the Texas Department of Human Services (DHS)?

§376.329. What information and materials must a contractor provide to the participant upon or during intake for services?

§376.331. Can an applicant or recipient appeal an adverse determination by a contractor?

§376.333. What should the contractor know about applicant or participant appeals?

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

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SUBCHAPTER D. EMPLOYMENT SERVICES: REFUGEE SOCIAL SERVICES (RSS)

1 TAC §§376.401, 376.403, 376.405, 376.407, 376.409, 376.411, 376.413, 376.415, 376.417, 376.419, 376.421, 376.423, 376.425, 376.427

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.401. What is the purpose of this subchapter?

§376.403. What criteria should be followed when providing refugee employment services?

§376.405. How are refugees prioritized for employment services under Refugee Social Services (RSS) grants?

§376.407. How must Refugee Social Services (RSS) employment services be designed?

§376.409. What types of services are appropriate employment services?

§376.411. Can a contractor consider participants as a family unit if they do not live together?

§376.413. If two or more unrelated participants live together, are they considered a family unit?

§376.415. Is a Family Self-Sufficiency Plan (FSSP) required for all employable participants?

§376.417. What does an Individual Employability Plan include and how is it developed?

§376.419. Are refugees required to accept job offers?

§376.421. What criteria must employment training services meet?

§376.423. Can employment training be provided beyond one year?

§376.425. Do participants in vocational employment training programs have to work while receiving training?

§376.427. Can a contractor enroll a refugee in a professional recertification 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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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SUBCHAPTER E. EMPLOYMENT SERVICES: REFUGEE CASH ASSISTANCE (RCA)

1 TAC §§376.501, 376.503, 376.505, 376.507, 376.509, 376.511, 376.513, 376.515, 376.517, 376.519

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive

Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.501. What is the purpose of this subchapter?
§376.503. What regulations govern the Refugee Cash Assistance (RCA) program?
§376.505. What are the employment requirements for participants in the Refugee Cash Assistance (RCA) program?
§376.507. Can an applicant for refugee cash assistance claim adverse effects of accepting employment?
§376.509. What are the employment requirements for Refugee Cash Assistance participants living outside of refugee resettlement areas?
§376.511. When must Refugee Cash Assistance (RCA) participants register for employment services?
§376.513. Do contractors need to schedule and provide services for Refugee Cash Assistance (RCA) recipients?
§376.515. What are the requirements for Refugee Cash Assistance (RCA) recipients who are employed fewer than 30 hours per week?
§376.517. Are there coordination requirements between employment services and Refugee Cash Assistance (RCA) providers?
§376.519. What procedures must a contractor follow when authorizing or denying an applicant benefits?
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 F. ENGLISH AS A SECOND LANGUAGE (ESL) SERVICES

1 TAC §376.601, §376.602

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.601. What is the purpose of this subchapter?
§376.602. Can English as a Second Language (ESL) be provided as a stand-alone service?
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 G. OTHER EMPLOYABILITY SERVICES

1 TAC §§376.701, 376.703, 376.705, 376.707, 376.709, 376.711, 376.713, 376.715, 376.717, 376.719, 376.721

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.701. What is the purpose of this subchapter?
§376.703. What other employability services may be provided under Refugee Social Services and Targeted Assistance grant-funded programs?
§376.705. What are outreach services?
§376.707. What are emergency services?
§376.709. What are health services?
§376.711. What are home management services?
§376.713. When can child day care services be provided?
§376.715. What standards must child day care meet?
§376.717. When can transportation services be provided?
§376.719. What are citizenship and naturalization services?
§376.721. Can immigration fee payments be made under Refugee Social Services (RSS) contracts?
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. TARGETED ASSISTANCE GRANT (TAG) SERVICES

1 TAC §§376.801 - 376.806

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive

Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.801. What is the purpose of this subchapter?

§376.802. What is a Targeted Assistance Grant (TAG)?

§376.803. Are Targeted Assistance Grant (TAG) programs subject to the same regulations as other Refugee Social Services (RSS) programs?

§376.804. What services are allowable under Targeted Assistance Grant (TAG) programs?

§376.805. Which refugee groups receive priority for services under Targeted Assistance Grant (TAG) programs?

§376.806. Can Targeted Assistance Grant (TAG) and Refugee Social Services (RSS) assistance be provided to a refugee at the same time?

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 I. UNACCOMPANIED REFUGEE MINOR (URM) PROGRAM

1 TAC §§376.901 - 376.907

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The repeals implement Texas Government Code §531.0055 and §531.0411.

§376.901. What is the purpose of this subchapter?

§376.902. Who provides care and services for unaccompanied refugee minors (URM)?

§376.903. What services are available to unaccompanied refugee minors?

§376.904. How long can an unaccompanied refugee minor (URM) receive services?

§376.905. How are services provided to unaccompanied refugee minors (URM) who move to or from another state?

§376.906. Are unaccompanied refugee minors (URM) eligible for adoption?

§376.907. How is adult legal responsibility for an unaccompanied refugee minor established?

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 J. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §376.1001

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

The amendment implements Texas Government Code §531.0055 and §531.0411.

§376.1001. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply. [:]

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) C.F.R.--Code of Federal Regulations.

(3) [~~(2)~~] HHSC--Texas Health and Human Services Commission, or its designee.

(4) [~~(3)~~] Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(5) [~~(4)~~] National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(6) Refugee--An individual admitted to the United States under section 207 of the Immigration and Nationality Act.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies; and

(2) community stakeholders, including:

(A) major providers under the local health care system; and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within 10 [~~ten~~] business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within 10 [~~ten~~] business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 20 [~~twenty~~] business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section in reporting annual refugee placement information to the local refugee resettlement agency's national voluntary agency for purposes of 8 United States Code (U.S.C.) §1522(b)(7)(E) [~~8 U.S.C. Section 1522(b)(7)(E)~~].

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of proposed annual refugee placement data for purposes of 8 U.S.C. §1522(b)(7)(E) [~~8 U.S.C. Section 1522(b)(7)(E)~~].

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. §1522(b)(7)(E) [~~8 U.S.C. Section 1522(b)(7)(E)~~].

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

[~~(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements), a contract with a local resettlement agency to provide Refugee Social Services must comply with the requirements of this subchapter.~~]

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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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter C, §60.32, and amendments to an existing rule at Subchapter D, §60.40, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and other laws applicable to state agencies.

The proposed rules enable the Department to require certain individuals to furnish e-mail addresses for purposes of receiving correspondence. The proposed rules additionally permit certain incarcerated individuals to apply for licensure prior to release. The proposed rules are necessary to implement §§3 and 5 of House Bill (HB) 3743, 88th Legislature, Regular Session (2023). HB 3743 took effect on September 1, 2023.

Section 3 of HB 3743 amended Occupations Code §51.207(c) to permit the Commission to adopt a rule to require an applicant, license holder, or other person who regularly receives correspondence from the Department to provide an e-mail address for purposes of receiving correspondence. The section further provides that any e-mail address furnished under this provision is confidential for purposes of Government Code, Chapter 552 (the Public Information Act).

The proposed rules implement HB 3743 §3 by authorizing the Department to require e-mail addresses from applicants, license holders, and others who regularly receive correspondence from the Department, and to deem an application incomplete if an applicant fails to provide an e-mail address when directed to do so. The intent of this rule is to allow the Department the flexibility to use instructions on Department forms to make providing an e-mail address mandatory when, in the Department's discretion,

requiring an e-mail address would be administratively expedient, while also allowing the Department the flexibility to process an application without an e-mail address on a case-by-case basis.

HB 3743 §5 enacted Occupations Code §51.4014, which authorizes the Department to accept a license application from an inmate imprisoned in the Texas Department of Criminal Justice (TDCJ), but prohibits the Department from issuing the license until the applicant has been released. The Department interprets these provisions as permitting, but not requiring, the Department to accept inmate applications. The proposed rules implement these provisions by amending the existing rule at 16 TAC, Chapter 60, Subchapter, C, at §60.40, License Eligibility for Persons with Criminal Convictions. The existing rule prohibits a person incarcerated because of a felony conviction from obtaining or renewing a license and requires a person whose license is revoked by operation of law under Occupations Code §53.021(b) to wait until release from imprisonment before applying for a license. Because under Occupations Code §53.021(b), automatic license revocation occurs upon imprisonment due to a felony conviction, the existing rule effectively bars formerly licensed TDCJ inmates from applying for a license.

The proposed rules carve out two new circumstances under which the Department will accept inmate applications: when the inmate previously held a license of the same type for which the inmate is applying, and when the inmate has completed a relevant course of study in the Windham School District, or other program acceptable to the Department, to prepare the person for reentry into the workforce in the occupation. The proposed rules further restrict the acceptance of these applications to those inmates who are scheduled for release within the next 90 days. The proposed rules additionally keep in place a provision authorizing the issuance of student permits to inmates studying barbering or cosmetology in a Windham School District or TDCJ program. The Department enjoys a longstanding and successful partnership with the Windham School District and TDCJ. The proposed rules strike a balance in furthering a common goal of this partnership by ameliorating barriers convicted individuals face in reentry to the workforce, while avoiding the imposition of an undue burden on the Department by limiting the acceptance of applications to those reasonably likely to be eligible for approval in the near future.

SECTION-BY-SECTION SUMMARY

The proposed rules adopt new §60.32, E-mail Communications and Requirements. Subsection (a) states the circumstances under which the Department may require a person to provide an e-mail address for purposes of receiving correspondence. Subsection (b) sets forth a potential consequence to an applicant for failing to provide an e-mail address when directed to do so, namely, that the application may be deemed incomplete.

The proposed rules amend §60.40. The first sentence of subsection (c) is deleted and replaced with verbiage clarifying that the provisions in (c) apply when the exceptions in new subsection (d) are inapplicable. Subsection (c)(3) is deleted and the substance moved to the new subsection (d). New subsection (d), containing the exceptions, is added and subdivided into two paragraphs. Subsection (d)(1) contains the substance of former (c)(3), the student permit exception for the barbering and cosmetology program. Subsection (d)(2) sets forth the new exceptions implemented under Occupations Code §51.4014, and contains language permitting the Department to accept applications from TDCJ inmates who are scheduled for release within the next 90 days in two circumstances, which are set forth in subsections (d)(2)(A) and (d)(2)(B), respectively. Subsection (d)(2)(A) refers to previously licensed inmates and subsection (d)(2)(B) refers to inmates who have completed participation in certain career preparation programs.

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 rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas 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 of new §60.32 will be improved communication between the Department and outside stakeholders and mitigation of the impact of lost or misdirected mail on the timeliness of processing correspondence. Concerning the amendments to §60.40, Mr. Couvillon has determined that the public benefit will be the removal of a barrier to workforce reentry, as the proposed rules will allow former inmates to be licensed in an occupation immediately upon release.

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 are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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. Because 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, is 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 Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas 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 create a new regulation. The proposed rules authorize the Department to require applicants, license holders, and other persons who regularly receive correspondence from the Department to furnish e-mail addresses for purposes of receiving correspondence.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand the number of individuals eligible to apply for a license by creating exceptions to a prohibition on inmate applications.

7. The proposed rules increase or decrease the number of individuals subject to the rules' applicability. The proposed rules decrease the number of individuals prohibited from applying for a license due to imprisonment.

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 Texas 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 Monica Nuñez, 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 C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.32

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter 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 the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

§60.32. E-mail Communications and Requirements.

(a) The department may require an applicant, licensee, or other person who regularly receives communications from the department, to provide an e-mail address for purposes of receiving correspondence. The department may send any correspondence to the e-mail address furnished by the person unless another form of notice is required by law.

(b) The department may deem an application incomplete if the applicant fails to provide an e-mail address when directed to do so.

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. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.40

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter 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 the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

§60.40. License Eligibility for Persons with Criminal Convictions.

(a) - (b) (No change).

(c) Except as provided in subsection (d), the following provisions apply to persons who are incarcerated or imprisoned. [~~Provisions Related to Persons Who are Incarcerated or Imprisoned.~~]

(1) - (2) (No change.)

[~~(3) This subsection does not apply to the issuance of a student permit under Texas Occupations Code, Chapter 1603, to a person enrolled in a school administered by the Windham School District or the Texas Department of Criminal Justice.~~]

(d) Notwithstanding subsection (c), the department may:

(1) issue a student permit under Texas Occupations Code, Chapter 1603, to a person enrolled in a school administered by the Windham School District or the Texas Department of Criminal Justice; or

(2) in accordance with Texas Occupations Code §51.4014, accept a license application from a person who is in the custody of the Texas Department of Criminal Justice, is scheduled for release from incarceration or imprisonment within the next 90 days, and who:

(A) previously held a license of the same type for which the person is applying; or

(B) has completed a relevant course of study in the Windham School District, or other program acceptable to the department, to prepare the person for reentry into the workforce in the occupation for which the person seeks a license.

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SUBCHAPTER M. CONTINUING EDUCATION AUDITS FOR LICENSE RENEWALS IN CERTAIN PROGRAMS

16 TAC §60.700, §60.701

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter M, §60.700 and §60.701, with the addition of a subchapter title to an existing chapter, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules create a new audit system to verify compliance with the continuing education (CE) requirements established for renewal of a license in the programs administered by the Department under the following statutes: Texas Government Code, Chapter 171, Court-Ordered Education Programs; Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal; Texas Occupations Code, Chapter 203, Midwives; Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists; Texas Occupations Code, Chapter 451, Athletic Trainers; Texas Occupations Code, Chapter 455, Massage Therapy; Texas Occupations Code, Chapter 605, Orthotists and Prosthetists; Texas Occupations Code, Chapter 701, Dietitians; Texas Occupations Code, Chapter 1952, Code Enforcement Officers; Texas Occupations Code, Chapter 1953, Sanitarians; and Texas Occupations Code, Chapter 1958, Mold Assessors and Remediators. These programs will hereafter be referred to as "the affected programs."

The proposed rules are necessary to ensure that CE audits do not delay the issuance of license renewals in the affected programs. The program-specific rules for most of the affected programs currently require a CE audit to be completed before a license renewal may be issued. However, even when a license holder provides the audited CE records in a timely manner, the process of the Department receiving and verifying those documents can take a significant amount of time, and this creates a risk that the license will expire before the license renewal can be issued, resulting in a period of non-licensure through no fault of the license holder. The proposed rules allow the CE audit to occur before, during, or after the license renewal process to en-

sure that a CE audit does not affect the renewal process for the license holder.

The proposed rules are applicable only to the affected programs because, with regard to the reporting of CE completion, the affected programs differ from other licensing programs administered by the Department that have CE requirements. In other programs, CE providers are required to register with the Department and report CE completion by license holders directly to the Department, which eliminates the need for the Department to audit license holders to verify their CE completion. In contrast, license holders in the affected programs may fulfill their CE requirements by completing activities that are not provided by CE providers that report CE completion directly to the Department, such as attending or instructing academic courses or publishing books or articles.

The proposed rules are also necessary to provide consistency and efficiency in the Department's CE audit process among the affected programs. Rather than having multiple program-specific rules addressing CE audits with variations in rule language from program to program, the proposed rules provide uniform language that allows Department staff to apply the same procedures to each affected program, which streamlines the Department's operations.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter M, Continuing Education Audits for License Renewals in Certain Programs, to clearly separate the CE audit requirements for the affected programs from the remainder of Chapter 60, which applies to all programs administered by the Department.

The proposed rules create new §60.700, Applicability, consisting of new subsection (a), which provides the list of affected programs that are subject to the new CE audit process; new subsection (b), which provides the statutory authority for the subchapter; new subsection (c), which clarifies the interplay between new Subchapter M and other laws and rules applicable to the affected programs; and new subsection (d), which clarifies that the CE audit provisions of the subchapter supersede any CE audit provisions included in the rules of the affected programs.

The proposed rules create new §60.701, Continuing Education Audits for License Renewal. The proposed rules create new subsection (a), which provides that the Department may employ the new CE audit system to verify CE completion in the affected programs for each renewal of a license. The proposed rules create new subsection (b), consisting of subsection (b)(1), which provides a definition for "continuing education records," and subsection (b)(2), which requires license holders to maintain CE records for three years. The proposed rules create new subsection (c), which provides the new CE audit process, including subsection (c)(1), which provides that the Department will select a random sample of license holders on a periodic basis for an audit that may occur before, during, or after the license renewal process; subsection (c)(2), which requires license holders selected for audit to submit continuing education records within 30 calendar days after notification of the audit; subsection (c)(3), which clarifies that a CE audit does not affect the renewal process for the license holder; and subsection (c)(4), which requires a license holder who is deficient in CE to remedy the deficiency within 90 calendar days after notification of the deficiency. The proposed rules also create new subsection (d), which provides the list of grounds for which a license holder may be subject to disciplinary action, and new subsection (e), which clarifies that CE obtained to correct a deficiency or as part of a disciplinary action cannot be applied toward the next renewal of the license.

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 or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the assurance that no license holder will have to wait for their license renewal to be issued while a CE audit is being conducted. This will eliminate the risk that a license holder will experience a period of non-licensure, through no fault of their own, due to an ongoing CE audit. Additionally, the public will benefit from increased clarity regarding the Department's process for verifying compliance with CE requirements for license renewal.

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 are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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. Because 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, is 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 Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas 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 create a new regulation. The proposed rules require a license holder to maintain continuing education records for three years from the completion of the continuing education activity.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand a regulation by providing a process for the Department to audit continuing education completion before, during, or after the license renewal process.

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 Texas 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 Monica Nuñez, 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.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under: Texas Government Code, Chapter 171, Court-Ordered Education Programs; Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal; Texas Occupations Code, Chapter 203, Midwives; Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists; Texas Occupations Code, Chapter 451, Athletic Trainers; Texas Occupations Code, Chapter 455, Massage Therapy; Texas Occupations Code, Chapter 605, Orthotists and Prosthetists; Texas Occupations Code, Chapter 701, Dietitians; Texas Occupations Code, Chapter 1952, Code Enforcement Officers; Texas Occupations Code, Chapter 1953, Sanitarians; and Texas Occupations Code, Chapter 1958, Mold Assessors and Remediators.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, Chapter 171; Texas Health and Safety Code, Chapter 401, Subchapter M; and Texas Occupations Code, Chapters 51, 401, 402, 403, 451, 455, 605, 701, 1952, 1953, and 1958. No other statutes, articles, or codes are affected by the proposed rules.

§60.700. Applicability.

(a) This subchapter applies to a holder of a license with continuing education requirements for renewal of the license in the programs administered by the department under the following statutes:

(1) Texas Government Code, Chapter 171, Court-Ordered Education Programs;

(2) Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal;

(3) Texas Occupations Code, Chapter 203, Midwives;

(4) Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists;

(5) Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers;

(6) Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists;

(7) Texas Occupations Code, Chapter 451, Athletic Trainers;

(8) Texas Occupations Code, Chapter 455, Massage Therapy;

(9) Texas Occupations Code, Chapter 605, Orthotists and Prosthetists;

(10) Texas Occupations Code, Chapter 701, Dietitians;

(11) Texas Occupations Code, Chapter 1952, Code Enforcement Officers;

(12) Texas Occupations Code, Chapter 1953, Sanitarians; and

(13) Texas Occupations Code, Chapter 1958, Mold Assessors and Remediators.

(b) This subchapter is promulgated under Texas Occupations Code §51.203 and the statutes listed under subsection (a).

(c) Except as provided by subsection (d), the provisions of this subchapter are in addition to all other laws and rules applicable to the programs listed under subsection (a).

(d) The continuing education audit provisions of this subchapter supersede:

(1) any continuing education audit provisions that are included in the rules of the programs listed under subsection (a); and

(2) any other methods of verifying continuing education compliance that are included in the rules of the programs listed under subsection (a).

(e) This subchapter does not affect the department's authority to conduct inspections or investigations that involve examining the license holder's continuing education records.

§60.701. Continuing Education Audits for License Renewal.

(a) The department may employ the audit system provided by this section to verify compliance with the continuing education requirements established for the programs listed under §60.700(a). The department may audit a license holder under this section for each renewal of the license.

(b) Continuing education records.

(1) In this section, the term "continuing education records" means copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the license holder's attendance, participation, and completion of the continuing education required for renewal of the license.

(2) A license holder must maintain continuing education records applied toward a license renewal for two years after the date the license renewal is issued by the department.

(c) Continuing education audit process.

(1) The department will select for audit a random sample of license holders on a periodic basis at its discretion. The audit may occur before, during, or after the license renewal process.

(2) If selected for audit, the license holder must submit to the department continuing education records for the most recent renewal of the license within 30 calendar days after notification of the audit.

(3) A continuing education audit does not affect the renewal process for the license holder.

(4) A license holder who is deficient in the continuing education required for the most recent renewal of the license must complete all deficient continuing education within 90 calendar days after notification of the deficiency to maintain licensure.

(d) A license holder is subject to disciplinary action for:

(1) failure to submit continuing education records within 30 calendar days after notification of the audit;

(2) providing false information during the audit process or the renewal process;

(3) being deficient in the continuing education required for the most recent renewal of the license; or

(4) failure to complete all deficient continuing education within 90 calendar days after notification of the deficiency.

(e) Continuing education obtained to correct a deficiency or as part of a disciplinary action may not be applied toward the continuing education required for the next renewal of the license.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402996
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §§89.1035, 89.1053, 89.1070

The Texas Education Agency (TEA) proposes amendments to §§89.1035, 89.1053, and 89.1070, concerning clarification of provisions in federal regulations and state law. The proposed amendment to §89.1053 would implement Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023. The proposed amendments to §89.1035 and §89.1070 would clarify graduation requirements for students receiving special education and related services as well as remove outdated language.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.1035 addresses age ranges for student eligibility for special education and related services. The proposed amendment would update cross references and terminology to align with changes proposed in §89.1070.

Section 89.1053 addresses procedures for the use of restraint and time-out for students receiving special education and related services. SB 133, 88th Texas Legislature, Regular Session, 2023, modified Texas Education Code, §37.0021, to prohibit a peace officer or school security personnel from restraining or using a chemical irritant spray or Taser on a student enrolled in Grade 5 or below unless the student poses a serious risk of harm to the student or another person. The proposed amendment would add new §89.1053(l) to address the requirements of SB 133. TEA also plans to engage in stakeholder communications over the next several months to review §89.1053 and potentially propose additional changes at a later date.

Section 89.1070 addresses graduation requirements for students receiving special education and related services. The proposed amendment would clarify the requirements based on questions from stakeholders and remove obsolete language.

The proposed amendment to §89.1070(a) would clarify when a student's eligibility for special education services terminates.

The proposed amendment to §89.1070(b) would clarify the expectations around the conditions that make a student eligible to graduate. Subsection (b)(1) would be modified to clarify that this condition equates to the same expectation for graduation as students without disabilities. The proposed amendment to subsection (b)(2) would clarify that this condition means that an admission, review, and dismissal committee has determined that a student would not have to meet satisfactory performance on state assessments beyond what is otherwise required for students without disabilities. Conditions in subsection (b)(3) would be amended to reflect graduation eligibility for a student who has received modified content or curriculum and completed their individualized education program.

The proposed amendment to §89.1070(d) would state that a student in Grade 11 or 12 who has failed to achieve satisfactory performance on no more than two state assessments would be eligible to graduate under the first condition described in §89.1070(b)(1).

Section 89.1070(e) and (f), related to students who entered Grade 9 before the 2014-2015 school year, would be deleted.

Proposed new §89.1070(e) would specify that if a student reaches maximum age eligibility but has not met the requirements for graduation, the student may receive a certificate of attendance.

Proposed new §89.1070(f) would address the summary of academic achievement and functional performance that must be provided to students who are graduating.

Section 89.1070(g) would be modified and new subsection (h) would be added to provide additional requirements for the summary of performance.

Revisions would be proposed throughout the rules for clarity and consistency in terminology and to delete outdated information.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, 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 and limit existing regulations. The proposed amendment to §89.1053 would add information related to restrictions on peace officers and security personnel in alignment with SB 133, 88th Texas Legislature, Regular Session, 2023. The proposed amendments to §89.1035 and §89.1070 would clarify graduation requirements for students receiving special education and related services and remove outdated language.

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 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. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring the rules are current by aligning them with federal law, state statute, and administrative rule; assisting school districts with implementation of special education programs by providing clarification on procedures for use of restraint and time-out and graduation requirements for students receiving special education and related services; and updating terminology. 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 July 19, 2024, and ends August 19, 2024. 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/. Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on July 30 and 31, 2024. The public may participate in either hearing virtually by linking to the hearing at https://zoom.us/j/98935357757. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearings will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearings should be directed to Derek Hollingsworth, Special Populations Policy, Integration and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for conducting a full individual and initial evaluation for a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §30.081, which establishes the legislative intent concerning regional day schools for the deaf; TEC, §37.0021, which establishes criteria for the use of confinement, restraint, seclusion, and time-out; TEC, §37.0023, which establishes criteria for prohibited aversive behavior techniques; TEC, §39.023, which establishes criteria for the agency to develop criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science; TEC, §48.003, which establishes criteria for student eligibility to the benefits of the Foundation School Program; TEC, §48.102,

which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which establishes the use of person first respectful language required by the legislature and the Texas Legislative Council; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate public education (FAPE) available; 34 CFR, §300.102, which establishes criteria for limitation-exception to FAPE for certain ages; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.305, which establishes criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which establishes criteria for determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; and 34 CFR, §300.600, which establishes criteria for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.025, 29.001, 29.003, 29.004, 29.005, 30.081, 37.0021, 37.0023, 39.023, 48.003, and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.102, 300.149, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.320, 300.323, and 300.600.

§89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation [~~with a regular high school diploma~~] pursuant to §89.1070(b)(1)[~~, (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)~~] of this title (relating to Graduation Requirements) or meeting maximum age eligibility terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a [~~regular high school~~] diploma pursuant to §89.1070 [~~(b)(1), (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)~~] of this title, whichever comes first.

(b) In accordance with [~~the~~] Texas Education Code [~~(TEC)~~], §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual impairments or who are deaf or hard of hearing.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint must be discontinued at the point at which the emergency no longer exists.

(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.

(5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. The written notification of each restraint must include the following:

(A) name of the student;

(B) name of the individual administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior of the student that prompted the restraint;

(H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(I) observation of the student at the end of the restraint;

(J) information documenting parent contact and notification; and

(K) one of the following:

(i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or

(ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i), to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force must not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies[,] and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The

ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by [~~the~~] TEA.

(l) Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.

(m) [~~(l)~~] Provisions applicable to peace [~~Peace~~] officers. Except for subsections (k) and (l) of this section, the [~~The~~] provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

(n) [~~(m)~~] The provisions adopted under this section do not apply to:

(1) juvenile probation, detention, or corrections personnel; or

(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1070. Graduation Requirements.

(a) Graduation [~~with a regular high school diploma~~] under subsection [~~subsections~~] (b)(1)[~~, (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)~~] of this section or reaching maximum age eligibility described by §89.1035 of this title (relating to Age Ranges for Student Eligibility) terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §48.003(a).

(b) A student [~~entering Grade 9 in the 2014-2015 school year and thereafter~~] who receives special education services may graduate and be awarded a [~~regular high school~~] diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; [~~and~~] satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education; and demonstrated [~~as well as~~] satisfactory performance as established for students in general education in [~~the~~] TEC, Chapters 28 and [~~Chapter~~] 39, on the required end-of-course assessment instruments, which could include meeting the requirements of subsection (d) of this section.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; the student has [~~and~~] satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title applicable to students in general education; and [~~but~~] the student's admission, review, and dismissal (ARD) [~~ARD~~] committee has determined that satisfactory performance, beyond what would otherwise be required in subsections (b)(1) and (d) of this section, on the required end-of-course assessment instruments is not required [~~necessary~~] for graduation.

(3) The student has [~~demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and~~] satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education; demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title in accordance with modified content and curriculum expectations established in the student's individualized education program (IEP); and demonstrated[~~, as well as~~] satisfactory performance [~~as established in the TEC, Chapter 39,~~] on the required end-of-course assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required end-of-course assessment instruments is not required [~~necessary~~] for graduation. The student must also successfully complete the student's IEP [~~individualized education program (IEP)~~] and meet one of the following conditions:[~~.~~]

(A) consistent [~~Consistent~~] with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;[~~.~~]

(B) consistent [~~Consistent~~] with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district ; or[~~.~~]

(C) the [~~The~~] student has access to services or other supports that are not within the legal responsibility of public education, including [~~or~~] employment or postsecondary education established through transition planning [~~educational options for which the student has been prepared by the academic program~~].

[~~(D) The student no longer meets age eligibility requirements.~~]

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and

(3) performs satisfactorily as established in [~~the~~] TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not necessary.

(d) A [~~Notwithstanding subsection (c)(3) of this section, a~~] student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive a diploma under subsection (b)(1) of this section [~~an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section~~].

(e) A student who has reached maximum age eligibility in accordance with §89.1035 of this title without meeting the credit, curriculum, and assessment requirements specified in subsection (b) of this section is not eligible to receive a diploma but may receive a certificate of attendance as described in TEC, §28.025(f).

(f) A summary of academic achievement and functional performance must be provided prior to exit from public school for students who meet one of the following conditions:

(1) a student who has met requirements for graduation specified by subsection (b)(1) of this section or who has exceeded the maximum age eligibility as described by §89.1035 of this title; or

(2) a student who has met requirements for graduation specified in subsection (b)(2) or (b)(3)(A), (B), or (C) of this section. Additionally, a student meeting this condition is entitled to an evaluation as described in 34 Code of Federal Regulations (CFR), §300.305(e)(1).

[~~(e) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.~~]

[~~(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.~~]

[~~(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.~~]

[~~(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.~~]

[~~(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.~~]

[~~(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.~~]

[~~(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.~~]

[~~(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.~~]

[~~(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.~~]

[~~(D) The student no longer meets age eligibility requirements.~~]

(g) The summary of performance described by subsection (f) of this section must include recommendations on how to assist the student in meeting the student's postsecondary goals, as required by [~~All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in~~] 34 CFR [~~Code of Federal Regulations (CFR)~~], §300.305(e)(3). This summary must also consider, as appropriate, the views of the parent and student and written recommendations from

adult service agencies on how to assist the student in meeting postsecondary goals. [An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section.]

(h) Students who meet graduation requirements under subsection (b)(2) or (b)(3)(A), (B), or (C) of this section and who will continue enrollment in public school to receive special education services aligned to their transition plan will be provided the summary of performance described in subsections (f) and (g) of this section upon exit from the public school system. These students are entitled to participate in commencement ceremonies and receive a certificate of attendance after completing four years of high school, as specified by TEC, §28.025(f).

[(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.]

(i) Employability and self-help skills referenced under subsection [subsections] (b)(3) [and (f)(4)] of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who graduate and receive a diploma according to subsections (b)(2) or [;] (b)(3)(A), (B), or (C)[; or (f)(4)(A), (B), or (C)] of this section, the ARD committee must determine needed special education [educational] services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-117, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

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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CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1205

The Texas Education Agency (TEA) proposes new §103.1205, concerning safe schools. The proposed new rule would implement House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, by defining violent conduct for the purpose of disciplinary alternative education program (DAEP) placement when the program is at capacity.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §37.009(a-2), as added by HB 114, 88th Texas Legislature, Regular Session, 2023, states that if a DAEP is at capacity at the time the campus behavior coordinator is determining placement of a student who engaged in an expellable offense under TEC, §37.007, for violent conduct, as defined by commissioner of education rule, a student who is currently placed at the DAEP for a marihuana, e-cigarette, alcohol, or abusable, volatile chemical offense could be removed from the DAEP and placed in in-school suspension (ISS) to make a position available for the student who engaged in violent conduct. The student moved to ISS would be returned to the DAEP if a position became available before the end of their assigned placement.

Proposed new §103.1205 would define violent conduct as required by statute.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, 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 create a new regulation establishing criteria for determining the placement of a student who engaged in violent conduct if a DAEP is at capacity. The new rule is necessary to align with HB 114, 88th Texas Legislature, Regular Session, 2023.

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. Porter 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 to define behavior that may be considered violent as well as criteria for determining the placement of a student engaged in violent conduct if a DAEP is at capacity. 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 July 19, 2024, and ends August 19, 2024. 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 July 19, 2024. 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/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §37.006, as amended by House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the removal of a student to a DAEP for certain conduct; TEC, §37.007, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the expulsion of a student for serious offenses; and TEC, §37.009, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the conference, hearing, and review process for a student who has been removed.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code §§37.006, 37.007, and 37.009, as amended by House Bill 114, 88th Texas Legislature, Regular Session, 2023.

§103.1205. Violent Conduct for Purposes of Placement in a Disciplinary Alternative Education Program When Program is at Capacity.

(a) As authorized under Texas Education Code (TEC), §37.009(a-2), a student who has been placed in a disciplinary alternative education program (DAEP) for conduct described under TEC, §37.006(a)(2)(C-1), (C-2), (D), or (E), relating to offenses involving marihuana, e-cigarettes, alcoholic beverages, and abusable volatile chemicals, may be removed from the DAEP and placed in in-school suspension to make a position available at the DAEP for a student who has engaged in one or more acts of violent conduct, as defined in this section.

(b) Violent conduct means an act by a student against another person that is intended to result in physical harm, bodily injury, or assault or a threat that reasonably places the other person in fear of imminent physical harm, bodily injury, or assault.

(c) A campus behavior coordinator may determine whether a specific instance of conduct listed in paragraphs (1)-(6) of this subsection rises to the level of violent conduct for purposes of determining placement in a DAEP. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under TEC, §37.007, the decision of the board or the board's designee is final and may not be appealed.

(1) TEC, §37.007(b)(1)--The student engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Texas Penal Code, §42.06, or terroristic threat under Texas Penal Code, §22.07.

(2) TEC, §37.007(b)(2)(C)--While on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of assault under Texas Penal Code, §22.01(a)(1), including when committed as an act of retaliation against an employee or volunteer, as described in TEC, §37.007(d).

(3) TEC, §37.007(b)(2)(D)--While on or within 300 feet of school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in conduct that contains the elements of the offense of deadly conduct under Texas Penal Code, §22.05.

(4) TEC, §37.007(b)(3)(A) and (B)--While within 300 feet of school property, or when committed as an act of retaliation against an employee or volunteer, whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, the student engages in:

(A) conduct that contains the elements of the offense of unlawful carrying of weapons under Texas Penal Code, §46.02;

(B) an offense relating to prohibited weapons under Texas Penal Code, §46.05;

(C) aggravated assault under Texas Penal Code, §22.02;

(D) sexual assault under Texas Penal Code, §22.011;

(E) aggravated sexual assault under Texas Penal Code, §22.021;

(F) arson under Texas Penal Code, §28.02;

(G) murder under Texas Penal Code, §19.02;

(H) capital murder under Texas Penal Code, §19.03;

(I) criminal attempt to commit murder or capital murder under Texas Penal Code, §15.01;

(J) indecency with a child under Texas Penal Code, §21.11;

(K) aggravated kidnapping under Texas Penal Code, §20.04;

(L) aggravated robbery under Texas Penal Code, §29.03;

(M) manslaughter under Texas Penal Code, §19.04;

(N) criminally negligent homicide under Texas Penal Code, §19.05;

(O) continuous sexual abuse of a young child or an individual with disabilities under Texas Penal Code, §21.02;

(P) selling, giving, delivering to another person, possessing, using, or being under the influence of a controlled substance or dangerous drug, excluding marihuana or tetrahydrocannabinol; or

(Q) possessing a firearm, as defined by 18 U.S.C. §921.

(5) TEC, §37.007(b)(4)--The student engages in conduct against another student, without regard to whether the conduct occurs on or off school property or while attending a school-sponsored or school-related activity on or off school property, that contains the elements of:

(A) the offense of aggravated assault under Texas Penal Code, §22.02;

(B) sexual assault under Texas Penal Code, §22.011;

(C) aggravated sexual assault under Texas Penal Code, §22.021;

(D) murder under Texas Penal Code, §19.02;

(E) capital murder under Texas Penal Code, §19.03; or

(F) criminal attempt to commit murder or capital murder under Texas Penal Code, §15.01.

(6) TEC, §37.007(c)(1)-(4)--While placed in a DAEP and on the program campus, the student engages in documented serious misbehavior despite documented behavioral interventions.

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
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CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1015

The Texas Education Agency (TEA) proposes new §153.1015, concerning mental health training. The proposed new rule would implement the mental health training requirement established by House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 88th Texas Legislature, Regular Session, 2023, added Texas Education Code (TEC), §22.904, to require each school district employee who regularly interacts with students enrolled in the district to complete an evidence-based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety. The bill also introduced an allotment to assist school districts in complying with the requirement, including costs incurred by the district for employees' travel, training fees, and compensation for the time spent completing the training.

Proposed new §153.1015 would implement HB 3 by establishing criteria for the evidence-based mental health training program for school district employees and district special program liaisons who regularly interact with students enrolled in a district.

Subsection (a) would define evidence-based mental health training program.

Subsection (b) would specify the requirements for an evidence-based mental health training program.

Subsection (c) would identify the personnel requirements for completing the mental health training program.

Subsection (d) would establish the criteria for selecting an evidence-based training program. Subsection (d)(1) would allow districts to select an evidence-based mental health training course that is on the recommended lists provided by the TEA, Texas Health and Human Services Commission, or an education service center. Subsection (d)(2) would establish requirements for a district that selects an evidence-based training course that is not on the recommended lists. Subsection (d)(3) would establish criteria for districts that may provide opportunities for personnel to complete more specialized training. Subsection (d)(4) and (5) would allow the training to be combined or coordinated with other required mental health training.

Subsection (e) would require additional training content to provide information on local district practices and procedures for mental health promotion in accordance with TEC, §38.351(i) and (j).

Subsection (f) would establish documentation requirements for the training.

Subsection (g) would introduce a phase-in timeline for districts to complete the mental health training.

Subsection (h) would establish criteria for mental health training reimbursement.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, 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 create a new regulation establishing a mental health training requirement for applicable school district employees who regularly interact with students enrolled in the district, which is necessary to align with HB 3, 88th Texas Legislature, Regular Session, 2023.

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. Porter 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 to ensure that district employees who regularly interact with students enrolled in the district receive evidence-based mental health training to align with the requirement in HB 3, 88th Texas Legislature, Regular Session, 2023. 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 July 19, 2024, and ends August 19, 2024. 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 July 19, 2024. 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/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §22.904, as added by House Bill 3, 88th Texas Legislature, Regular Session, 2023, which requires each school district employee who regularly interacts with students enrolled in the district to complete an evidence-based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety. TEC, §22.904(e) requires the commissioner of education to adopt rules to implement the section, including rules specifying the training fees and travel expenses subject to reimbursement.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §22.904, as added by House Bill 3, 88th Texas Legislature, Regular Session, 2023.

§153.1015. Mental Health Training.

(a) Definition. Evidence-based mental health training program means a program designed to provide instruction on mental health practices and procedures using current, practical, and applicable research that includes information and strategies shown to have effective, positive outcomes.

(b) Evidence-based mental health training program requirements.

(1) This section implements Texas Education Code (TEC), §22.904 (Mental Health Training). School districts may be eligible for reimbursement as specified in subsection (h) of this section.

(2) To complete the evidence-based mental health training program under this section, personnel who regularly interact with students as determined under subsection (c) of this section shall:

(A) participate and complete the required content in subsection (d) of this section;

(B) participate and complete the required content in subsection (e) of this section; and

(C) submit and maintain supporting documentation of completion as described in subsection (f) of this section.

(c) Personnel required to complete the evidence-based mental health training program.

(1) A school district shall require each district employee who regularly interacts with students enrolled at the district to complete an evidenced-based mental health training program that is designed to provide instruction regarding the recognition and support of children and youth who experience mental health or substance use issues that may pose a threat to school safety.

(2) School district employees who regularly interact with students are employees working on a school campus, including, but not limited to, teachers, coaches, librarians, instructional coaches, counselors, nurses, administration, administrative support personnel, student support personnel, paraprofessionals, substitutes, custodians, cafeteria staff, bus drivers, crossing guards, and district special programs liaisons. Special programs liaisons may include, but are not limited to, individuals who provide support for students who are homeless or in substitute care, military connected students, and emergent bilingual students; individuals involved in the prevention of child maltreatment and human trafficking; individuals who support special education services; and members of a Safe and Supportive Schools Program Team.

(A) A school district will determine the number of employees who regularly interact with students for purposes of compliance with this section using the requirements in this subsection and ensure that training is provided for the number and percentage of personnel in accordance with the timeline in subsection (g) of this section.

(B) A school district may, at its discretion, require contracted personnel who regularly interact with students to participate in the training.

(C) A school district may, at its discretion, require supervisors of personnel who regularly interact with students to participate in the training.

(d) General Training Program Required Content.

(1) A school district may select an evidence-based mental health training course that is on the recommended lists provided by the Texas Education Agency (TEA), the Texas Health and Human Services Commission (HHSC), or an education service center (ESC). A school district may not require a district employee who has previously completed the Youth Mental Health First Aid (YMHFA) or Mental Health First Aid (MHFA) course provided by a Local Mental Health Authority (LMHA), an ESC, or a YMHFA or MHFA trainer certified to teach those courses by the National Council on Mental Wellbeing if the employee provides the certificate of completion to the school district in accordance with the timeline established in subsection (g) of this section.

(2) If a school district selects an evidence-based mental health training course that is not on the recommended lists provided by TEA, HHSC, or an ESC, the school district may review and select the course to satisfy the training requirement under this section only if the course provides employees with the following evidence-based information, practices, and strategies:

(A) awareness and understanding of mental health and substance use prevalence data;

(B) knowledge, skills, and abilities for implementing mental health prevention and substance use prevention in a school to protect the health and safety of students and staff, including strategies to prevent harm or violence to self or others that may pose a threat to school safety;

(C) awareness and introductory understanding of typical child development, adverse childhood experiences, grief and trauma, risk factors, the benefits of early identification and early intervention for children who may have potential mental health challenges and substance use concerns, and evidence-supported treatment and self-help strategies;

(D) awareness and understanding of mental health promotive and protective factors and strategies to deploy them for students in the school environment;

(E) experiential activities designed to:

(i) increase the participant's understanding of the impact of mental illness on individuals and families, skills for listening respectfully, and strategies for supporting the individual and family in a mental health crisis;

(ii) encourage help-seeking to obtain appropriate professional care; and

(iii) identify professional care, other supports, and self-help strategies for mental health and substance use challenges;

(F) knowledge, skills, and abilities to recognize risk factors and warning signs for early identification of students who may potentially have mental health challenges or substance use concerns in alignment with TEC, §38.351, and evidence-based information;

(G) knowledge, skills and abilities to support a student when potential mental health concerns or early warning signs are identified, including effective strategies for teachers to support student mental health in the classroom, including students with intellectual or developmental disabilities who may have co-occurring mental health challenges;

(H) knowledge, skills, and abilities to respectfully notify and engage with a child's parent or guardian regarding potential early warning signs of mental health or substance use concerns and make recommendations so a parent or guardian can seek help for their child;

(I) knowledge of school-based and community-based resources and referrals to connect families to services and support for student mental health, including early intervention in a crisis situation that may involve risk of harm to self or others; and

(J) knowledge of strategies to promote mental health and wellness for school staff.

(3) In addition to the basic mental health training course under paragraph (1) or (2) of this subsection, school districts may provide more specialized mental health training opportunities for personnel with specific school mental health and safety related roles and responsibilities to strengthen their capacity to:

(A) plan for and monitor a continuum of evidence-based school mental and behavioral health related services and supports;

(B) deliver practical, evidence-based practices and research-based programs that may include resources recommended by TEA, HHSC, or ESCs to strengthen training, procedures, and protocols designed to promote student mental health and wellness, to prevent harm or violence to self or others, and to prevent threats to school safety;

(C) intervene effectively to engage parents or guardians and caregivers with practical evidence-based practices and programs, including in mental and behavioral health related crisis situations;

(D) facilitate mental health safety planning, including suicide prevention and intervention;

(E) facilitate referral pathways that connect parents, guardians, and caregivers to school-based or community-based mental health assessment, counseling, treatment, and related support services for students and families with effective coordination of efforts across systems;

(F) support students with intellectual or developmental disabilities who may have co-occurring mental health and behavioral health challenges and their families;

(G) facilitate mental health safety planning at schools, including suicide prevention and intervention;

(H) coordinate back-to-school transition plans from mental health or substance use treatment or from a discipline alternative education program when a mental health or substance use challenge has been identified;

(I) collaborate within a community system of care to support students and their families, including assistance offered through organizations such as LMHAs, HHSC, hospitals, school-based and community-based clinics, out of school time programs, non-profit mental health and faith-based groups, family partner services, the juvenile justice system, the child welfare system, the Texas Child Mental Health Care Consortium, and community resource coordination groups;

(J) establish partnerships and referral pathways with school-based and community-based mental health service providers and engage resources that may be available to the school, including resources that are identified by TEA, state agencies, or an ESC in the Texas School Mental Health Resources Database in accordance with TEC, Chapter 38, and which may include services that are delivered by telehealth or telemedicine;

(K) support classroom educators with job-embedded training, coaching, and consultation on supporting student mental health and wellness and preventing youth violence; and

(L) establish strategies and support plans to promote educator mental health and wellness.

(4) The training in this section may be combined or coordinated with suicide prevention, intervention, and postvention training, but it does not replace that required training.

(5) The training in this section may be combined or coordinated with grief and trauma informed care practices training, but it does not replace the required trauma informed training under TEC, §38.036. The training may be combined to include up to three required mental health training topics under TEC, §38.351, and as cited in TEC, §21.451(d-1)(2), at the discretion of the local school district.

(6) The training may be delivered through various modalities, such as face-to-face delivery, synchronous online learning, or hybrid or blended formats, and it may include job-embedded learning and coaching strategies for evidence-based implementation support.

(7) For alignment, a school district must consider the recommendations from the State Board for Educator Certification Clear-

inghouse on providing mental health training per TEC, §21.451; develop a local policy on what training will be provided; and determine the training frequency for personnel required to be trained.

(e) Training Program Required Content Related to Local School District Practices and Procedures.

(1) For applicability of the course content in subsection (d) of this section to local school district context, the personnel who regularly interact with students must be informed of the local district practices and procedures for mental health promotion required by TEC, §38.351(i), concerning each of the following areas listed in TEC, §38.351(c), including where multiple areas are listed together, in accordance with TEC, §38.351(j):

(A) early mental health prevention and intervention;

(B) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(C) substance abuse prevention and intervention;

(D) suicide prevention, intervention, and postvention;

(E) grief-informed and trauma-informed practices;

(F) positive school climates;

(G) positive behavior interventions and supports;

(H) positive youth development; and

(I) safe, supportive, and positive school climate.

(2) If the school district also develops practices and procedures for providing educational material to all parents and families in the district that contain information on identifying risk factors, accessing resources for treatment or support provided on and off campus, and accessing available student accommodations provided on campus in accordance with TEC, §38.351(i-1), personnel who regularly interact with students must also be informed of those practices and procedures.

(f) Documentation.

(1) School districts shall require each district employee to provide the certificate of completion of the training content in subsection (d) of this section to the school district.

(2) Documentation of the training content described in subsection (e) of this section may be satisfied when the employee submits to the district an acknowledgement form signed by the employee who received the current training and a copy of local procedures and practices that are published in the district handbook and/or district improvement plan.

(3) Documentation of training for the mental health training program must be kept by the school district and made available to TEA upon request for the duration of the employee's employment with the district.

(g) Timeline.

(1) At least 25% of the applicable district employees shall be trained before the start of the 2025-2026 school year.

(2) At least 50% of the applicable school district employees shall be trained before the start of the 2026-2027 school year.

(3) At least 75% of the applicable school district employees shall be trained before the start of the 2027-2028 school year.

(4) 100% of the applicable district employees shall be trained before the start of the 2028-2029 school year.

(A) When calculating the percentage of staff to be trained, the denominator is the number of school district employees who regularly interact with students who are required under subsection (c) of this section to receive mental health training.

(B) The percentages in this subsection shall be calculated using the number of school district employees who regularly interact with students and are employed by the district as of September 1 in any given school year.

(C) The number and percentage of employees and the procedure for making the determination under this subsection and subsection (c) of this section must be made available upon request by TEA.

(h) Mental health training reimbursement.

(1) If funds are appropriated, an allotment shall be provided to assist local school districts in complying with this section.

(2) The amount of the allotment provided to school districts under this subsection may not exceed the allowable costs incurred by the district for completing the required training.

(3) The funding shall be used to assist the school district in complying with the section and should include only the costs incurred by the district from employees' travel, training fees, and compensation for time spent completing the required training. Substitute pay, travel costs such as mileage and lodging, and cost of materials are eligible for this reimbursement.

(4) School districts may use the funding for training fees, travel expenses, and material costs for employees to attend trainer of trainer courses that allow staff to facilitate trainings for their district that meet the requirements set out in this section.

(5) TEA may proportionally reduce each school district's allotment if the amount appropriated is insufficient to pay for all costs incurred by districts under this subsection.

(6) School districts shall maintain an accounting of funding and documentation on expenses for the allocated funds and make the accounting of expenses available as requested by TEA.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402997
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §133.45, concerning Miscellaneous Policies and Protocols.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 186 and S.B. 1402, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

S.B. 1402 amended HSC §323.0045 and added new HSC §323.0046. Amended HSC §323.0045 requires a person who performs a forensic medical examination on a sexual assault survivor to complete at least two hours of basic forensic evidence collection training or equivalent education. Amended HSC §323.0045 also requires each health care facility with an emergency department that is not a sexual assault forensic exam ready facility (SAFE-ready facility) to develop a written policy to require staff who perform forensic medical examinations on sexual assault survivors to complete at least two hours of basic forensic evidence collection training. New HSC §323.0046 requires each health care facility with an emergency department to provide at least one hour of basic sexual assault response training to certain facility employees and outlines the training content requirements. New HSC §323.0046 also requires each non-SAFE-ready health care facility with an emergency department to develop a written policy to ensure all appropriate facility personnel complete the basic sexual assault response training.

The proposed amendment adds information regarding the new discharge requirements in HSC §256.003, new training requirements in HSC §323.0045 and §323.0046 to the general and special hospital rules, and more statutory language to further align the rule requirements for providing parents or caregivers of newborn infants with a resource pamphlet, as required by Texas Health and Safety Code §161.501.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.45 adds new subsection (k), which requires a general or special hospital to comply with the discharge requirements in HSC §256.003. The proposed amendment also adds new subsections (l) and (m), which require a general or special hospital to comply with the forensic medical examination training requirements under HSC §323.0045 and the basic sexual assault response training requirements under HSC §323.0046. The proposed amendment makes changes to correct outdated information and references and improve readability.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule is codifying current practices as required by statute.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that are consistent with statutory requirements for discharging patients to licensed group-centered facilities and forensic evidence collection and basic sexual assault response training requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule is codifying current practices as required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Com-

ments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R002" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services agencies; and HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and HSC §§241.026, 256.003, 323.0045, and 323.0046.

§133.45. Miscellaneous Policies and Protocols.

(a) Determination of death and autopsy reports. The hospital shall adopt, implement, and enforce protocols to be used in determining death and for filing autopsy reports which comply with Texas Health and Safety Code (HSC)[~~, Title 8, Subtitle A,~~] Chapter 671 [~~(Determination of Death and Autopsy Reports)~~].

(b) Organ and tissue donors. The hospital shall adopt, implement, and enforce a written protocol to identify potential organ and tissue donors which complies [~~is in compliance~~] with [~~the Texas Anatomical Gift Act,~~] HSC[~~,~~] Chapter 692A [~~692~~]. The hospital shall make its protocol available to the public during the hospital's normal business hours.

(1) The hospital's protocol shall include all requirements in HSC §692A.015 [~~, Chapter 692, §692.013 (Hospital Protocol)~~].

(2) A hospital which performs organ transplants shall be a member of the Organ Procurement and Transplantation Network in accordance with 42 United States Code[~~,~~] §274 [~~(Organ Procurement and Transplantation Network)~~].

(c) Discrimination prohibited. A licensed hospital shall not discriminate based on a patient's disability and shall comply with [~~Texas Health and Safety Code~~] HSC Chapter 161, Subchapter S [~~(relating to Allocation of Kidneys and Other Organs Available for Transplant)~~].

(d) All-hazard disaster preparedness.

(1) Definitions.

(A) Adult intensive care unit (ICU)--Can support critically ill or injured [~~ill /injured~~] patients, including ventilator support.

(B) Burn or burn ICU--Either approved by the American Burn Association or self-designated. (These beds should not be included in other ICU bed counts.)

(C) Medical/surgical--Also thought of as "ward" beds.

(D) Negative pressure/isolation--Beds provided with negative airflow, providing respiratory isolation. Note: This value may represent available beds included in the counts of other types.

(E) Operating rooms--An operating room that is equipped and staffed and could be made available for patient care in a short period.

(F) Pediatric ICU--The same as adult ICU, but for patients 17 years and younger.

(G) Pediatrics--Ward medical/surgical beds for patients 17 years and younger.

(H) Physically available beds--Beds that are licensed, physically set up, and available for use. These are beds regularly maintained in the hospital for the use of patients, which furnish accommodations with supporting services (such as food, laundry, and housekeeping). These beds may or may not be staffed but are physically available.

(I) Psychiatric--Ward beds on a closed or locked [~~closed/locked~~] psychiatric unit or ward beds where a patient will be attended by a sitter.

(J) Staffed beds--Beds that are licensed and physically available for which staff members are available to attend to the patient who occupies the bed. Staffed beds include those that are occupied and those that are vacant.

(K) Vacant/available beds--Beds that are vacant and to which patients can be transported immediately. These must include supporting space, equipment, medical material, ancillary and support services, and staff to operate under normal circumstances. These beds are licensed, physically available, and have staff on hand to attend to the patient who occupies the bed.

(2) A hospital shall adopt, implement, and enforce a written plan for all-hazard, natural or man-made, disaster preparedness for effective preparedness, mitigation, response, and recovery from disasters.

(3) The plan, which may be subject to review and approval by [~~the department~~] the Texas Health and Human Services Commission (HHSC), shall be sent to the local disaster management authority.

(4) The plan shall:

(A) be developed through a joint effort of the hospital governing body, administration, medical staff, hospital personnel and emergency medical services partners;

(B) include the applicable information contained in the:

(i) National Fire Protection Association 99, Standard for Health Care Facilities, 2002 edition, Chapter 12 [~~(Health Care Emergency Management)~~], published by the National Fire Protection Association; [~~(NFPA) ,~~] and

(ii) the State of Texas Emergency Management Plan, which [~~. Information regarding the State of Texas Emergency Management Plan~~] is available from the city or county emergency management coordinator [~~. The NFPA document referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: 1 Batterymarch Park, Post Office Box 9101, Quincy, Massachusetts 02269-9101, (800) 344-3555~~];

(C) contain the names and contact numbers of city and county emergency management officers and the hospital water supplier;

(D) be exercised at least annually and in conjunction with state and local exercises[~~. Hospitals participating in an exercise or responding to a real-life event shall develop an after-action report (AAR) within 60 days. AARs shall be retained for at least three years and be available for review by the local emergency management authority and the department~~];

(E) include the methodology for notifying the hospital personnel and the local disaster management authority of an event that will significantly impact hospital operations;

(F) include evidence that the hospital has communicated prospectively with the local utility and phone companies regarding the need for the hospital to be given priority for the restoration of utility and phone services and a process for testing internal and external communications systems regularly;

(G) include the use of a Texas Department of State Health Services (DSHS) [~~department~~] approved process to update bed availability, as follows:

(i) as requested by DSHS [~~the department~~] during a public health emergency or state declared disaster; and

(ii) for the physically available beds and staffed beds that are vacant/available beds for the following bed types:

(I) adult ICU;

(II) burn or burn ICU;

(III) medical/surgical;

(IV) negative pressure/isolation;

(V) operating rooms;

(VI) pediatric ICU;

(VII) pediatrics; and

(VIII) psychiatric;

(iii) for emergency department divert status;

(iv) for decontamination facility available; and

(v) for ventilators available;

(H) include at a minimum:

(i) a component for the reception, treatment, and disposition of casualties that can be used in the event that a disaster situation requires the hospital to accept multiple patients, which [~~. This component~~] shall include at a minimum:

(I) process, developed in conjunction with appropriate agencies, to allow essential healthcare workers and personnel to safely access their delivery care sites;

(II) procedures for the appropriate provision of personal protection equipment for and appropriate immunization of staff, volunteers, and staff families; and

(III) plan to provide food and shelter for staff and volunteers as needed throughout the duration of response;

(ii) an evacuation component that can be engaged in any emergency situation necessitating either a full or partial evacuation of the hospital, which [~~. The evacuation component~~] shall address at a minimum:

(I) activation, including who makes the decision to activate and how it is activated;

(II) when within control of the hospital, patient evacuation destination, including protocol to ensure that the patient destination is compatible to patient acuity and health care needs, plan for the order of removal of patients and planned route of movement, train and drill staff on the traffic flow and the movement of patients to a staging area, and room evacuation protocol;

(III) family or [~~/~~]responsible party notification, including the procedure to notify patient emergency contacts of an evacuation and the patient's destination; and

(IV) transport of records and supplies, including the protocol for the transfer of patient specific medications and records to the receiving facility, which [~~. These records~~] shall include at a minimum:

(-a-) the patient's most recent physician's assessment;[~~,~~]

(-b-) order sheet;[~~,~~]

(-c-) medication administration record (MAR); [~~, and~~]

(-d-) patient history with physical documentation; and [~~.~~]

(-e-) a [~~A~~] weather-proof patient identification wrist band (or equivalent identification), which must be intact on all patients.

(5) Hospitals participating in an exercise or responding to a real-life event under paragraph (4)(D) of this subsection shall develop an after-action report (AAR) within 60 days. The hospital shall retain the AARs for at least three years and make them available for review by the local emergency management authority and HHSC.

(e) Voluntary paternity establishment services. A hospital that handles the birth of newborns must provide voluntary paternity establishment services in accordance with:

(1) [~~the~~] HSC[~~,~~] §192.012 [~~, Record of Acknowledgment of Paternity~~]; and

(2) the rules of the Office of the Attorney General found at 1 Texas Administrative Code [~~TAC~~] Chapter 55, Subchapter J (relating to Voluntary Paternity Acknowledgment Process).

(f) Harassment and abuse. A hospital shall adopt, implement, and enforce a written policy for identifying and addressing instances of alleged verbal or physical abuse or harassment of hospital employees or contracted personnel by other hospital employees or contracted personnel or by a health care provider who has clinical privileges at the hospital.

(g) Information for parents of newborn children. A hospital that provides prenatal care to a pregnant woman during gestation or at delivery of an infant, shall adopt, implement, and enforce written policies to ensure compliance with HSC [~~, Chapter 161, Subchapter T,~~] §161.501 [~~(relating to Parenting and Postpartum Counseling Information)~~].

(1) The policy shall require that the woman and the father of the infant, if possible, or another adult caregiver for the infant, be provided with a resource pamphlet which includes:

(A) a list of the names, addresses, and phone numbers of [~~information on~~] professional organizations providing counseling and assistance relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome, as specified under HSC §161.507(a)(1)(B)(i) - (iv) [~~, §167.501(a)(1)(B)(i) - (iv)~~];

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations; [~~and~~]

(D) the appropriate schedule for follow-up procedure for newborn screening; [~~.~~]

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome;

(F) educational information in both English and Spanish on:

(i) pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control and Prevention recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis; and

(ii) the incidence of cytomegalovirus, birth defects caused by congenital cytomegalovirus, and available resources for the family of an infant born with congenital cytomegalovirus; and

(G) the danger of heatstroke for a child left unattended in a motor vehicle.

(2) If the woman is a recipient of medical assistance under Texas Human Resources Code Chapter 32, the policy must require the hospital to provide the woman and the father of the infant, if possible, or another adult caregiver with a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child from birth until age five, including information relating to:

(A) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(B) dental care;

(C) effective parenting;

(D) child safety;

(E) the importance of reading to a child;

(F) expected developmental milestones;

(G) health care resources available in the state;

(H) selecting appropriate child care; and

(I) other resources available in the state;

(3) [~~(2)~~] The policy shall include a requirement that it be documented in the woman's record that the information was provided, and that the documentation be maintained for at least five years.

(h) Abortion. A hospital that performs abortions shall adopt, implement, and enforce policies to:

(1) ensure compliance with HSC[~~,~~] Chapter 171;

(2) ensure compliance with Texas Occupations Code[~~,~~] §164.052(a)(19) [~~(relating to Parental Consent for Abortion)~~].

(i) Influenza and pneumococcal vaccine for elderly persons. The hospital shall adopt, implement, and enforce a policy for providing influenza and pneumococcal vaccines for elderly persons. The policy shall:

(1) establish that an elderly person, defined as 65 years of age older, who is admitted to the hospital for a period of 24 hours or more, is informed of the availability of the influenza and pneumococcal vaccines, and, if they request the vaccine, is assessed to determine if receipt of the vaccine is in their best interest; and [~~,~~]

(2) include provisions that if the vaccines requested by the elderly person under paragraph (1) of this subsection are [~~If~~] determined appropriate by the physician or other qualified medical personnel, the elderly person shall receive the vaccines prior to discharge from the hospital;

(3) [~~(2)~~] include provisions that the influenza vaccine shall be made available in October and November, and if available, December, and pneumococcal vaccine shall be made available throughout the year;

(4) [~~(3)~~] require that the person administering the vaccine ask the elderly patient if they are currently vaccinated against influenza or pneumococcal disease, assess potential contraindications, and then, if appropriate, administer the vaccine under approved hospital protocols; and

(5) [~~(4)~~] address required documentation of the vaccination in the patient medical record.

(6) [~~(5)~~] HHSC [~~The department~~] may waive requirements related to the administration of the vaccines based on established shortages of the vaccines.

(j) Human trafficking signage required [~~Trafficking Signage Required~~]. A licensed hospital shall comply with human trafficking signage requirements in accordance with HSC [~~Texas Health and Safety Code~~] §241.011 [~~(relating to Human Trafficking Signs Required)~~].

(k) Prohibited discharge of patients to certain group-centered facilities. A hospital shall comply with HSC §256.003.

(1) Except as provided by paragraph (2) of this subsection, a hospital may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility only if the person operating the group-centered facility holds a license or permit issued in accordance with applicable state law.

(2) A hospital may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility operated by a person who does not hold a license or permit issued in accordance with applicable state law only if:

(A) there is no group-centered facility operated in the county where the patient is discharged that is operated by a person holding the applicable license or permit; or

(B) the patient voluntarily chooses to reside in the group-centered facility operated by an unlicensed or unpermitted person.

(l) Basic sexual assault forensic evidence collection training. A hospital shall develop, implement, and enforce policies and procedures to ensure a person who performs a forensic medical examination on a survivor of sexual assault completes the required forensic evidence collection training or equivalent education required by HSC §323.0045.

(m) Basic sexual assault response policy and training. A hospital shall develop, implement, and enforce policies and procedures to provide basic sexual assault response training that meets the requirements under HSC §323.0046 to facility employees who provide patient admission functions, patient-related administrative support functions, or direct patient care.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402979
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §140.433, concerning Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses, and new §140.433, concerning Licensing, Certification, or Registration of Military Service Members, Military Spouses, and Military Veterans.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with and implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023. S.B. 422, in part, amended Texas Occupations Code (TOC) Chapter 55 to update requirements for a state agency's recognition of a military service member's and military spouse's out-of-state professional license, which includes a licensed chemical dependency counselor (LCDC) license.

The proposal increases consistency between the proposed rule, the HHSC rules at 1 Texas Administrative Code (TAC) §351.3 and §351.6, and the statutory requirements regarding the licensing process for military service members, military spouses, and military veterans. The proposal also retains and updates certain language currently found in 25 TAC §140.433.

SECTION-BY-SECTION SUMMARY

Proposed repeal of §140.433 removes the current rule language because the new proposed §140.433 reorganizes language and updates every subsection in the current rule.

Proposed new §140.433 outlines definitions used in the rule; sets forth out-of-state and alternative licensing requirements for military service members, military spouses, and military veterans; references HHSC rules at 1 TAC §351.3 and §351.6, which updates the timeframe requirement for HHSC to process an application for alternative licensing; and retains and updates certain language currently found in 25 TAC §140.433.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional costs or requirements for LCDC applicants or licensees.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consistency between the LCDC rule, HHSC rules at 1 TAC §351.3 and §351.6, and statutory requirements regarding the licensing process for military service members, military spouses, and military veterans.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional cost to LCDC applicants.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 24R062" in the subject line.

SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.433

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Occupations Code Chapter 504, which authorizes the Executive Commissioner to adopt rules governing the performance, conduct, and ethics for persons licensed as LCDCs.

§140.433. Licensing, Certification, or Registration of Military Service Members, Military Veterans, and Military Spouses.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402974
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.433

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Occupations Code Chapter 504, which authorizes the Executive Commissioner to adopt rules governing the performance, conduct, and ethics for persons licensed as LCDCs.

The new section implements Texas Government Code §531.0055, Texas Occupations Code Chapter 55, and Texas Occupations Code Chapter 504.

§140.433. Licensing, Certification, or Registration of Military Service Members, Military Spouses, and Military Veterans.

(a) This section sets out licensing procedures applicable to military service members, military spouses, and military veterans, pursuant to Texas Occupations Code Chapter 55 and does not modify or alter rights that may be provided under federal law. For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Texas Government Code §437.001, or similar military service of another state.

(2) "Alternative licensing" means the process under the Texas Health and Human Services Commission (HHSC) rule at 1 Texas Administrative Code (TAC) §351.6 (relating to Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans) by which HHSC may issue a license to a military service member, military spouse, or military veteran who is currently licensed in good standing with another jurisdiction or has held the same license in Texas within the preceding five years.

(3) "Armed forces of the United States" means the Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(4) "License" means a license, certificate, registration, permit, or other form of authorization required by law or an HHSC rule to practice as a licensed chemical dependency counselor (LCDC), certified clinical supervisor, or counselor intern (CI).

(5) "Military service member" means a person who is on active duty.

(6) "Military spouse" means a person who is married to a military service member.

(7) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(8) "Verification letter" means a verification letter issued in accordance with 1 TAC §351.3 (relating to Recognition of Out-of-State License of Military Service Members and Military Spouses).

(b) A military service member, military spouse, or military veteran may apply for alternative licensing in accordance with 1 TAC §351.6 if the applicant:

(1) has an active license issued by another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this subchapter and seeks a license as an LCDC or to register as a CI in Texas; or

(2) held the same license in Texas within the five years preceding the application date.

(c) A military service member, military spouse, or military veteran who does not comply with or qualify for alternative licensing or practicing under another jurisdiction's license must seek a license under the standard processes of this subchapter.

(d) A military service member or military spouse currently licensed by another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this subchapter, may work in Texas under that jurisdiction's license if the applicant complies with the requirements of 1 TAC §351.3 (relating to Recognition of Out-of-State License of Military Service Members and Military Spouses), including obtaining a verification letter.

(e) For license renewal under this subchapter, HHSC will exempt an individual currently licensed under this subchapter from any increased fee or other penalty for failing to renew the license in a timely manner because the individual was serving as a military service member. The individual must establish the reason for timely renewal failure to HHSC's satisfaction.

(f) A military service member who holds a license under this subchapter is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

(g) When a verified military service member or military veteran submits an application for a license under this subchapter, the applicant will receive credit towards any licensing or internship requirements, except an examination requirement, for verified military service, training, or education that HHSC determines relevant, as applicable, to the occupation or licensing requirements, unless the applicant holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.

(h) HHSC's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions of this section.

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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Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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CHAPTER 229. FOOD AND DRUG SUBCHAPTER HH. LABELING OF ANALOGUE PRODUCTS

25 TAC §§229.901 - 229.903

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new Subchapter HH, §§229.901 - 229.903, concerning Labeling of Analogue Products.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 664, 88th Legislature, Regular Session, 2023, which adds Texas Health and Safety Code §431.0805. S.B. 664 defines "analogue product," "cell-cultured product," "close proximity," "egg," "egg product," "fish," "meat," "meat food product," "poultry," and "poultry product."

S.B. 664 also includes labeling requirements for an analogue meat product, a meat food product, poultry, a poultry product, an egg product, or fish.

SECTION-BY-SECTION SUMMARY

Proposed new §229.901 outlines the purpose of the subchapter.

Proposed new §229.902 adds definitions to clarify the terms product name and statement of identity, and adds definitions for different classifications of food products.

Proposed new §229.903 includes labeling requirements for analogue, meatless, plant-based, made from plants, or a similar qualifying term describing the contents of the product.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new regulations;

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

(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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no adverse small business, micro-business, or rural community impact related to the new rules as the rules are specific to labeling of analogue products.

LOCAL EMPLOYMENT IMPACT

The proposed new rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, Ph.D., Associate Commissioner, Consumer Protection Division has determined that for each year of the first five years the new rules are in effect, the public benefit will be clarity on labeling requirements for analogue products. Consumers will be clearly informed of the contents of the food products.

Christy Havel Burton has also determined that for the first five years the new rules are in effect, DSHS is unable to estimate the potential economic costs to persons who are required to comply with the proposed rules because all food products must be labeled regardless of the product type.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Food & Drug Section, Consumer Protection Division, DSHS, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, or street address 1100 West 49th Street, Austin, Texas 78756; or by email to foods.regulatory@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the

last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R080" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code Chapter 431, which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new sections implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 431 and 1001.

§229.901. Purpose and Scope.

The purpose of this subchapter is to implement Texas Health and Safety Code Chapter 431, which requires the Department of State Health Services to adopt rules related to analogue food products. This subchapter addresses analogue food products only.

§229.902. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. Terms defined and interpreted in the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code Chapter 431, when used in this subchapter also apply.

(1) Analogue product--A food product made to resemble the texture, flavor, appearance, or other aesthetic qualities or chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product. Such products are made by combining processed plant products, insects, or fungus with food additives.

(2) Cell-cultured product--A food product made by harvesting animal cells and artificially replicating those cells in a growth medium in a laboratory to produce tissue.

(3) Close proximity--Means:

(A) immediately before or after the product name or statement of identity; or,

(B) in the line of the label immediately before or after the line containing the product name or statement of identity; or,

(C) within the same phrase or sentence containing the product name or statement of identity.

(4) Egg--Has the meaning assigned by Section 4(g), Egg Products Inspection Act (21 United States Code (USC) §1033(g)). The term does not include an analogue product or a cell-cultured product.

(5) Egg product--Has the meaning assigned by Section 4(f), Egg Products Inspection Act (21 USC §1033(f)). The term does not include an analogue product or a cell-cultured product.

(6) Fish--Has the meaning assigned by Section 403 of the Federal Food, Drug and Cosmetic Act (21 USC §343(q)(4)(E)). The term does not include an analogue product or a cell-cultured product.

(7) Meat--Has the meaning assigned by 9 Code of Federal Regulations (CFR) §301.2. The term does not include an analogue product or a cell-cultured product.

(8) Meat food product--Has the meaning assigned by Section 1(j), Federal Meat Inspection Act (21 USC §601(j)). The term does not include an analogue product or a cell-cultured product.

(9) Poultry--Has the meaning assigned by Section 4(e), Poultry Products Inspection Act (21 USC §453(e)). The term does not include an analogue product or a cell-cultured product.

(10) Poultry product--Has the meaning assigned by Section 4(f), Poultry Products Inspection Act (21 USC §453(f)). The term does not include an analogue product or a cell-cultured product.

(11) Product name--For purposes of this subchapter, product name is the trade name or brand name of their product, which must be clarified by a statement of identity.

(12) Statement of identity--Means:

(A) the name specified in or required by any applicable federal law or regulation; or,

(B) the common or usual name of the food; or,

(C) an appropriately descriptive term, or when the nature of the food is obvious, a fanciful name commonly used by the public for such food.

§229.903. Labeling.

One of the following statements must be shown prominently on the product label in close proximity to and in type size equal to or greater than the product name or statement of identity:

(1) analogue;

(2) meatless;

(3) plant-based;

(4) made from plants; or

(5) a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product.

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

Filed with the Office of the Secretary of State on July 2, 2024.

TRD-202402923
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-6670

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.252

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §289.252, concerning Licensing of Radioactive Material.

BACKGROUND AND PURPOSE

The proposed amendment is necessary for Texas (an Agreement State) to comply with United States Nuclear Regulatory Commission (NRC) requirements, as identified in the Review

Summary Sheets for Regulation Amendments (RATS Identification). The amendment updates NRC information, including the sum of ratios equation, used for determining whether aggregate quantities of radionuclides exceed the category 1 or category 2 radioactive material thresholds. An additional RATS Identification prescribes an update to the 21 Code of Federal Regulations (CFR) reference used when evaluating applications for specific licenses to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material.

The proposed amendment clarifies Radiation Safety Officer training requirements; updates licensee responsibility for providing documentation to support nuclear pharmacist designation; specifies cut-off dates for nuclear pharmacy practice experience as they relate to authority to designate nuclear pharmacists; corrects the reference for reporting and notifying DSHS when radiopharmaceutical generator eluates exceed permissible concentrations; and simplifies the "Form of records" requirements for category 1 and category 2 protection standards by removing references to obsolete storage media. The amendment ensures compatibility with NRC requirements not specifically mentioned in the RATS Identification.

The proposed amendment updates, corrects, improves, and clarifies the rule language and incorporates plain language where appropriate while ensuring compatibility with NRC regulation.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §289.252(f)(7)(A) and §289.252(f)(7)(B) adds "or" to the end of the qualification description to clarify that these are alternate pathways and ensures compliance with equivalent NRC regulation.

Proposed amendment to §289.252(l)(4), §289.252(l)(4)(C), and §289.252(l)(7)(A)(i)(II) clarifies to whom the listed documents must be furnished, adds "if applicable" to provide regulatory relief when the General License Acknowledgement does not apply, and clarifies the timeline for filing the report of all commercial distributions of devices.

Proposed amendment to §289.252(r)(1)(A)(i) updates the reference to "21 CFR §207.17(a)" for applicants registered with the United States Food and Drug Administration (FDA). This update is required by RATS Identification 2023-1.

Proposed amendment to §289.252(r)(3)(E) adds "NRC master materials licensee permit" to the list of documents provided by licensees to DSHS for consideration when designating nuclear pharmacists. This addition complies with the equivalent NRC regulation (10 CFR Part 32.72). Subsequent clauses are renumbered.

Proposed amendment to §289.252(r)(3)(D)(ii) and §289.252(r)(3)(E)(v) specifies cut-off dates for nuclear pharmacy practice as they relate to nuclear pharmacist designation and documentation requirements. This change complies with equivalent NRC regulation (10 CFR Part 32.72).

Proposed amendment to §289.252(x)(10)(B) updates the reference to reporting and notification requirements of "§289.256(www)" for generator eluates exceeding permissible concentrations.

Proposed amendment to §289.252(cc)(6) changes the paragraph to "Requirements for a specific license to initially transfer source material to persons generally licensed under §289.251(f)(3) of this subchapter" as is consistent with other subsections listing requirements for specific licenses.

Proposed amendment to §289.252(dd)(1) and §289.252(dd)(2)(C) adds a reference to "court" orders to reflect that only a court can issue a civil penalty under Texas Health & Safety Code Chapter 401; the issuance of civil penalties is considered in matters of modification, suspension, and revocation of licenses.

Proposed amendment to §289.252(gg)(8) deletes the paragraph and removes the obsolete reference to licensees applying for license renewal before January 1, 1995.

Proposed amendment to §289.252(ii)(24) simplifies the "Form of records" requirements for category 1 and category 2 protection standards by removing references to obsolete storage media.

Proposed amendment to §289.252(jj)(9) updates the sum of ratios equation in 25 TAC §289.252(jj)(9) - Figure, which is used for determining whether aggregate quantities of radionuclides exceed the category 1 or category 2 radioactive material thresholds. This update is required by RATS Identification 2021-2.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand existing regulation;

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

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

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

Christy Havel Burton, Chief Financial Officer, has also determined there will be no adverse economic impact on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. Small businesses, micro-businesses, and rural communities should not need to make changes to their business practices to comply with the rule when license conditions are applicable.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect the local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFITS AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined for each year of the first five years the rule is in effect, the public will benefit from adopting the rule. The public benefit anticipated as the result of enforcing or administering the rule is to ensure continued enhanced protection of the public, patients, workers, and the environment from unnecessary exposure to ionizing radiation. This is accomplished when rules are understandable, effective, specific, and harmonious with NRC rules.

Christy Havel Burton, Chief Financial Officer, has also determined for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because those persons are already required to follow NRC regulations.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Radiation Section, Consumer Protection Division, DSHS, Mail Code 1986, P.O. Box 149347, Austin, Texas 78714-9347, or street address 1100 West 49th Street, Austin, Texas 78756; by fax to (512) 483-3430 or by email to CPDRuleComments@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight or hand-delivered on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 23R048" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules providing for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment also implements Texas Health and Safety Code Chapters 401 and 1001 and Texas Government Code Chapter 531.

§289.252. Licensing of Radioactive Material.

(a) Purpose. The intent of this section is as follows.

(1) This section provides for the specific licensing of radioactive material.

(2) Unless otherwise exempted, no person may [~~shall~~] manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized by [~~the following~~]:

(A) a specific license issued under [~~in accordance with~~] this section and any of the following sections:

(i) §289.253 of this subchapter [~~title~~] (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies);

(ii) §289.255 of this subchapter [~~title~~] (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography);

(iii) §289.256 of this subchapter [~~title~~] (relating to Medical and Veterinary Use of Radioactive Material);

(iv) §289.258 of this subchapter [~~title~~] (relating to Licensing and Radiation Safety Requirements for Irradiators); or

(v) §289.259 of this subchapter [~~title~~] (relating to Licensing of Naturally Occurring Radioactive Material (NORM)); or

(B) a general license or general license acknowledgment issued under [~~in accordance with~~] §289.251 of this subchapter [~~title~~] (relating to Exemptions, General Licenses, and General License Acknowledgements).

(3) A person who manufactures, produces, receives, possesses, uses, transfers, owns, or acquires radioactive materials before receiving a license is subject to the requirements of this chapter.

(b) Scope. In addition to the requirements of this section, the following [~~additional~~] requirements are applicable.

(1) All licensees, unless otherwise specified, are subject to the requirements in [~~the following sections~~]:

(A) §289.201 of this chapter [~~title~~] (relating to General Provisions for Radioactive Material);

(B) §289.202 of this chapter [~~title~~] (relating to Standards for Protection Against Radiation from Radioactive Materials);

(C) §289.203 of this chapter [~~title~~] (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this chapter [~~title~~] (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this chapter [~~title~~] (relating to Hearing and Enforcement Procedures); and

(F) §289.257 of this subchapter [~~title~~] (relating to Packaging and Transportation of Radioactive Material).

(2) Licensees engaged in well logging service operations and tracer studies are subject to the requirements of §289.253 of this subchapter [~~title~~].

(3) Licensees engaged in industrial radiographic operations are subject to the requirements of §289.255 of this subchapter [~~title~~].

(4) Licensees using radioactive material for medical or veterinary use are subject to the requirements of §289.256 of this subchapter [~~title~~].

(5) Licensees using sealed sources in irradiators are subject to the requirements of §289.258 of this subchapter [~~title~~].

(6) Licensees possessing or using naturally occurring radioactive material are subject to the requirements of §289.259 of this subchapter [~~title~~].

(c) Types of licenses. There are two types of licenses [~~Licenses~~] for radioactive materials [~~are of two types~~]: general and specific.

(1) General licenses provided in §289.251 and §289.259 of this subchapter [~~title~~] are effective without the filing of applications with the department or the issuance of licensing documents [~~to the particular persons~~], although [~~the~~] filing [~~of~~] an application for acknowledgement with the department may be required for a particular general license. The general licensee is subject to any other applicable portions of this chapter and any conditions or limitations of the general license.

(2) Specific licenses require the submission of an application to the department and the issuance of a licensing document by the department. The licensee is subject to all applicable portions of this chapter as well as any conditions or limitations specified in the licensing document.

(d) Filing application for specific licenses. The department may request additional information[~~,~~] at any time [~~after the filing of the original application, require further statements in order to enable the department~~] to determine if [~~whether~~] the application should be granted or denied or if an existing license should be modified or revoked [~~or the license should be issued~~].

(1) Applications for specific licenses must [~~shall~~] be filed in a manner prescribed by the department.

(2) Each application must [~~shall~~] be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(3) An application for a license may include a request for a license authorizing one or more activities. The department may require the issuance of separate specific licenses for those activities.

(4) An application for a license may include a request for more than one use location [~~of use~~] on the license. The department may require the issuance of a separate license for additional locations [~~that are~~] more than 30 miles from the main site specified on a license.

(5) Each application for a specific license, other than a license exempted from §289.204 of this chapter [~~title~~], must [~~shall~~] be accompanied by the fee prescribed in §289.204 of this chapter [~~title~~].

(6) Each application must [~~shall~~] be accompanied by a completed RC Form 252-1 (Business Information Form).

(7) Each applicant must [~~shall~~] demonstrate to the department [~~that~~] the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the department issues a license. Each licensee must [~~shall~~] demonstrate to the department [~~that~~] it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (jj)(8) of this section. Demonstrating [~~The requirement for demonstration of~~] financial qualifications [~~qualification~~] is separate from the requirement as specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance.

(8) If facility drawings submitted in conjunction with the license application [~~for a license~~] are prepared by a professional engineer or engineering firm, those drawings must [~~shall~~] be final and must [~~shall~~] be signed, sealed, and dated as specified in [~~accordance with~~] the requirements of the Texas Board of Professional Engineers and Land Surveyors, 22 Texas Administrative Code (TAC) Chapter 137 (relating to Compliance and Professionalism for Engineers) [~~Title 22, Part 6, Texas Administrative Code (TAC), Chapter 137~~].

(9) Applications for licenses must [~~shall~~] be processed according to [~~in accordance with~~] the following time periods.

(A) The first period is the time from receipt of an application by the department to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Texas Government Code, Chapter 2001.

(10) Except as provided in this paragraph, an application for a specific license to use radioactive material in the form of a sealed source or in a device containing [~~that contains~~] the sealed source must [~~shall~~]:

(A) identify the source or device by manufacturer and model number as registered under [~~in accordance with~~] subsection (v) of this section or with equivalent regulations of the United States Nuclear Regulatory Commission (NRC) or any agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material registered under [~~in accordance with~~] subsection (v) of this section; or

(B) contain the information as specified in subsection (v)(3) - (4) of this section.

(11) For sources or devices manufactured before October 23, 2012, that are not registered under [~~in accordance with~~] subsection (v) of this section or with equivalent regulations of the NRC or any agreement state, and for which the applicant is unable to provide all categories of information as specified in subsection (v)(3) - (4) of this section, the application must [~~shall~~] include:

(A) all available information identified in subsection (v)(3) - (4) of this section concerning the source, and, if applicable, the device; and

(B) sufficient additional information to demonstrate [~~that~~] there is reasonable assurance [~~that~~] the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must [~~shall~~] include:

(i) a description of the source or device;

(ii) a description of radiation safety features;

(iii) the intended use and associated operating experience; and

(iv) the results of a recent leak test.

(12) For sealed sources and devices allowed to be distributed without registration of safety information as specified in [accordance with] subsection (v)(8)(A) of this section, the applicant must [shall] supply [only] the manufacturer, model number, [and] radionuclide, and quantity.

(13) If it is not feasible to identify each sealed source and device individually, the applicant must [shall] propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, instead [in lieu] of identifying each sealed source and device.

(14) Notwithstanding the provisions of §289.204(d)(1) of this chapter [title], reimbursement of application fees may be granted in the following manner.

(A) If [In the event] the application is not processed within [in] the time periods [as] stated in paragraph (9) of this subsection, the applicant may [has the right to] request a [of the director of the Radiation Control Program] full reimbursement of all application fees paid in that [particular] application process from the director of the Radiation Control Program. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15 percent or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed according to 1 TAC [in accordance with Title 1, TAC,] Chapter 155 (relating to Rules of Procedure), and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(15) Applications for licenses may be denied for [the following reasons]:

(A) any materially false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means warranting [that would warrant the] department refusal [to refuse] to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter are [have been] addressed.

(16) Action on a specific license application is [will be] considered abandoned if the applicant does not respond within 30 days from the date of a request by the department for any information [by the department]. Abandonment of these [such] actions does not provide an opportunity for a hearing, but[; however,] the applicant retains the right to resubmit the application as specified in [accordance with] paragraphs (1) - (8) of this subsection.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the department determines [that]:

(1) the applicant and all personnel who handle [will be handling] the radioactive material are qualified by [reason of] training and experience to use the material [in question] for the purpose requested under [in accordance with] this chapter in such a manner as to minimize danger to occupational and public health and safety, life, property, and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and public health and safety, life, property, and the environment;

(3) the issuance of the license will not be harmful [inimical] to the health and safety of the public;

(4) the applicant satisfies [satisfied] any applicable special requirement in this section and other sections as specified in subsection (a)(2)(A) of this section;

(5) the radiation safety information submitted for requested sealed sources [source(s)] or devices [device(s)] containing radioactive material complies [is in accordance] with subsection (v) of this section;

(6) qualifications of the designated radiation safety officer (RSO) as specified in subsection (f) of this section are adequate for the purpose requested in the application;

(7) the applicant submitted adequate operating, safety, and emergency procedures;

(8) the applicant's permanent facility is located in Texas (if the applicant's permanent facility is not located in Texas, reciprocal recognition must [shall] be sought as required by subsection (ee) of this section);

(9) the owner of the property is aware [that] radioactive material is stored or used on the property. If[, if] the proposed facility is not owned by the applicant, the[. The] applicant must [shall] provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use;

(10) there is no reason to deny the license as specified in subsections (d)(13) [(d)(15)] or (x)(9) of this section; and

(11) the applicant possesses [shall have] a current registration with the Texas Secretary of State (SOS) to conduct business in the state[,] unless the applicant is exempt. All applicants using an assumed name in their application must [shall] file an assumed name certificate as required under [the] Texas Business and Commerce Code, Chapter 71.

(f) RSO.

(1) An RSO must [shall] be designated for every license issued by the department. A single individual may be designated as RSO for more than one license if authorized by the department.

(2) The RSO's documented qualifications must [shall] include, at [as] a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the General Educational Development (GED) [GED] test;

(B) completion of the training and testing requirements as specified in this chapter for the activities for which the license application is submitted; and

(C) training and experience necessary to supervise the radiation safety aspects of the licensed activity.

(3) Every licensee must [~~shall~~] establish in writing the authority, duties, and responsibilities of the RSO and ensure [~~that~~] the RSO is provided sufficient authority, organizational freedom, time, resources, and management prerogative to perform the specific duties of the RSO, including [~~which include the following~~]:

(A) establishing [~~to establish~~] and overseeing [~~oversee~~] operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and reviewing [~~to review~~] them at least annually to ensure [~~that~~] the procedures are current and conform with this chapter;

(B) overseeing [~~to oversee~~] and approving [~~approve~~] all phases of the training program for operations and personnel so [~~that~~] appropriate and effective radiation protection practices are taught;

(C) ensuring [~~to ensure that~~] required radiation surveys and leak tests are performed and documented as specified in [~~accordance with~~] this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) ensuring [~~to ensure that~~] individual monitoring devices are used properly by occupationally exposed [~~occupationally-exposed~~] personnel, [~~that~~] records are kept of the monitoring results, and [~~that~~] timely notifications are made as specified in [~~accordance with~~] §289.203 of this chapter [~~title~~];

(E) investigating [~~to investigate~~] and causing [~~cause~~] a report to be submitted to the department for each known or suspected case of radiation exposure to an individual or radiation level detected over the [~~in excess of~~] limits established by this chapter, determining [~~and each theft or loss of source(s) of radiation, to determine~~] the cause or causes [~~cause(s)~~], and taking [~~to take~~] steps to prevent [~~a~~] recurrence;

(F) investigating and causing a report to be submitted to the department for each theft or loss of radiation sources, determining the cause or causes, and taking steps to prevent recurrence;

(G) [~~(F)~~] investigating [~~to investigate~~] and causing [~~cause~~] a report to be submitted to the department for each known or suspected case of release of radioactive material to the environment over the [~~in excess of~~] limits established by this chapter;

(H) [~~(G)~~] having [~~to have~~] a thorough knowledge of management policies and administrative procedures of the licensee;

(I) [~~(H)~~] assuming [~~to assume~~] control and having [~~have~~] the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(J) [~~(I)~~] ensuring [~~to ensure that~~] records are maintained as required by this chapter;

(K) [~~(J)~~] ensuring [~~to ensure~~] the proper storing, labeling, transport, use, and disposal of sources of radiation[~~, storage, and transport containers~~];

(L) [~~(K)~~] ensuring [~~to ensure that~~] inventories are performed according to [~~in accordance with~~] the activities for which the license application is submitted;

(M) [~~(L)~~] performing [~~to perform~~] a physical inventory of the radioactive sealed sources authorized for use on the license every six [~~6~~] months. Written records of the inventory must be made, maintained, and retained as specified in subsection (mm) of this section. Inventory records must [~~and make, maintain, and retain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to~~] include [~~the following~~]:

(i) isotopes [~~isotope(s)~~];

(ii) quantities [~~quantity(ies)~~];

(iii) activities [~~activity(ies)~~];

(iv) date inventory is performed;

(v) location;

(vi) unique identifying number or serial number; and

(vii) signature of person performing the inventory;

(N) [~~(M)~~] ensuring [~~to ensure that~~] personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee;

(O) [~~(N)~~] serving [~~to serve~~] as the primary contact with the department; and

(P) [~~(O)~~] having [~~to have~~] knowledge of and ensuring [~~ensure~~] compliance with federal and state security measures for radioactive material.

(4) The RSO must [~~shall~~] ensure [~~that~~] the duties listed in paragraph (3)(A) - (P)[~~(O)~~] of this subsection are performed.

(5) The RSO must [~~shall~~] be on site periodically, appropriate to [~~commensurate with~~] the scope of licensed activities, to satisfy the requirements of paragraphs (3) and (4) of this subsection.

(6) The RSO, or a Site RSO designated on the license, must [~~shall~~] be capable of physically arriving at the licensee's authorized use site or sites [~~site(s)~~] within a reasonable time of being notified of an emergency [~~situation~~] or unsafe condition. A Site RSO must [~~shall~~] meet the qualifications in paragraph (2) of this subsection.

(7) Requirements for an RSO [~~RSOs~~] for specific licenses for broad scope authorization for research and development. In addition to the requirements in paragraphs (1) and (3) - (6) of this subsection, the RSO's qualifications for specific licenses for broad scope authorization for research and development must [~~shall~~] include [~~evidence of the following~~]:

(A) a bachelor's degree in health physics, radiological health, physical science, or a biological science with a physical science minor and four [4] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed; or

(B) a master's degree in health physics or radiological health and three [~~3~~] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed; or

(C) two [~~2~~] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed and one of the following:

(i) doctorate degree in health physics or radiological health;

(ii) comprehensive certification by the American Board of Health Physics;

(iii) certification by the American Board of Radiology in Nuclear Medical Physics;

(iv) certification by the American Board of Science in Nuclear Medicine in Radiation Protection; or

(v) certification by the American Board of Medical Physics in Medical Health Physics; or

(D) equivalent qualifications as approved by the department.

(8) The qualifications in paragraph (7)(A) - (D) do not apply to individuals who have been adequately trained and designated as an RSO [~~RSOs~~] on licenses issued before October 1, 2000.

(g) Duties and responsibilities of the Radiation Safety Committee (RSC). The duties and responsibilities of the RSC include [~~the following~~]:

(1) meeting as often as necessary to conduct business but no less than three times a year;

(2) reviewing summaries of the following information presented by the RSO:

(A) over-exposures;

(B) significant incidents, including spills, contamination, or medical events; and

(C) items of non-compliance following an inspection;

(3) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA;

(4) reviewing the overall compliance status for authorized users;

(5) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(6) reviewing the audit of the radiation safety program and acting upon the findings;

(7) developing criteria to evaluate training and experience of new authorized user applicants;

(8) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility;

(9) evaluating new uses of radioactive material;

(10) reviewing and approving permitted program and procedural changes before implementation; and

(11) having knowledge of and ensuring compliance with federal and state security measures for radioactive material.

(h) Specific licenses of broad scope.

(1) Types of specific licenses of broad scope.

(A) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use, and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license. The quantities specified are usually in the multicurie range.

(B) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use, and transfer of any chemical or physical form of radioactive material as specified in subsection (jj)(10) of this section. [~~The possession limit for a Type B specific license of broad scope, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in subsection (jj)(10) of this section. If two or more radionuclides are possessed thereunder, the possession limit for each is determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in subsection (jj)(10) of this section, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.~~]

(i) The possession limit for a Type B specific license of broad scope, if only one radionuclide is possessed under such a license, is the quantity specified for that radionuclide in subsection (jj)(10) of this section.

(ii) If two or more radionuclides are possessed under such a license, the possession limit for each is determined as follows:

(I) For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity as specified in subsection (jj)(10) of this section for that radionuclide.

(II) The sum of the ratios for all radionuclides possessed under the license must not exceed unity.

(C) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use, and transfer of any chemical or physical form of radioactive material specified in subsection (jj)(10) of this section. [~~The possession limit for a Type C specific license of broad scope, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in subsection (jj)(10) of this section. If two or more radionuclides are possessed thereunder, the possession limit is determined for each as follows: For each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in subsection (jj)(10) of this section, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.~~]

(i) The possession limit for a Type C specific license of broad scope, if only one radionuclide is possessed under such a license, is the quantity specified for that radionuclide in subsection (jj)(10) of this section.

(ii) If two or more radionuclides are possessed under such a license, the possession limit is determined for each as follows:

(I) For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity as specified in subsection (jj)(10) of this section for that radionuclide.

(II) The sum of the ratios for all radionuclides possessed under the license must not exceed unity.

(2) An application for a Type A specific license of broad scope will be approved if:

(A) the applicant satisfies the general requirements as specified in subsection (e) of this section;

(B) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(C) the applicant has established administrative controls and provisions relating to organization and management, procedures, record keeping, material control, and accounting and management review that are necessary to assure safe operations, including:

(i) the establishment of an RSC composed of [~~such persons as~~] an RSO, a representative of management, and persons trained and experienced in the safe use of radioactive materials [~~management~~] to fulfill the duties and responsibilities as specified in subsection (g) of this section;

(ii) the appointment of a full-time RSO meeting the requirements of subsection (f)(7) or (8) of this section who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to ensure:

(I) control of procurement and use of radioactive material;

(II) completion of safety evaluations of proposed uses of radioactive material that [~~which~~] take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(III) review, approval, and recording by the RSC of safety evaluations of proposed uses prepared as specified in [~~accordance with~~] subclause (II) of this clause before use of the radioactive material.

(3) An application for a Type B specific license of broad scope will be approved if:

(A) the applicant satisfies the general requirements as specified in subsection (e) of this section; and

(B) the applicant has established administrative controls and provisions relating to organization and management, procedures, record keeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of an RSO who is qualified by training and experience in radiation protection, and who is available for advice and assistance on safety matters; and

(ii) the establishment of appropriate administrative procedures to ensure:

(I) control of procurement and use of radioactive material;

(II) completion of safety evaluations of proposed uses of radioactive material that [~~which~~] take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(III) review, approval, and recording by the RSO of safety evaluations of proposed uses prepared under [~~in accordance with~~] subclause (II) of this clause before use of the radioactive material.

(4) An application for a Type C specific license of broad scope will be approved if:

(A) the applicant satisfies the general requirements as specified in subsection (e) of this section;

(B) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of, individuals who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least 40 hours of training and experience in the safe handling of radioactive materials, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(C) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, record keeping, material control and accounting, and management review necessary to assure safe operations.

(5) An application filed pursuant to subsection (e) of this section for a specific license other than one of broad scope is [~~will be~~] considered by the department as an application for a specific license of broad scope [~~under this subsection~~] if the applicable requirements of this subsection are satisfied.

(6) The following conditions apply to specific licenses of broad scope.

(A) Unless specifically authorized by [~~in accordance with~~] a separate license, a person [~~persons~~] licensed under this subsection must [~~shall~~] not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, transfer, or import devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the department under [~~in accordance with~~] subsections (i) - (u) of this section and §289.255, §289.256, and §289.259 of this subchapter is [~~title as~~] required;

(iv) add or cause the addition of radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being; or

(v) commercially distribute radioactive materials.

(B) Each Type A specific license of broad scope issued under this subsection is [~~shall be~~] subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's RSC.

(C) Each Type B specific license of broad scope issued under this subsection is [~~shall be~~] subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's RSO.

(D) Each Type C specific license of broad scope issued under this subsection is [~~shall be~~] subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of paragraph (4) of this subsection.

(i) Specific licenses for introduction of radioactive material into products in exempt concentrations. A person must not [~~No person may~~] introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to a person [~~persons~~] exempt under [~~in accordance with~~] §289.251 of this subchapter [~~title~~] except as specified with a license issued by the NRC.

(j) Specific licenses for commercial distribution of radioactive material in exempt quantities.

(1) Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material, byproduct material, or naturally occurring and accelerator-produced radioactive material (NARM) whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission (NRC), Washington, DC 20555 under Title 10 Code of Federal Regulations (10 CFR) [~~in accordance with Title 10, Code of Federal Regulations (CFR),~~] §32.18.

(2) Licenses issued under [~~in accordance with~~] this subsection do not authorize [~~the following~~]:

(A) the combining of exempt quantities of radioactive material in a single device;

(B) any program advising a person [~~persons~~] to combine exempt quantity sources and providing devices for them to do so; and

(C) the possession and use of combined exempt sources, in a single unregistered device, by a person [~~persons~~] exempt from licensing under [~~in accordance with~~] §289.251(e)(2) of this subchapter [~~title~~].

(k) Specific licenses for incorporating [~~incorporation of~~] byproduct material or NARM into gas and aerosol detectors. A specific license authorizing the incorporation of byproduct material or NARM into gas and aerosol detectors to be distributed to a person [~~persons~~] exempt from this chapter must only [~~shall~~] be issued [~~only~~] by the NRC under 10 CFR [~~in accordance with Title 10, CFR,~~] §32.26.

(l) Specific licenses for the manufacture and commercial distribution of devices to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~].

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute devices containing radioactive material to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~] or equivalent requirements of the NRC or any agreement state will be issued if the department approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) the device can be safely operated by a person [~~persons~~] not having training in radiological protection;

(ii) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely [~~that~~] any person will receive, in any period of one year, a dose in excess of ten percent of the limits as specified in §289.202(f) of this chapter [~~title~~]; and

(iii) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely [~~that~~] any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(I) 15 rem [~~rems~~] to the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye;

(II) 200 rem [~~rems~~] to the hands and forearms; feet and ankles; or localized areas of skin averaged over areas no larger than 1 square centimeter (cm^2) [(~~cm^2~~)]; or

(III) 50 rem [~~rems~~] to other organs;

(B) procedures for disposition of unused or unwanted radioactive material;

(C) each device bears a durable, legible, clearly visible label or labels approved by the department containing [~~that contain~~] the following in a clearly identified and separate statement:

(i) instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) the requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(iii) the information [~~called for~~] in one of the following statements, as appropriate, in the same or substantially similar form:

(I) For radioactive materials other than NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(I) (No change.)

(II) For NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(II) (No change.)

(III) The model and serial number and name of manufacturer or distributor may be omitted from this label provided they are elsewhere stated in labeling affixed to the device.

(D) Each device having a separable source housing providing [~~that provides~~] the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial numbers, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in §289.202(z) of this chapter [~~title~~], and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of §289.251(g)(1) of this subchapter [~~title~~], bears a permanent (for example, embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, including [~~that includes~~] the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in §289.202(z) of this chapter [~~title~~].

(F) The device has been registered in the Sealed Source and Device Registry.

(2) If [~~In the event~~] the applicant desires [~~that~~] the device [~~be required to~~] be tested at intervals longer than six [6] months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material, or for both, the applicant must [~~shall~~] include in the application sufficient information to demonstrate [~~that~~] the longer interval is justified by performance characteristics of the device or similar devices and by design features having [~~that have~~] a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the department considers [~~will consider~~] information, including [~~that includes the following~~]:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical devices or similarly designed and constructed devices.

(3) If [~~In the event~~] the applicant desires [~~that~~] the general licensee under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~] or [~~in accordance with~~] equivalent regulations of the NRC or any agreement state, be authorized to install [~~mount~~] the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, service [~~perform maintenance of~~] the device (i.e., replace labels, perform rust and corrosion prevention, or perform repair and maintenance of fixed gauge sealed source holder mounting brackets) [~~consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of sealed source holder mounting brackets~~], test the "on-off" mechanism and indicator, or remove the device from installation, the applicant must [~~shall~~] include in the application written instructions to be followed by the general licensee, estimated annual doses associated with these [~~such activity or~~] activities, and bases for the [~~such~~] estimates. The submitted information must [~~shall~~] demonstrate [~~that~~] performance of these [~~such activity or~~] activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices as authorized by [~~in accordance with~~] the general license, is unlikely to cause that individual to receive an annual dose in excess of ten percent of the limits as specified in §289.202(f) of this chapter [~~title~~].

(4) Before the device may be transferred, each person licensed under [~~in accordance with~~] this subsection to commercially distribute devices to generally licensed persons must [~~shall~~] furnish to each person to whom a device is transferred for use under the general license in §289.251(f)(4)(H) of this subchapter or equivalent NRC or agreement state general license:

(A) a copy of the general license in §289.251(f)(4)(H) of this subchapter [~~title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(f)(4)(H) of this title~~];

(B) a copy of the general license in the NRC's or any agreement state's regulation equivalent to §289.251(f)(4)(H) of this subchapter [~~title~~], or alternatively, a copy of the general license in §289.251(f)(4)(H) of this subchapter [~~title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license of the NRC or any agreement state. If certain requirements of the regulations do not apply to the particular device, those requirements may be omitted. If a copy of the general license in §289.251(f)(4)(H) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the NRC or any agreement state in accordance with requirements substantially the same as those in §289.251(f)(4)(H) of this title~~];

(i) if certain requirements of the regulations do not apply to the device, those requirements may be omitted; and

(ii) if a copy of the general license in §289.251(f)(4)(H) of this subchapter is furnished to such a person, it must be accompanied by an explanation that use of the device is regulated by the NRC or any agreement state under requirements substantially the same as those in §289.251(f)(4)(H) of this subchapter;

(C) a copy of §289.251(g) of this subchapter, if applicable [~~title~~];

(D) a list of the services that can only be performed by a specific licensee;

(E) information on acceptable disposal options, including estimated costs of disposal;

(F) the name or position, address, and phone number of a contact person at the department, the NRC, or any agreement state, from which additional information may be obtained; and

(G) a statement [~~an indication~~] that it is the NRC's policy to issue high civil penalties for improper disposal if the device is commercially distributed to a general licensee of the NRC.

(5) An alternative approach to informing customers may be submitted by the licensee for approval by the department.

(6) In the case of a transfer through an intermediate person, each licensee who commercially distributes radioactive material in a device for use under [~~in accordance with~~] the general license in §289.251(f)(4)(H) of this subchapter [~~title~~], must [~~shall~~] furnish the information in paragraph (4) of this subsection to the intended user before the initial transfer to the intermediate person.

(7) Each person licensed under [~~in accordance with~~] this subsection to commercially distribute devices to generally licensed persons must [~~shall~~]:

(A) report to the department all commercial distributions of devices to any person [~~persons~~] for use under [~~in accordance with~~] the general license in §289.251(f)(4)(H) of this subchapter [~~title~~] and all receipts of devices from general licensees licensed under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~].

(i) The report must [~~shall~~]:

(I) cover each calendar quarter;

(II) be filed within 30 days of the end of each calendar quarter [~~thereafter~~];

(III) be submitted on a form prescribed by the department or in a clear and legible report containing all [~~of~~] the data required by the form;

(IV) clearly indicate the period covered by the report;

(V) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(VI) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee must [~~shall~~] be submitted along with information on the actual location of use;

(VII) identify an individual by name, title, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VIII) identify the type, model and serial number of the device, and serial number of the sealed source commercially distributed;

(IX) identify the quantity and type of radioactive material contained in the device; and

(X) include the date of transfer.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must [~~shall~~] also include the information as specified in [~~accordance with~~] paragraph (7)(A)(i) of this subsection

for both the intended user and each intermediate person and clearly designate the intermediate person [~~person(s)~~].

(iii) If no commercial distributions have been made to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~] during the reporting period, the report must [~~shall~~] so indicate.

(iv) For devices received from a general licensee, the report must [~~shall~~] include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(B) report the following to the NRC to include covering each calendar quarter to be filed within 30 days thereafter, clearly indicating the period covered by the report, the identity of the specific licensee submitting the report, and the license number of the specific licensee:

(i) all commercial distributions of such devices to a person [~~persons~~] for use under [~~in accordance with~~] the NRC general license in 10 CFR [~~Title 10, CFR,~~] §31.5 and all receipts of devices from general licensees in areas under NRC jurisdiction, including [~~the following~~]:

(I) the identity of each general licensee by name and address;

(II) the type, model and serial number of the device, and serial number of sealed source commercially distributed;

(III) the quantity and type of radioactive material contained in the device; and

(IV) the date of transfer; or

(ii) if the licensee makes changes to a device possessed under [~~in accordance with~~] the general license in §289.251(f)(4)(H) of this subchapter [~~title~~], and [~~such that~~] the label must be changed to update required information, the report must [~~shall~~] identify the licensee, the device, and the changes to information on the device label;

(iii) in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor;

(iv) if no commercial distributions were [~~have been~~] made to the NRC licensees during the reporting period; the report must [~~shall~~] so indicate;

(C) report to the department or any agreement state all transfers of devices manufactured and commercially distributed under [~~in accordance with~~] this subsection for use under [~~in accordance with~~] a general license in the [~~that~~] state's requirements equivalent to §289.251(f)(4)(H) of this subchapter [~~title~~] and all receipts of devices from general licensees.

(i) The report must [~~shall~~]:

(I) be submitted within 30 days after the end of each calendar quarter in which the [~~such a~~] device is commercially distributed to the generally licensed person;

(II) clearly indicate the period covered by the report;

(III) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(IV) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use an alternate address for the licensee must [~~shall~~] be submitted along with the information on the actual location of use;

(V) identify an individual by name, position, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VI) include the type, model and serial number of the device, and serial number of the sealed source commercially distributed;

(VII) include the quantity and type of radioactive material contained in the device; and

(VIII) include the date of receipt.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must [~~shall~~] also include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person [~~person(s)~~].

(iii) If no commercial distributions have been made to persons in the agreement state during the reporting period, the report shall so indicate.

(iv) For devices received from a general licensee, the report must [~~shall~~] include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; and

(D) make, maintain, and retain records required by this paragraph for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section, including the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use under [~~in accordance with~~] the general license provided in §289.251(f)(4)(H) of this subchapter [~~title~~], or equivalent requirements of the NRC or any agreement state.

(i) The records must [~~shall~~] include [~~the following~~]:

(I) the date of each commercial distribution;

(II) the isotope and the quantity of radioactivity in each device commercially distributed;

(III) the identity of any intermediate person; and

(IV) compliance with the reporting requirements of this subsection.

(ii) The records must indicate when [~~If~~] no commercial distributions have been made to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(H) of this subchapter [~~title~~] during the reporting period[~~, the records shall so indicate~~].

(8) If a notification of bankruptcy has been made as specified in [~~accordance with~~] subsection (x)(6) of this section or the license is to be terminated, each person licensed under [~~in accordance with~~] this subsection must [~~shall~~] provide, upon request, to the NRC and to any appropriate agreement state, records of final disposition required under [~~in accordance with~~] subsection (y)(16)(A) of this section.

(9) Each device [~~that is~~] transferred after February 19, 2002, must [~~shall~~] meet the labeling requirements as specified in [~~accordance with~~] paragraph (1)(C) - (E) of this subsection.

(m) Specific licenses for the manufacture, assembly, repair, or initial transfer of luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(B) of this subchapter [~~title~~]. In addition to the requirements in subsection (e) of this section, a specific license to manufacture, assemble, repair, or initially transfer luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(B) of this subchapter [~~title~~], is [~~will be~~] issued if the department approves the information submitted by the applicant. The information must [~~shall~~] satisfy the requirements of 10 CFR [~~Title 10, CFR,~~] §§32.53, 32.54, 32.55, and 32.56, or their equivalent.

(n) Specific licenses for the manufacture or initial transfer of calibration sources containing americium-241 or radium-226 for commercial distribution to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(D) of this subchapter [~~title~~].

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture or initially transfer calibration sources containing americium-241, or radium-226 to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(D) of this subchapter [~~title~~] will be issued if the department approves the information submitted by the applicant. The information must [~~shall~~] satisfy the requirements of 10 CFR [~~Title 10, CFR,~~] §§32.57, 32.58, 32.59, and §70.39 or their equivalent.

(2) Each person licensed under [~~in accordance with~~] this subsection must [~~shall~~] perform a dry wipe test on each source containing more than 0.1 microcurie (μCi) [~~μCi~~] (3.7 kilobecquerels (kBq)) of americium-241 or radium-226 before transferring the source to a general licensee under [~~in accordance with~~] §289.251(f)(4)(D) of this subchapter [~~title~~] or equivalent regulations of the NRC or any agreement state. This test must [~~shall~~] be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper must [~~shall~~] be measured by using radiation detection instrumentation capable of detecting 0.005 μCi (0.185 kBq) of americium-241 or radium-226. If a source has been shown to be leaking or losing more than 0.005 μCi (0.185 kBq) of americium-241 or radium-226 by methods described in this paragraph, the source must [~~shall~~] be rejected and may [~~shall~~] not be transferred to a general licensee under [~~in accordance with~~] §289.251(f)(4)(D) of this subchapter [~~title~~] or equivalent regulations of the NRC or any agreement state.

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to a person [~~persons~~] licensed under [~~in accordance with~~] §289.256 of this subchapter [~~title~~] for use as a calibration, transmission, or reference source or for use of sealed sources listed in §289.256(q), (rr), (bbb), and (ddd) of this subchapter [~~title~~] will be issued if the department approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device, including [~~the following~~]:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction of the sealed source or device;

(C) procedures for, and results of, prototype tests to demonstrate [~~that~~] the sealed source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) for devices containing radioactive material, the radiation profile of a prototype device;

(E) details of quality control procedures to assure [~~that~~] production sources and devices meet the standards of the design and prototype tests;

(F) procedures and standards for calibrating sealed sources and devices;

(G) instructions for handling and storing the sealed source or device from the radiation safety standpoint. These instructions are to be included on a durable label attached to the sealed source or device or attached to a permanent storage container for the sealed source or device;[~~, provided that~~] instructions [~~that are~~] too lengthy for the label may be summarized on the label and printed in detail on a brochure [~~that is~~] referenced on the label; and

(H) a legend and methods for labeling sources and devices as to their radioactive content;

(2) documentation that the label affixed to the sealed source or device, or to the permanent storage container for the sealed source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the sealed source or device is licensed by the department for commercial distribution to a person [~~persons~~] licensed for use of sealed sources in the healing arts or by equivalent licenses of the NRC or any agreement state;

(3) documentation that in the event the applicant desires that the sealed source or device [~~be required to~~] be tested for radioactive material leakage at intervals longer than six [~~6~~] months, the applicant must [~~shall~~] include in the application sufficient documentation [~~information~~] to demonstrate [~~that~~] the longer interval is justified by performance characteristics of the sealed source or device or similar sources or devices and by design features having [~~that have~~] a significant bearing on the probability or consequences of radioactive material leakage from the sealed source;

(4) documentation considered [~~that~~] in determining the acceptable interval for testing radioactive material leakage, includes [~~information will be considered that includes the following~~]:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical sealed sources or devices or similarly designed and constructed sealed sources or devices; and

(5) the source or device has been registered in the national Sealed Source and Device Registry.

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain in vitro clinical or laboratory testing under [~~in accordance with~~] the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use under [~~in accordance with~~] the general license in §289.251(f)(4)(G) of this subchapter [~~title~~] will be issued if the department approves the following information submitted by the applicant:

(1) documentation [~~that~~] the radioactive material will be prepared for distribution in prepackaged units of:

(A) iodine-125 in units not exceeding 10 μCi (0.37 megabecquerel (MBq)) each;

(B) iodine-131 in units not exceeding 10 μCi (0.37 MBq) each;

(C) carbon-14 in units not exceeding 10 μCi (0.37 MBq) each;

(D) hydrogen-3 (tritium) in units not exceeding 50 μCi (1.85 MBq) each;

(E) iron-59 in units not exceeding 20 μCi (0.74 MBq) each;

(F) cobalt-57 in units not exceeding 10 μCi (0.37 MBq) each;

(G) selenium-75 in units not exceeding 10 μCi (0.37 MBq) each; or

(H) mock iodine-125 in units not exceeding 0.05 μCi (1.85 kBq) of iodine-129 and 0.005 μCi (0.185 kBq) of americium-241 each;

(2) evidence [~~that~~] each prepackaged unit will bear a durable, clearly visible label:

(A) identifying the radioactive contents as to chemical form and radionuclide, and indicating [~~that~~] the amount of radioactivity does not exceed 10 μCi (0.37 MBq) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 μCi (1.85 MBq) of hydrogen-3 (tritium); 20 μCi (0.74 MBq) of iron-59; or mock iodine-125 in units not exceeding 0.05 μCi (1.85 kBq) of iodine-129 and 0.005 μCi (0.185 kBq) of americium-241; and

(B) displaying the radiation caution symbol as specified in [~~accordance with~~] §289.202(z) of this chapter [~~title~~] and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(3) [~~that~~] one of the following statements, as appropriate, or a substantially similar statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure accompanying [~~that accompanies~~] the package:

(A) option 1:
Figure: 25 TAC §289.252 (p)(3)(A) (No change.)

(B) option 2:
Figure: 25 TAC §289.252 (p)(3)(B) (No change.)

(4) [~~that~~] the label affixed to the unit, or the leaflet or brochure accompanying [~~that accompanies~~] the package, contains adequate information as to the precautions to be observed in handling and storing the radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source must [~~shall~~] also contain directions to the licensee regarding the waste disposal requirements of §289.202(ff) of this chapter [~~title~~].

(q) Specific licenses for the manufacture and commercial distribution of ice detection devices. In addition to the requirements of subsection (e) of this section, a specific license to manufacture and commercially distribute ice detection devices to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(4)(E) of this subchapter [~~title~~] will be issued if the department approves the information submitted by the applicant. This information must [~~shall~~] satisfy the requirements of 10 CFR §32.61 and §32.62 [~~Title 10, CFR, §§32.61 and 32.62~~].

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use under §289.256 of this subchapter [~~title~~].

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material for use by a person [~~persons~~] authorized under [~~in accordance with~~] §289.256 of this subchapter [~~title~~] will be issued if the department approves the following information submitted by the applicant:

(A) evidence [~~that~~] the applicant is at least [~~one of the following~~]:

(i) registered with the United States Food and Drug Administration (FDA) as the owner or operator of a drug establishment engaging [~~that engages~~] in the manufacture, preparation, propagation, compounding, or processing of a drug under Title 21 CFR §207.17(a) [~~in accordance with Title 21, CFR, §207.17~~]; or

(ii) registered or licensed with a state agency as a drug manufacturer; or

(iii) licensed as a pharmacy by the Texas State Board of Pharmacy; or

(iv) operating as a nuclear pharmacy within a federal medical institution; or

(v) a positron emission tomography (PET) drug production facility registered with a state agency;

(B) radionuclide data relating to [~~the following~~]:

(i) chemical and physical form;

(ii) maximum activity per vial, syringe, generator, or other container of the radioactive drug; and

(iii) shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees;

(C) labeling requirements, including [~~the following~~]:

(i) [~~that~~] each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution must [~~shall~~] include [~~the following~~]:

(I) the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";[~~"~~]

(II) the name of the radioactive drug or its abbreviation; and

(III) the quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half-life greater than 100 days); and

(ii) [~~that~~] each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution must [~~shall~~] include [~~the following~~]:

(I) radiation symbol and the words, "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";[~~"~~] and

(II) an identifier ensuring [~~that ensures that~~] the syringe, vial, or other container can be correlated with the information on the transport radiation shield.

(2) A licensee must [~~shall~~] possess and use instrumentation to measure the radioactivity of radioactive drugs and must [~~shall~~] have procedures for the use of the instrumentation. The licensee must [~~shall~~] measure, by direct measurement or by a combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs before transfer for commercial distribution. In addition, the licensee must [~~shall~~]:

(A) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary;

(B) check each instrument for constancy and proper operation at the beginning of each day of use; and

(C) make, maintain, and retain records of the tests and checks required in this paragraph for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(3) A licensee described in paragraph (1)(A)(iii) or (iv) of this subsection may [~~shall~~] prepare radioactive drugs for medical use as defined in §289.256 of this subchapter [~~title~~] with the following provisions.

(A) Radioactive drugs must [~~shall~~] be prepared by either an authorized nuclear pharmacist, as specified in subparagraphs (B) and (D) of this paragraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in §289.256(s) of this subchapter [~~title~~].

(B) A pharmacist may [~~shall~~] be allowed to work as an authorized nuclear pharmacist if:

(i) the individual qualifies as an authorized nuclear pharmacist as defined in §289.256 of this subchapter [~~title~~];

(ii) the individual meets the requirements as specified in §289.256(k)(2) and (m) of this subchapter [~~title~~], and the licensee has received from the department, an approved license amendment identifying the [~~this~~] individual as an authorized nuclear pharmacist; or

(iii) the individual is designated as an authorized nuclear pharmacist under [~~in accordance with~~] subparagraph (D) of this paragraph.

(C) The actions authorized in subparagraphs (A) and (B) of this paragraph are permitted despite [~~in spite of~~] more restrictive language in license conditions.

(D) A licensee may designate a pharmacist, as defined in §289.256 of this subchapter [~~title~~], as an authorized nuclear pharmacist if:

(i) the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material; and

(ii) the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe [~~or at all other pharmacies~~] before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date [~~the effective date of this rule~~] as noticed by the NRC or the department.

(E) The licensee must [~~shall~~] provide the following to the department:

(i) a copy of each individual's certification by a specialty board whose certification process has been recognized by the NRC, the department, or an agreement state as specified in §289.256(k)(1) of this subchapter [~~title~~]; or

(ii) the department, NRC, or another agreement state license; or

(iii) NRC master materials licensee permit; or

(iv) [~~(iii)~~] the permit issued by a broad scope licensee or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(v) [~~(iv)~~] documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe [~~or at all other locations of use~~] before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date [~~the effective date of this rule~~] as noticed by the NRC or the department; and

(vi) [~~(v)~~] a copy of the Texas State Board of Pharmacy licensure or registration, no later than 30 days after the date [~~that~~] the licensee allows, under [~~in accordance with~~] subparagraph (B)(i) and (iii) of this paragraph, the individual to work as an authorized nuclear pharmacist.

(F) The radiopharmaceuticals for human use must [~~shall~~] be processed and prepared according to instructions [~~that are~~] furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure accompanying [~~that accompanies~~] the generator or reagent kit.

(G) If the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner deviating [~~that deviates~~] from written instructions furnished by the manufacturer [~~on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure~~], a complete description of the deviation must [~~shall~~] be made and maintained for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(4) A licensee must [~~shall~~] satisfy the labeling requirements in subsection (r)(1)(C) of this section.

(5) Nothing in this subsection relieves the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture products and devices containing depleted uranium for use under [~~in accordance with~~] §289.251(f)(3)(D) of this subchapter [~~title~~] or equivalent regulations of the NRC or an agreement state, will be issued if the department approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential

hazards of the product or device to provide reasonable assurance the [~~that~~] possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one year a radiation dose in excess of ten percent of the limits as specified in §289.202(f) of this chapter [~~title~~]; and

(B) reasonable assurance is provided that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of a product or device whose unique benefits are questionable, the department will issue a specific license under [~~in accordance with~~] paragraph (1) of this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The department may deny any application for a specific license under [~~in accordance with~~] this subsection if the end use or uses [~~use(s)~~] of the product or device cannot be reasonably foreseen.

(4) Each person licensed under [~~in accordance with~~] paragraph (1) of this subsection must [~~shall~~]:

(A) maintain the level of quality control required by the license in the manufacture of the product or device, and in the installation of the depleted uranium into the product or device;

(B) label or mark each unit to:

(i) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact [~~that~~] the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) state [~~that~~] the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the requirements of the NRC or of an agreement state;

(C) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(D) furnish a copy of the following:

(i) the general license in §289.251(f)(3)(D) of this subchapter [~~title~~] to each person to whom the licensee commercially distributes depleted uranium in a product or device for use under [~~in accordance with~~] the general license in §289.251(f)(3)(D) of this subchapter [~~title~~];

(ii) the NRC's or agreement state's requirements equivalent to the general license in §289.251(f)(3)(D) of this subchapter [~~title~~] and a copy of the NRC's or agreement state's certificate; or

(iii) alternately, a copy of the general license in §289.251(f)(3)(D) of this subchapter [~~title~~] to each person to whom the licensee commercially distributes depleted uranium in a product or device for use under [~~in accordance with~~] the general license of the NRC or an agreement state;

(E) report to the department all commercial distributions of products or devices to a person [~~persons~~] for use under [~~in accordance with~~] the general license in §289.251(f)(3)(D) of this subchapter [~~title~~].

(i) The report must [~~shall~~] be submitted within 30 days after the end of each calendar quarter in which [~~such~~] a product or device is commercially distributed to the generally licensed person and must [~~shall~~] include the following:

(I) the identity of each general licensee by name and address;

(II) the identity of an individual by name and position who may constitute a point of contact between the department and the general licensee;

(III) the type and model number of devices commercially distributed; and

(IV) the quantity of depleted uranium contained in the product or device.

(ii) If no commercial distributions have been made to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(3)(D) of this subchapter [~~title~~] during the reporting period, the report must [~~shall so~~] indicate this;

(F) report to the NRC and each responsible agreement state agency all commercial distributions of industrial products or devices to a person [~~persons~~] for use under [~~in accordance with~~] the general license in the NRC's or agreement state's equivalent requirements to §289.251(f)(3)(D) of this subchapter [~~title~~]. The report must [~~shall~~] meet the provisions of subparagraph (E)(i) and (ii) of this paragraph; and

(G) make, maintain, and retain records, including the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use under [~~in accordance with~~] the general license provided in §289.251(f)(3)(D) of this subchapter [~~title~~] or equivalent requirements of the NRC or any agreement state. The records must [~~shall~~] be maintained for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section and must [~~shall~~] include the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(t) Specific licenses for the processing of loose radioactive material for manufacture and commercial distribution. In addition to the requirements in subsection (e) of this section, a license to process loose radioactive material for manufacture and commercial distribution of radioactive material to a person [~~persons~~] authorized to possess such radioactive material under [~~in accordance with~~] this chapter will be issued if the department approves the following information submitted by the applicant:

(1) the radionuclides to be used, including the chemical and physical form and the maximum activity of each radionuclide;

(2) the intended use of each radionuclide and the sealed sources or other products to be manufactured, including [~~that includes~~]:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) American National Standards Institute (ANSI) testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of the facility to include:

(A) air filtration;

(B) ventilation system;

(C) plumbing; and

(D) radioactive material handling systems and, when applicable, remote handling hot cells;

(4) details of the environmental monitoring program; and

(5) documentation of training as specified in subsection (jj)(1) of this section for all personnel who handle [~~will be handling~~] radioactive materials.

(u) Specific licenses for other manufacture and commercial distribution of radioactive material. In addition to the requirements in subsection (e) of this section, a license to manufacture and commercially distribute radioactive material to a person [~~persons~~] authorized to possess such radioactive material under [~~in accordance with~~] these requirements will be issued if the department approves the following information submitted by the applicant:

(1) the radionuclides to be used, including the chemical and physical form and the maximum activity of each radionuclide;

(2) the intended use of each radionuclide and the sealed sources or other products to be manufactured, including [~~that includes~~]:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) ANSI testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of radioactive material handling systems; and

(4) documentation of training as specified in subsection (jj)(1) of this section for all personnel who handle [~~will be handling~~] radioactive material.

(v) Sealed source or device evaluation.

(1) Any manufacturer or initial distributor of a sealed source or device containing a sealed source may submit a request to the department for evaluation of radiation safety information about its product and for its registration.

(2) The request for review must [~~shall~~] be sent to the department as specified in [~~accordance with~~] §289.201(k) of this chapter [~~title~~] and must [~~shall~~] be submitted in duplicate accompanied by the appropriate fee as specified in §289.204 of this chapter [~~title~~].

(3) In order to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property, the request for evaluation of a sealed source or device must [~~shall~~] include sufficient information about the:

(A) design;

(B) manufacture;

(C) prototype testing;

(D) quality control program;

(E) labeling;

(F) proposed uses; and

(G) leak testing.

(4) The request for evaluation of a device must [~~shall~~] also include sufficient information about:

(A) installation;

(B) service and maintenance;

(C) operating and safety instructions; and

(D) its potential hazards.

(5) The department normally evaluates a sealed source or a device using radiation safety criteria within [~~in~~] accepted industry standards. If these standards and criteria do not readily apply to a particular case, the department formulates reasonable standards and criteria with the help of the manufacturer or distributor. The department must [~~shall~~] use criteria and standards sufficient to ensure [~~that~~] the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property. Section 289.251(e)(1) - (3) of this subchapter [~~title~~] includes specific criteria applying [~~that apply~~] to certain exempt products and §289.251(f) of this subchapter [~~title~~] includes specific criteria applying [~~applicable~~] to certain generally licensed devices. This section includes specific provisions applying [~~that apply~~] to certain specifically licensed items.

(6) After completion of the evaluation, the department issues a sealed source and device (SS & D) certificate of registration to the person making the request. The SS & D certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product, or concerning use under an exemption from licensing or general license as applicable for the category of SS & D certificate of registration.

(7) The person submitting the request for evaluation and SS & D certificate of registration of safety information about the product must [~~shall~~] manufacture and distribute the product as specified in [~~accordance with~~]:

(A) the statements and representations, including the quality control program, contained in the request; and

(B) the provisions of the SS & D certificate of registration.

(8) Authority to manufacture or initially distribute a sealed source or device to specific licensees must [~~shall~~] be provided in the license without the issuance of a SS & D certificate of registration in the following cases:

(A) calibration and reference sources must [~~shall~~] contain no more than:

(i) 1 millicurie (mCi) [~~mCi~~] (37 MBq) for beta or [~~and/or~~] gamma emitting radionuclides; or

(ii) 10 μCi (0.37 MBq) for alpha emitting radionuclides; or

(B) the intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form, as specified in their licenses; and

(i) the intended recipients are licensed under [~~in accordance with~~] subsection (h) of this section, §289.256(o) of this subchapter [~~title~~], or equivalent regulations of the NRC or any agreement state; or

(ii) the recipients are authorized for research and development; or

(iii) the sources and devices are to be built to the unique specifications of the particular recipient and contain no more than 20 curie (Ci) (740 gigabecquerel (GBq)) [~~Ci (740 GBq)~~] of tritium or 200 mCi (7.4 GBq) of any other radionuclide.

(9) After the SS & D certificate of registration is issued, the department may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the department will complete its evaluation according to [~~in accordance with~~] criteria specified in this section. The department may request [~~such~~] additional information [~~as~~] it considers necessary to conduct its review and the SS & D certificate of registration holder must [~~shall~~] provide the information [~~as~~] requested.

(10) Inactivation of SS & D certificates [~~certificate(s)~~] of registration.

(A) An SS & D certificate of registration holder [~~who~~] no longer manufacturing [~~manufactures~~] or initially transferring [~~transfers~~] any of the sealed sources [~~source(s)~~] or devices [~~device(s)~~] covered by a particular SS & D certificate of registration issued by the department must [~~shall~~] request inactivation of the SS & D certificate of registration. Such a request must [~~shall~~] be made to the department by an appropriate method under [~~in accordance with~~] §289.201(k) of this chapter [~~title~~] and must [~~shall normally~~] be made no later than two [~~2~~] years after initial distribution of all of the sources [~~source(s)~~] or devices [~~device(s)~~] covered by the SS & D certificate of registration have [~~has~~] ceased. However, if the SS & D certificate of registration holder determines [~~that~~] an initial transfer was in fact the last initial transfer more than two [~~2~~] years after that transfer, the SS & D certificate of registration holder must [~~shall~~] request inactivation of the SS & D certificate of registration within 90 days of this determination and briefly describe the circumstances of the delay.

(B) If a distribution license is to be terminated under [~~in accordance with~~] subsection (y) of this section, the licensee must [~~shall~~] request inactivation of its SS & D certificate of registration [~~registration(s)~~] associated with that distribution license before the department will terminate the license. A [~~Such a~~] request for inactivation of the SS & D certificate [~~certificate(s)~~] of registration must [~~shall~~] indicate [~~that~~] the license is being terminated and include the associated specific license number.

(C) A specific license to manufacture or initially transfer a source or device covered only by an inactivated SS & D certificate of registration no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices must comply with [~~shall be in accordance with~~] any conditions in the SS & D certificate of registration, including in the case of an inactive SS & D certificate of registration.

(w) Issuance of specific licenses.

(1) When the department determines [~~that~~] an application meets the requirements of the Act and the rules of this chapter [~~the department~~], the department issues [~~will issue~~] a specific license authorizing the proposed activity in such form and containing the conditions and limitations as the department deems appropriate or necessary.

(2) The department may incorporate in any license at the time of issuance, or [~~thereafter~~] by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as the department deems appropriate or necessary [~~in order~~] to:

(A) minimize danger to occupational and public health and safety and the environment;

(B) require reports and the keeping of records, and [~~to~~] provide for inspections of activities under [~~in accordance with~~] the license as may be appropriate or necessary; and

(C) prevent loss or theft of radioactive material subject to this chapter.

(3) The department may request, and the licensee must [~~shall~~] provide, additional information after the license has been issued to enable the department to determine whether the license should be modified as specified in [~~accordance with~~] subsection (dd) of this section.

(x) Specific terms and conditions of licenses.

(1) Each license issued under [~~in accordance with~~] this section is [~~shall be~~] subject to the applicable provisions of the Act and to applicable rules [~~, now or hereafter~~] in effect[~~,~~] and orders of the department.

(2) No license issued or granted under [~~in accordance with~~] this section and no right to possess or utilize radioactive material granted by any license issued under [~~in accordance with~~] this section may [~~shall~~] be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department [~~shall~~], after securing full information, finds [~~find that~~] the transfer complies [~~is in accordance~~] with [~~the provisions of~~] the Act, [~~and to~~] applicable rules in effect, [~~now or hereafter in effect,~~] and orders of the department. The department provides [~~, and shall give~~] its consent in writing.

(3) An application for transfer of license must [~~shall~~] include:

(A) the identity, technical and financial qualifications of the proposed transferee; and

(B) financial assurance for decommissioning information required by subsection (gg) of this section.

(4) Each person licensed by the department under [~~in accordance with~~] this section must [~~shall~~] confine use and possession of the radioactive material licensed to the locations and purposes authorized in the license. Radioactive material must [~~shall~~] not be used or stored in residential locations unless specifically authorized by the department.

(5) The licensee must [~~shall~~] notify the department[~~,~~] in writing within 15 calendar days[~~,~~] of any of the following changes:

(A) name;

(B) mailing address; or

(C) RSO.

(6) Each licensee must [~~shall~~] notify the department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(7) The notification in paragraph six [~~(6)~~] of this subsection must [~~shall~~] include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(8) A copy of the petition for bankruptcy must [~~shall~~] be submitted to the department along with the written notification.

(9) In deciding [~~making a determination~~] whether to grant, deny, amend, renew, revoke, suspend, or restrict a license, the department may consider the technical competence and compliance history of an applicant or holder of a license. After an opportunity for a hearing, the department may deny an application for a license, an amendment to a license, or an application for renewal of a license if the applicant's compliance history reveals [~~that~~] three or more disciplinary [~~department~~] actions have been issued against the applicant[~~,~~] within the previous six years. Disciplinary actions include those assessing [~~, that assess~~] administrative or civil penalties against the applicant[~~,~~] or revoking [~~that revoke~~] or suspending [~~suspend~~] the applicant's license.

(10) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators must [~~shall~~] test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, under [~~in accordance with~~] §289.256 of this subchapter [~~title~~].

(A) The licensee must [~~shall~~] make, maintain, and retain a record of the results of each test for inspection by the department, as specified in [~~accordance with~~] subsection (mm) of this section.

(B) The licensee must [~~shall~~] report the results of any test exceeding [~~that exceeds~~] the permissible concentration listed in §289.256(ii) of this subchapter [~~title~~] at the time of generator elution, as specified in [~~accordance with~~] §289.256(www) [~~§289.256(xxx)~~] of this subchapter [~~title~~].

(11) Licensees must [~~shall~~] not hold radioactive waste, sources, or devices not authorized for disposal by decay in storage, and [~~that are~~] not in use for longer than 24 months following the last principal activity use. Sources and devices kept in standby for future use may be excluded from the 24-month time limit if the department approves a plan for future use. A plan for an alternative disposal timeframe may be submitted by the licensee if the 24-month time limit cannot be met. Licensees must [~~shall~~] submit plans to the department at least 30 days before the end of the 24 months of nonuse.

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(1) Except as provided in paragraph (2) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(2) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(3) All license provisions continue in effect beyond the expiration date, with respect to possession of radioactive material until the department notifies the former licensee in writing [~~that~~] the provisions of the license are no longer binding. During this time, the former licensee must [~~shall~~]:

(A) be limited to actions involving radioactive material to those [~~that are~~] related to decommissioning; and

(B) continue to control entry to restricted areas until each location [~~the location(s)~~] is suitable for release for unrestricted use, as specified [~~in accordance with the requirements~~] in §289.202(ddd) of this chapter [~~title~~].

(4) Within 60 days of the occurrence of any of the following, each licensee must [~~shall~~] provide notification to the department in writing and either begin decommissioning a site, or any separate building or outdoor area containing [~~that contains~~] residual radioactivity, so [~~that~~] the building and outdoor area is suitable for release under [~~in accordance with~~] §289.202(eee) of this chapter [~~title~~], or submit within 12 months of notification a decommissioning plan, if required by paragraph (7) of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired or has been revoked, as specified in [~~accordance with~~] this subsection or subsection (dd) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this chapter [~~title~~], at the entire site or in any separate building or outdoor area containing [~~that contains~~] residual radioactivity and [~~such that~~] the building or outdoor area is unsuitable for release, as specified in [~~accordance with~~] department requirements;

(C) no principal activities at an entire site as specified in the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area containing [~~that contains~~] residual radioactivity such that the building or outdoor area is unsuitable for release under [~~in accordance with~~] §289.202(eee) of this chapter [~~title~~].

(5) Coincident with the notification required by paragraph (4) of this subsection, the licensee must [~~shall~~] maintain in effect all decommissioning financial assurances established by the licensee, as specified in [~~accordance with~~] subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must [~~shall~~] be increased, or may be decreased, as appropriate, with department approval, to cover the detailed cost estimate for decommissioning established under [~~in accordance with~~] paragraph (10)(E) of this subsection.

(A) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan must [~~shall~~] do so as specified in [~~accordance with~~] subsection (gg) of this section.

(B) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the department.

(6) The department may grant a request to delay or postpone initiation of the decommissioning process if the department determines [~~that~~] such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request must [~~shall~~] be submitted no later than 30 days before notification under [~~in accordance with~~] paragraph (4) of this subsection. The schedule for decommissioning set forth in paragraph (4) of this subsec-

tion must [may] not commence until the department has decided [made a determination] on the request.

(7) A decommissioning plan must [shall] be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(8) The department may approve an alternate schedule for submittal of a decommissioning plan required under [in accordance with] paragraph (4) of this subsection if the department determines [that] the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(9) The procedures listed in paragraph (7) of this subsection must [may] not be carried out before approval of the decommissioning plan.

(10) The proposed decommissioning plan for the site or separate building or outdoor area must [shall] include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(11) The proposed decommissioning plan will be approved by the department if the information in the plan demonstrates [that] the decommissioning will be completed as soon as practicable and [that] the health and safety of workers and the public will be adequately protected.

(12) Except as provided in paragraph (14) of this subsection, licensees must [shall] complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(13) Except as provided in paragraph (14) of this subsection, when decommissioning involves the entire site, the licensee must [shall] request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) The department may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines [that] the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(C) whether a significant volume reduction in wastes requiring disposal is [will be] achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors [that] the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(15) As the final step in decommissioning, the licensee must [shall do the following]:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates [that] the premises are suitable for release according to [in accordance with] the radiological requirements for license termination as specified in §289.202(ddd) of this chapter [title]. The licensee must [shall do the following], as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) [(cm^2)] for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name and model and serial number of each survey instrument [survey instrument(s)] used and certify [that] each instrument is properly calibrated, as specified in [accordance with] §289.202(p) of this chapter, [title] and tested.

(16) The department will provide written notification to specific licensees, including former licensees with provisions contin-

ued in effect beyond the expiration date under [~~in accordance with~~] paragraph (3) of this subsection, that the provisions of the license are no longer binding. The department provides [~~will provide~~] such notification when the department determines [~~that~~]:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed demonstrating [~~that demonstrates that~~] the premises are suitable for release according to [~~in accordance with~~] the radiological requirements for license termination as specified in §289.202(ddd) of this chapter [~~title~~], or other information submitted by the licensee is sufficient to demonstrate [~~that~~] the premises are suitable for release according to [~~in accordance with~~] the radiological requirements for license termination as specified in §289.202(ddd) of this chapter [~~title~~]; and

(D) any outstanding fees under [~~in accordance with~~] §289.204 of this chapter [~~title~~] are paid and any outstanding notices of violations of this chapter or of license conditions are resolved.

(17) Each licensee must [~~shall~~] submit to the department all records required by §289.202(nn)(3) of this chapter [~~title~~] before the license is terminated.

(z) Renewal of licenses.

(1) Requests for renewal of specific licenses must [~~shall~~] be filed as specified in [~~accordance with~~] subsection (d)(1) - (4) and (6) - (8) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date, and unique number of drawing), if no modifications have been made since previously submitted.

(2) In any case in which a licensee, not less than 30 days before expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the [~~such~~] existing license will [~~shall~~] not expire until the request has been finally determined by the department. In any case in which a licensee, not more than 90 days after the expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the department may reinstate the license and extend the expiration until the request has been finally determined by the department. The requirements in this subsection are subject to the provisions of Texas Government Code, §2001.054.

(3) An application for technical renewal of a license will be approved if the department determines [~~that~~] the requirements of subsection (e) of this section are [~~have been~~] satisfied.

(aa) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license must [~~shall~~] be filed as specified in [~~accordance with~~] subsection (d)(1) - (4) of this section, must [~~shall~~] be signed by management or the RSO, and must [~~shall~~] specify the respects in which the licensee desires a license to be amended and the grounds for the amendment.

(2) Requests for amendments to delete a subsite from a license must [~~shall~~] be filed as specified in [~~accordance with~~] subsections (d)(1) and (2) and (y)(13) and (15) of this section.

(bb) Department action on requests to renew or amend. In considering a request by a licensee to renew or amend a license, the department applies [~~will apply~~] the criteria in subsection (e) of this section as applicable.

(cc) Transfer of material.

(1) A licensee must not [~~No licensee shall~~] transfer radioactive material except as authorized under [~~in accordance with~~] this chapter. This subsection does not include transfer for commercial distribution.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the department, only after receiving approval from the department [~~(A licensee may transfer material to the department only after receiving prior approval from the department)~~];

(B) to the United States Department of Energy (DOE);

(C) to any person exempt from this section to the extent permitted, as specified in [~~accordance with~~] such exemption;

(D) to any person authorized to receive such material under [~~in accordance with~~] the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the department, the NRC, or any agreement state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, the department, or any agreement state; or

(E) as otherwise authorized by the department in writing.

(3) Before transferring radioactive material to a specific licensee of the department, the NRC, or any agreement state, or to a general licensee who is required to register with the department, the NRC, or any agreement state before receipt of the radioactive material, the licensee transferring the material must [~~shall~~] verify [~~that~~] the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A) The transferor possesses and has read [~~may possess and have read~~] a current copy of the transferee's specific license.

(B) When a current copy of the transferee's specific license described in subparagraph (A) of this paragraph is not readily available or when a transferor desires to verify the [~~that~~] information received is correct or up-to-date, the transferor may obtain and record confirmation from the department, the NRC, or any agreement state [~~that~~] the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material must [~~shall~~] be performed as specified in [~~accordance with~~] the provisions of subsection (ff) of this section.

(6) Requirements for a specific license to initially transfer source material to a person generally licensed under §289.251(f)(3) of this subchapter [~~transfer of small quantities of source material~~].

(A) An application for a specific license to initially transfer source material for use under [~~in accordance with~~] §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22; or equivalent regulations of any agreement state, will be approved if:

(i) the applicant satisfies the general requirements as specified in subsection (e) of this section; and

(ii) the applicant submits adequate information on, and the department approves, the methods to be used for quality control, labeling, and providing safety instructions to recipients.

(B) Quality control, labeling, safety instructions, and records and reports. Each person licensed under subparagraph (A) of this paragraph must [~~shall~~]:

(i) label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material"; [~~"radioactive material."~~]

(ii) ensure [~~that~~] the quantities and concentrations of source material are as labeled and indicated in any transfer records;[~~,~~]

(iii) provide the information as specified in this clause to each person to whom source material is transferred for use under §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22; or equivalent regulations of any agreement state. This information must be provided [~~transferred~~] before the source material is transferred for the first time in each calendar year to the [~~particular~~] recipient. The required information includes:

(I) a copy of this subsection, and[~~,~~] as applicable, [~~of~~] §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22; or the equivalent agreement state regulation [~~that applies~~]; and [~~of this subsection;~~] 10 CFR [~~Title 10, CFR,~~] §40.51; or the equivalent agreement state regulations [~~that apply~~]; and

(II) appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material; and[~~,~~]

(iv) report transfers as follows:

(I) File a report with the department and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The report must [~~shall~~] include the following information:

(-a-) the name, address, and license number of the person who transferred the source material;

(-b-) for each general licensee under §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22; or equivalent regulations of any agreement state to whom greater than 50 grams (0.11 pounds (lb)) [~~(0.11 lb)~~] of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name or [~~and/or~~] position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(-c-) the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(II) File a report with each responsible agreement state agency that identifies all persons[~~,~~] operating under §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22;[~~,~~] or equivalent regulations of any agreement state to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report must [~~shall~~] include the following information specific to those transfers made to the agreement state being reported to:

(-a-) the name, address, and license number of the person who transferred the source material; and

(-b-) the name and address of the general licensee to whom source material was distributed; a responsible agent, by name or [~~and/or~~] position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(-c-) the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the agreement state.

(III) The following are to be submitted to the department by January 31 of each year:

(-a-) each report required by subclauses (I) and (II) of this clause covering all transfers for the previous calendar year;

(-b-) if no transfers were made during the current period to a person [~~persons~~] generally licensed under [~~in accordance with~~] §289.251(f)(3) of this subchapter [~~title~~]; 10 CFR [~~Title 10, CFR,~~] §40.22; or equivalent regulations of any agreement state, a report to the department indicating so; and

(-c-) if no transfers have been made to general licensees in a particular agreement state during the reporting period, this information must [~~shall~~] be reported to the responsible agreement state upon request of that agency.

(C) Records.

(i) The licensee must [~~shall~~] maintain all information supporting [~~that supports~~] the reports required by this paragraph concerning each transfer to a general licensee for inspection by the department, as specified in [~~accordance with~~] subsection (mm) of this section.

(ii) The licensee transferring [~~who transferred~~] the material must [~~shall~~] retain each record of transfer of radioactive material until the department terminates each license authorizing [~~that authorizes~~] the activity [~~that is~~] subject to the recordkeeping requirement.

(dd) Modification, suspension, and revocation of licenses.

(1) The terms and conditions of all licenses are [~~shall be~~] subject to revision or modification. A license may be modified, suspended, or revoked due to [~~by reason of~~] amendments to the Act or[~~, by reason of~~] rules in this chapter, or orders issued by the department or a court.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means warranting [~~that would warrant the~~] department refusal [~~to refuse~~] to grant a license on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the department or court; or

(D) existing conditions constituting [~~that constitute~~] a substantial threat to the public health or safety or the environment.

(3) Each specific license revoked by the department ends at the end of the day on the date of the department's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the department order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no license will [~~shall~~] be suspended or revoked unless, before the institution of proceedings [~~therefore~~], facts or conduct warranting [~~that may warrant~~] such action is [~~shall have been~~] called to the attention of the licensee in writing and the licensee has been given [~~shall have been afforded~~] an opportunity to demonstrate compliance with all lawful requirements.

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the NRC or any agreement state, and issued by the agency

having jurisdiction where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the State of Texas provided [~~that~~]:

(A) the licensing document does not limit the activity authorized by such document to specified installations or locations;

(B) the out-of-state licensee notifies the department in writing at least three working days before engaging in such activity. If, for a specific case, the three-working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the department, obtain permission to proceed sooner. The department may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under [~~in accordance with~~] the general license provided in this subsection. Such notification must [~~shall~~] include:

(i) the exact location, start date, duration, and type of activity to be conducted;

(ii) the identification of the radioactive material to be used;

(iii) the name [~~name(s)~~] and in-state address [~~address(es)~~] of each individual [~~the individual(s)~~] performing the activity;

(iv) a copy of the applicant's pertinent license;

(v) a copy of the licensee's operating, safety, and emergency procedures;

(vi) a fee as specified in §289.204 of this chapter [~~title~~]; and

(vii) a copy of the completed RC Form 252-1 (Business Information Form);

(C) the out-of-state licensee complies with all applicable rules of the department and with all the terms and conditions of the licensee's licensing document, except any such terms and conditions [~~that may be~~] inconsistent with applicable rules of the department;

(D) the out-of-state licensee supplies such other information as the department may request;

(E) the out-of-state licensee must [~~shall~~] not transfer or dispose of radioactive material possessed or used under [~~in accordance with~~] the general license provided in this subsection except by transfer to a person:

(i) specifically licensed by the department, the NRC, or any agreement state to receive such material, or

(ii) exempt from the requirements for a license for such material under [~~in accordance with~~] §289.251(e)(1) of this subchapter [~~title~~]; and

(F) the out-of-state licensee must always [~~shall~~] have the following documents in their possession [~~at all times~~] when conducting work in Texas, and make them available for department review upon request:

(i) a copy of the department letter granting the licensee reciprocal recognition of their out-of-state license;

(ii) a copy of the licensee's operating and emergency procedures;

(iii) a copy of the licensee's radioactive material license;

(iv) a copy of all applicable sections of this chapter [~~25 TAC, Chapter 289~~]; and

(v) a copy of the completed RC Form 252-3 notifying the department of the licensee's intent to work in Texas.

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the NRC or any agreement state authorizing the holder to manufacture, transfer, install, or service the device described in §289.251(f)(4)(H) of this subchapter [~~title~~] or in 10 CFR [~~Title 10, CFR,~~] §150.20, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the State of Texas provided that:

(A) the person files a report with the department within 30 days after the end of each calendar quarter in which any device is transferred to or installed in the State of Texas. Each report must [~~shall~~] identify by name and address, each general licensee to whom the device is transferred, the type of device transferred by manufacturer's name, model and serial number of the device, and serial number of the sealed source, and the quantity and type of radioactive material contained in the device;

(B) the device has been manufactured, labeled, installed, and serviced as specified in [~~accordance with~~] applicable provisions of the specific license issued to the person by the NRC or any agreement state;

(C) the person assures [~~that~~] any labels required to be affixed to the device according to [~~in accordance with~~] requirements of the authority licensing the [~~that licensed~~] manufacture of the device, bear a statement that "Removal of this label is prohibited"; and

(D) the holder of the specific license furnishes to each general licensee to whom the holder of the specific license transfers the device, or on whose premises the holder of the specific license installs the device, a copy of the general license contained in §289.251(f)(4)(H) of this subchapter [~~title~~].

(3) The department may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed under [~~in accordance with~~] the licensing document, upon determining [~~that~~] the action is necessary [~~in order~~] to prevent undue hazard to occupational and public health and safety and the environment.

(ff) Preparation of radioactive material for transport. Requirements for the preparation of radioactive material for transport are specified in §289.257 of this subchapter [~~title~~].

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material must [~~shall~~] submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the department to engage a third party to decommission each site [~~the site(s)~~] specified on the license for the following situations:

(A) when unsealed radioactive material requested or authorized on the license, with a half-life greater than 120 days, is in quantities exceeding 10^5 times the applicable quantities set forth in subsection (jj)(2) of this section;

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by 10^5 being greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in subsection (jj)(2) of this section;

(C) when sealed sources or plated foils requested or authorized on the license, with a half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in subsection (jj)(2) of this section (or when a combination of isotopes is involved if R, as defined in this subsection, divided by 10^{12} is greater than 1), must [~~shall~~] submit a decommissioning funding plan as described in paragraph (4) of this subsection; or

(D) when radioactive material requested or authorized on the license is in quantities more than 100 mCi (3.7 GBq) [~~(3.7 gigabecquerels (GBq))~~] of source material in a readily dispersible form.

(2) The applicant for a specific license or renewal of a specific license or the holder of a specific license authorizing possession and use of radioactive material as specified in paragraph (3) of this subsection must [~~shall~~] either:

(A) submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the department to engage a third party to decommission each site [~~the site(s)~~] specified on the license; or

(B) submit financial assurance for decommissioning in the amount specified in [~~accordance with~~] paragraph (3) of this subsection, using one of the methods described in paragraph (6) of this subsection, in an amount sufficient to allow the department to engage a third party to decommission each site [~~the site(s)~~] specified on the license.

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) $1,125,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1);

(B) $225,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1);

(C) $113,000 for quantities of material greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities in subsection (jj)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1); or

(D) $225,000 for quantities of source material greater than 10 mCi (0.37 GBq) but less than or equal to 100 mCi (3.7 GBq) in a readily dispersible form.

(4) Each decommissioning funding plan must [~~shall~~]:

(A) be submitted for review and approval and must [~~shall~~] contain the following:

(i) a detailed cost estimate for decommissioning in an amount reflecting:

(I) the cost of an independent contractor to perform all decommissioning activities;

(II) the cost of meeting the criteria of §289.202(ddd)(2) of this chapter [~~title~~] for unrestricted use[~~,~~] provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of §289.202(ddd)(3) of this chapter [~~title~~], then the cost estimate may be based on meeting the criteria of §289.202(ddd)(3) of this chapter [~~title~~];

(III) the volume of onsite subsurface material containing residual radioactivity requiring [~~that will require~~] remediation to meet the criteria for license termination; and

(IV) an adequate contingency factor;[~~.~~]

(ii) identification of and justification for using the key assumptions contained in the detailed cost estimate;

(iii) a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning); and

(B) be resubmitted at the time of license renewal and at intervals not to exceed three years[~~, the decommissioning funding plan, be resubmitted~~] with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance is [~~will be~~] adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must [~~shall~~] update the information submitted with the original or prior approved plan, and must [~~shall~~] specifically consider the effect of the following events on decommissioning costs:

(i) spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) waste inventory increasing above the amount previously estimated;

(iii) waste disposal costs increasing above the amount previously estimated;

(iv) facility modifications;

(v) changes in authorized possession limits;

(vi) actual remediation costs exceeding [~~that exceed~~] the previous cost estimate;

(vii) onsite disposal; and

(viii) use of a settling pond.

(5) Financial assurance in conjunction with a decommissioning funding plan must [~~shall~~] be submitted as follows:

(A) for an applicant for a specific license, financial assurance as described in paragraph (6) of this subsection, may be obtained after the application has been approved and the license issued by the department, but must [~~shall~~] be submitted to the department before receipt of licensed material; or

(B) for an applicant for renewal of a specific license, or a holder of a specific license, a signed original of the financial in-

strument obtained to satisfy the requirements of paragraph (6) of this subsection must [~~shall~~] be submitted with the decommissioning funding plan.

(6) Financial assurance for decommissioning must [~~shall~~] be provided by one or more of the following methods. The financial instrument obtained must [~~shall~~] be continuous for the term of the license in a form prescribed by the department. The applicant or licensee must [~~shall~~] obtain written approval of the financial instrument or any amendment to it from the department.

(A) [~~Prepayment.~~] Prepayment is the deposit into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee [~~that~~] decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations issuing [~~that issue~~] bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(4) of this section. For commercial companies [~~that do~~] not issuing [~~issue~~] bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (jj)(5) of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (jj)(6) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must [~~shall~~] contain the following conditions.

(i) The surety method or insurance must [~~shall~~] be open-ended or, if written for a specified term, such as five years, must [~~shall~~] be renewed automatically unless 90 days or more before the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must [~~shall~~] also provide [~~that~~] the full face amount be paid to the beneficiary automatically before the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must [~~shall~~] be payable in the State of Texas to the Radiation and Perpetual Care Account.

(iii) The surety method or insurance must [~~shall~~] remain in effect until the department has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must comply [~~shall be in accordance~~] with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount as specified in [~~accordance with~~] paragraph (3) of this subsection, and indicating [~~that~~] funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there must [~~shall~~] be an arrangement [~~that is~~] deemed acceptable by such governmental entity.

(7) Each person licensed under [~~in accordance with~~] this section must [~~shall~~] make, maintain, and retain records of information important to the safe and effective decommissioning of the facility in an identified location for inspection by the department, as specified in [~~accordance with~~] subsection (mm) of this section. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood [~~that~~] contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must [~~shall~~] include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes [~~that may be~~] subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee must [~~shall~~] substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years[~~,~~] of [~~the following~~]:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this chapter [~~title~~];

(ii) all areas outside of restricted areas requiring [~~that require~~] documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas containing [~~that contain~~] material where [~~such that~~], if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in §289.202(ddd) of this chapter [~~title~~], or meet the requirements for approval of disposal under §289.202(ff) - (kk) of this chapter [~~title~~]; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds.

[~~(8) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section~~

~~shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection.]~~

(hh) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass, in excess of the quantities in subsection (jj)(7) of this section, must [~~shall~~] contain either:

(A) an evaluation showing [~~that~~] the maximum dose to a person offsite due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rem [~~rems~~] to the thyroid; or

(B) an emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted under [~~in accordance with~~] paragraph (1)(A) of this subsection:

(A) the radioactive material is physically separated so [~~that~~] only a portion could be involved in an accident;

(B) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) the release fraction in the respirable size range would be lower than the release fraction in subsection (jj)(7) of this section due to the chemical or physical form of the material;

(D) the solubility of the radioactive material would reduce the dose received;

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (jj)(7) of this section;

(F) operating restrictions or procedures would prevent a release fraction as large as that in subsection (jj)(7) of this section; or

(G) other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted under [~~in accordance with~~] paragraph (1)(B) of this subsection must [~~shall~~] include the following information.

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. Identification [~~An identification~~] of each [~~type of~~] radioactive materials accident type for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the department; also, responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated, injured onsite workers, when appropriate. A control point must [~~shall~~] be established. The notification and coordination must [~~shall~~] be planned so [~~that~~] unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee must [~~shall~~] also commit to notify the department immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements under [~~in accordance with~~] the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the department.

(J) Training. A brief description of the frequency, performance objectives, and plans for the training [~~that~~] the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training must [~~shall~~] familiarize personnel with site-specific emergency procedures. Also, the training must comprehensively [~~shall thoroughly~~] prepare site personnel to effectively respond to accidents considered [~~for their responsibilities in the event of accident scenarios postulated~~] as most probable for the specific site and include[~~, including~~] the use of team training for such events [~~scenarios~~].

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with offsite response organizations must [~~shall~~] include the check and update of all necessary telephone numbers. The licensee must [~~shall~~] invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must [~~shall~~] use accident scenarios postulated as most probable for the specific site and the scenarios must [~~shall~~] not be known to most exercise participants. The licensee must [~~shall~~] critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must [~~shall~~] evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must [~~shall~~] be corrected.

(M) Hazardous chemicals. A certification [~~that~~] the applicant has met its responsibilities under [~~in accordance with~~] the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(4) The licensee must [~~shall~~] allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the department. The licensee must [~~shall~~] provide any comments received during [~~within~~] the 60 days to the department with the emergency plan.

(ii) Physical protection of category 1 and category 2 quantities of radioactive material.

(1) Specific exemptions. A licensee possessing [~~that possesses~~] radioactive waste containing [~~that contains~~] category 1 or category 2 quantities of radioactive material is exempt from the requirements of paragraphs (2) - (23) of this subsection, except [~~that~~] any radioactive waste containing [~~that contains~~] discrete sources, ion-exchange resins, or activated material weighing [~~that weighs~~] less than 2,000 kilograms (kg) (4,409 lb) [~~(4,409 pounds)~~] is not exempt from the requirements of this subsection. The licensee must [~~shall~~] implement the following requirements to secure the radioactive waste:

(A) use continuous physical barriers allowing [~~that allow~~] access to the radioactive waste only through established access control points;

(B) use a locked door or gate with monitored alarm at the access control point;

(C) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(D) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination [~~that~~] there was an actual or attempted theft, sabotage, or diversion of the radioactive waste containing [~~that contains~~] category 1 or category 2 quantities of radioactive material.

(2) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(A) General.

(i) Each licensee possessing [~~that possesses~~] an aggregated quantity of radioactive material at or above the category 2 threshold must [~~shall~~] establish, implement, and maintain its access authorization program, as specified in [~~accordance with~~] the requirements of this paragraph and paragraphs (3) - (8) of this subsection.

(ii) An applicant for a new license and each licensee that would become subject to the requirements of this paragraph and paragraphs (3) - (8) of this subsection upon application for modification of its license, must [~~shall~~] implement the requirements of this paragraph and paragraphs (3) - (8) of this subsection, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(iii) Any licensee that has not previously implemented the security orders or been subject to this paragraph and paragraphs (3) - (8) of this subsection must [~~shall~~] implement the provisions of these paragraphs before aggregating radioactive material to a quantity equaling [~~that equals~~] or exceeding [~~exceeds~~] the category 2 threshold.

(B) General performance objective. The licensee's access authorization program must ensure [~~that the~~] individuals specified in subparagraph (C)(i) of this paragraph are trustworthy and reliable.

(C) Applicability.

(i) Licensees must [~~shall~~] subject the following individuals to an access authorization program:

(I) any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device containing [~~that contains~~] the radioactive material; and

(II) reviewing officials.

(ii) Licensees need not subject the categories of individuals listed in paragraph (6)(A)(i) - (xiii) of this subsection to the investigation elements of the access authorization program.

(iii) Licensees must [~~shall~~] approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties requiring [~~that require~~] unescorted access to category 1 or category 2 quantities of radioactive material.

(iv) Licensees may include individuals needing access to safeguards information-modified handling under 10 CFR [~~in accordance with Title 10, CFR,~~] Part 73, in the access authorization program under this paragraph and paragraphs (3) - (8) of this subsection.

(3) Access authorization program requirements.

(A) Granting unescorted access authorization.

(i) Licensees must [~~shall~~] implement the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection for granting initial or reinstated unescorted access authorization.

(ii) Individuals who have been determined to be trustworthy and reliable must [~~shall~~] also complete the security training required by paragraph (10)(C) of this subsection before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.[~~)~~]

(B) Reviewing officials.

(i) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations allowing [~~that allow~~] individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(ii) Each licensee must [~~shall~~] name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee must [~~shall~~] provide to the department under oath or affirmation, a certification [~~that~~] the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies providing [~~that provide~~] fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee must [~~shall~~] recertify [~~that~~] the reviewing official is deemed trustworthy and reliable every 10 years, as specifiedin [~~accordance with~~] paragraph (4)(C) of this subsection.

(iii) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling[~~,~~] if the licensee possesses safeguards information or safeguards information-modified handling.

(iv) Reviewing officials cannot approve other individuals to act as reviewing officials.

(v) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(I) the individual has undergone a background investigation, including [~~that included~~] fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(II) the individual is subject to a category listed in paragraph (6)(A) of this subsection.

(C) Informed consent.

(i) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee must [~~shall~~] provide the individual with an opportunity to correct any inaccurate or incomplete information [~~that is~~] developed during the background investigation. Licensees do not need to obtain signed consent from those individuals meeting [~~that meet~~] the requirements of paragraph (4)(B) of this subsection. A signed consent must be obtained before any reinvestigation.

(ii) The subject individual may withdraw his or her consent at any time. Licensees must [~~shall~~] inform the individual that:

(I) if an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation [~~that were~~] not in progress at the time the individual withdrew his or her consent; and

(II) the withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(D) Personal history disclosure. Any individual who is applying for unescorted access authorization must [~~shall~~] disclose the personal history information [~~that is~~] required by the licensee's access authorization program for the reviewing official to determine [~~make a determination of~~] the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection is sufficient cause for denial or termination of unescorted access.

(E) Determination basis.

(i) The reviewing official must [~~shall~~] determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all [~~of~~] the information collected to meet the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection.

(ii) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all [~~of~~] the information collected to meet the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection and determined [~~that~~] the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(iii) The licensee must [~~shall~~] document the basis for concluding whether [~~or not~~] there is reasonable assurance [~~that~~] an individual is trustworthy and reliable.

(iv) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(v) Licensees must [~~shall~~] maintain a list of persons currently approved for unescorted access authorization. When a licensee determines [~~that~~] a person no longer requires unescorted access or meets the access authorization requirement, the licensee must [~~shall~~]:

(I) remove the person from the approved list as soon as possible, but no later than seven [~~7~~] working days; and

(II) take prompt measures to ensure [~~that~~] the individual is unable to have unescorted access to the material.

(F) Procedures. Licensees must [~~shall~~] develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must:

(i) include provisions for the notification of individuals who are denied unescorted access;

(ii) include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization; and

(iii) contain a provision to ensure [~~that~~] the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(G) Right to correct and complete information.

(i) Before any final adverse determination, licensees must [~~shall~~] provide each individual subject to paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection with the right to complete, correct, and explain information obtained resulting from [~~as a result of~~] the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(ii) If, after reviewing his or her criminal history record, an individual believes [~~that~~] it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency contributing [~~that contributed~~] the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR [~~Title 28, CFR,~~] §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency submitting [~~that submitted~~] the data[~~,~~] and will request [~~that~~] the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency contributing [~~that contributed~~] the original information, the FBI Identification Division makes any changes necessary according to [~~in accordance with~~] the information supplied by that agency. Licensees must [~~shall~~] provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(H) Records. The licensee must [~~shall~~] make, maintain, and retain the following records/documents for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. The licensee must [~~shall~~] maintain superseded versions or portions of the following records/documents for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section:

(i) documentation regarding the trustworthiness and reliability of individual employees;

(ii) a copy of the current access authorization program procedures; and

(iii) the current list of persons approved for unescorted access authorization.

(4) Background investigations.

(A) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices containing [~~that contain~~] the material, licensees must [~~shall~~] complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(i) fingerprinting and an FBI identification and criminal history records check as specified in [~~accordance with~~] paragraph (5) of this subsection;

(ii) verification of true identity. Licensees must [~~shall~~]:

(I) verify the true identity of the individual who is applying for unescorted access authorization to ensure [~~that~~] the applicant is who the individual [~~he or she~~] claims to be;

(II) review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information;

(III) document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file as specified in [~~accordance with~~] paragraph (7) of this subsection;

(IV) certify in writing [~~that~~] the identification was properly reviewed; and

(V) maintain the certification and all related documents for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section;

(iii) employment history verification. Licensees must [~~shall~~]:

(I) complete an employment history verification, including military history; and

(II) verify the individual's employment with each previous employer for the most recent seven [~~7~~] years before the date of application;

(iv) verification of education. Licensees must [~~shall~~] verify [~~that~~] the individual participated in the education process during the claimed period;

(v) character and reputation determination. Licensees must [~~shall~~] complete reference checks to determine the character and reputation of the individual applying [~~who has applied~~] for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks as specified in paragraphs (2) and (3), this paragraph, and paragraphs (5) - (8) of this subsection must be limited to whether the individual has been and continues to be trustworthy and reliable;

(vi) the licensee must [~~shall~~] also, to the extent possible, obtain independent information to corroborate information [~~that~~] provided by the individual (e.g., seek references not supplied by the individual); and

(vii) if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request, or if the licensee is unable to reach the entity, the licensee must [~~shall~~] document the refusal, unwillingness, or inability in the record of investigation[~~;~~] and attempt to obtain the information from an alternate source.

(B) Grandfathering.

(i) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material as specified in the fingerprint orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals are [~~shall be~~] subject to the reinvestigation requirement.

(ii) Individuals [~~who have been~~] determined to be trustworthy and reliable under 10 CFR [~~in accordance with Title 10, CFR,~~] Part 73, or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee must [~~shall~~] document [~~that~~] the individual was determined to be trustworthy and reliable under 10 CFR [~~Title 10, CFR,~~] Part 73, or a security order. Security order, in this context, refers to any order [~~that was~~] issued by the NRC requiring [~~that required~~] fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals are [~~shall be~~] subject to the reinvestigation requirement.

(C) Reinvestigations. Licensees must [~~shall~~] conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation must [~~shall~~] consist of fingerprinting and an FBI identification and criminal history records check as specified in [~~accordance with~~] paragraph (5) of this subsection. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(5) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(A) General performance objective and requirements.

(i) Except for those individuals listed in paragraph (6) of this subsection and those individuals grandfathered under paragraph (4)(B) of this subsection, each licensee subject to the requirements of paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection must [~~shall~~]:

(I) fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material;

(II) transmit all collected fingerprints to the NRC for transmission to the FBI; and

(III) use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(ii) The licensee must [~~shall~~] notify each affected individual their [~~that his or her~~] fingerprints will be used to secure a review of their [~~his or her~~] criminal history record[~~,~~] and must [~~shall~~] inform the individual [~~him or her~~] of the procedures for revising the record or adding explanations to the record.

(iii) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(I) the individual returns to the same facility granting [~~that granted~~] unescorted access authorization within 365 days of the termination of the individual's [~~his or her~~] unescorted access authorization; and

(II) the previous access was terminated under favorable conditions.

(iv) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under [~~in accordance with~~] paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection, the fingerprint orders, or 10 CFR [~~Title 10, CFR,~~] Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access as specified in [~~accordance with~~] the requirements of paragraph (7)(C) of this subsection.

(v) Licensees must [~~shall~~] use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(B) Prohibitions.

(i) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(I) an arrest more than one year old for which there is no information of the disposition of the case; or

(II) an arrest resulting [~~that resulted~~] in dismissal of the charge or an acquittal.

(ii) Licensees may not use information received from a criminal history records check obtained under paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection in a manner infringing on [~~that would infringe upon~~] the rights of any individual under the First Amendment to the Constitution of the United States, nor may [~~shall~~] licensees use the information in any way discriminating [~~that would discriminate~~] among individuals on the basis of race, religion, national origin, gender, or age.

(C) Procedures for processing of fingerprint checks.

(i) For the purpose of complying with paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection, licensees must [~~shall~~] use an appropriate method listed in 10 CFR [~~Title 10, CFR,~~] §37.7, to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-07D04M, 11545 Rockville Pike, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan, or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing *MAILSVS.Resource@nrc.gov.* Guidance on submitting electronic fingerprints can be found at *https://www.nrc.gov/security/chp.html.*

(ii) Fees for the processing of fingerprint checks are due upon application. Licensees must [~~shall~~] submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by emailing *Crimhist.Resource@nrc.gov.*) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at *https://www.nrc.gov/security/chp.html* and see the link for How do I determine how much to pay for the request?).

(iii) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application [~~application(s)~~] for criminal history records checks.

(6) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(A) Fingerprinting, [~~and~~] the identification and criminal history records checks required by Section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals before granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(i) an employee of the NRC or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(ii) a member of Congress;

(iii) an employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(iv) the governor of a state or his or her designated state employee representative;

(v) federal, state, or local law enforcement personnel;

(vi) state radiation control program directors and state homeland security advisors or their designated state employee representatives;

(vii) agreement state employees conducting security inspections on behalf of the NRC under an agreement executed as specified in section 274.i. [~~§274.1~~] of the Atomic Energy Act;

(viii) representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(ix) emergency response personnel who are responding to an emergency;

(x) commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(xi) package handlers at transportation facilities such as freight terminals and railroad yards;

(xii) any individual having [~~who has~~] an active federal security clearance, if the individual [~~provided that he or she~~] makes available the appropriate documentation. Written confirmation from the agency/employer granting [~~that granted~~] the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee must [~~shall~~] maintain and retain this documentation for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section; and

(xiii) any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee must [~~shall~~] maintain and retain the documentation for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(B) Fingerprinting, and the identification and criminal history records checks required by Section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five [~~5~~] years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check, provided the individual [~~that he or she~~] makes available the appropriate documentation. Written confirmation from the agency/employer reviewing [~~that reviewed~~] the criminal history records check must be provided to the licensee. The licensee must [~~shall~~] maintain and retain this documentation for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. These programs include:

(i) National Agency Check;

(ii) Transportation Worker Identification Credentials (TWIC) under 49 CFR [~~Title 49, CFR,~~] Part 1572;

(iii) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR [~~Title 27, CFR,~~] Part 555;

(iv) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR [~~Title 42, CFR,~~] Part 73;

(v) Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR [~~Title 49, CFR,~~] Part 1572; and

(vi) Customs and Border Protection's Free and Secure Trade (FAST) Program.

(7) Protection of information.

(A) Each licensee who obtains background information on an individual under paragraphs (2) - (6), this paragraph, or paragraph (8) of this subsection must [~~shall~~] establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(B) The licensee may not disclose the record or personal information collected and maintained to any person [~~persons~~] other than the subject individual, the individual's [~~his or her~~] representative, or to those having [~~who have~~] a need to [~~have~~] access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(C) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(i) upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(ii) provided the recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(D) The licensee must [~~shall~~] make background investigation records obtained under paragraphs (2) - (6), this paragraph, and paragraph (8) of this subsection available for examination by an authorized representative of the department to determine compliance with the regulations and laws.

(E) The licensee must retain [~~shall maintain~~] all fingerprint and criminal history records on an individual (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(8) Access authorization program review.

(A) Each licensee is [~~shall be~~] responsible for the continuing effectiveness of the access authorization program. Each licensee must [~~shall~~] ensure [~~that~~] access authorization programs are reviewed to confirm compliance with the requirements of paragraphs (2) - (7) and this paragraph of this subsection and [~~that~~] comprehensive actions are taken to correct any noncompliance [~~that is~~] identified. The review program must [~~shall~~] evaluate all program performance objectives and requirements. Each licensee must [~~shall~~] review the access program content and implementation at least every 12 months.

(B) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions [~~that are~~] adverse to the proper performance of the access authorization program, the cause of each condition [~~the condition(s)~~], and, when appropriate, recommend corrective actions[~~,~~] and corrective actions taken. The licensee must [~~shall~~] review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(C) Review records must be maintained for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(9) Security program.

(A) Applicability.

(i) Each licensee possessing [~~that possesses~~] an aggregated category 1 or category 2 quantity of radioactive material must [~~shall~~] establish, implement, and maintain a security program complying [~~in accordance~~] with the requirements of this paragraph and paragraphs (10) - (17) of this subsection.

(ii) An applicant for a new license and each licensee becoming [~~that would become~~] newly subject to the requirements of this paragraph and paragraphs (10) - (17) of this subsection upon application for modification of its license must [~~shall~~] implement the requirements of this paragraph and paragraphs (10) - (17) of this subsection, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(iii) Any licensee [~~that has~~] not previously implementing [~~implemented~~] the security orders or [~~been~~] subject to the provisions of this paragraph and paragraphs (10) - (17) of this subsection must [~~shall~~] provide written notification to the department at least 90 days before aggregating radioactive material to a quantity equaling [~~that equals~~] or exceeding [~~exceeds~~] the category 2 threshold.

(B) General performance objective. Each licensee must [~~shall~~] establish, implement, and maintain a security program [~~that is~~] designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(C) Program features. Each licensee's security program must include the program features, as appropriate, described in paragraphs (10) - (16) of this subsection.

(10) General security program requirements.

(A) Security plan.

(i) Each licensee identified in paragraph (9)(A) of this subsection must [~~shall~~] develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection. The security plan must, at a minimum:

(I) describe the measures and strategies used to implement the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection; and

(II) identify the security resources, equipment, and technology used to satisfy the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection.

(ii) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(iii) A licensee must [~~shall~~] revise its security plan as necessary to ensure the effective implementation of department and NRC requirements. The licensee must [~~shall~~] ensure [~~that~~]:

(I) the revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(II) the affected individuals are instructed on the revised plan before the changes are implemented.

(iv) The licensee must [~~shall~~] maintain a copy of the current security plan as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. If any portion of the plan is superseded, the licensee must [~~shall~~] maintain and retain the superseded material for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(B) Implementing procedures.

(i) The licensee must [~~shall~~] develop and maintain written procedures documenting [~~that document~~] how the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection and the security plan are [~~will be~~] met.

(ii) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(iii) The licensee must retain [~~shall maintain~~] a copy of the current procedure as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. Superseded portions of the procedure must [~~shall~~] be maintained for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(C) Training.

(i) Each licensee must [~~shall~~] conduct training to ensure [~~that~~] those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(I) the licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(II) the responsibility to report promptly to the licensee any condition causing [~~that causes~~] or potentially causing [~~may cause~~] a violation of the requirements of the department;

(III) the responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(IV) the appropriate response to security alarms.

(ii) In determining those individuals who must [~~shall~~] be trained on the security program, the licensee must [~~shall~~] consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(iii) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(I) review of the training requirements of this subparagraph [~~of this paragraph~~] and any changes made to the security program since the last training;

(II) reports on any relevant security issues, problems, and lessons learned;

(III) relevant results of inspections by the department; and

(IV) relevant results of the licensee's program review and testing and maintenance.

(iv) The licensee must [~~shall~~] maintain records of the initial and refresher training for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. The training records must [~~shall~~] include:

(I) the dates of the training;

(II) the topics covered;

(III) a list of licensee personnel in attendance; and

(IV) any related information.

(D) Protection of information.

(i) Licensees authorized to possess category 1 or category 2 quantities of radioactive material must [~~shall~~] limit access to and unauthorized disclosure of their security plan, implementing pro-

cedures, and the list of individuals [~~that have been~~] approved for unescorted access.

(ii) Efforts to limit access must [~~shall~~] include the development, implementation, and maintenance of written policies and procedures for controlling access to[~~,~~] and for proper handling and protection against unauthorized disclosure of[~~,~~] the security plan, implementing procedures, and the list of individuals [~~that have been~~] approved for unescorted access.

(iii) Before granting an individual access to the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access, licensees must [~~shall~~]:

(I) evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access; and

(II) if the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination must [~~shall~~] be conducted by the reviewing official and must [~~shall~~] include the background investigation elements contained in paragraph (4)(A)(ii) - (vii) of this subsection.

(iv) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(I) the categories of individuals listed in paragraph (6)(A)(i) - (xiii) of this subsection; or

(II) security service provider employees, provided written verification [~~that~~] the employee has been determined to be trustworthy and reliable, by the required background investigation in paragraph (4)(A)(ii) - (vii) of this subsection, has been provided by the security service provider.

(v) The licensee must [~~shall~~] document the basis for concluding [~~that~~] an individual is trustworthy and reliable and should be granted access to the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access.

(vi) Licensees must [~~shall~~] maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access. When a licensee determines [~~that~~] a person no longer needs access to the security plan, implementing procedures, and the list of individuals [~~that have been~~] approved for unescorted access, or no longer meets the access authorization requirements for access to the information, the licensee must [~~shall~~]:

(I) remove the individual [~~person~~] from the approved list as soon as possible, but no later than seven [~~7~~] working days; and

(II) take prompt measures to ensure [~~that~~] the individual is unable to obtain the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access.

(vii) When not in use, the licensee must [~~shall~~] store its security plan, implementing procedures, and the list of individuals [~~that have been~~] approved for unescorted access in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must [~~shall~~] be password protected.

(viii) The licensee must [~~shall~~] make, maintain, and retain as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section:

(I) a copy of the information protection procedures; and

(II) the list of individuals approved for access to the security plan, implementing procedures, or the list of individuals [~~that have been~~] approved for unescorted access.

(11) LLEA coordination.

(A) A licensee subject to paragraphs (9) and (10), this paragraph, and paragraphs (12) - (17) of this subsection must [~~shall~~] coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(i) a description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures [~~that have been~~] implemented to comply with paragraphs (9) and (10), this paragraph, and paragraphs (12) - (17) of this subsection; and

(ii) a notification [~~that~~] the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(B) The licensee must [~~shall~~] notify the department within three business days if:

(i) the LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(ii) the LLEA notifies the licensee [~~that~~] the LLEA does not plan to participate in coordination activities.

(C) The licensee must [~~shall~~] document its efforts to coordinate with the LLEA. The documentation must be kept for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(D) The licensee must [~~shall~~] coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(12) Security zones.

(A) Licensees must [~~shall~~] ensure [~~that~~] all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee-established [~~licensee established~~] security zones. Security zones may be permanent or temporary.

(B) Temporary security zones must [~~shall~~] be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(C) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(i) isolation of category 1 and category 2 quantities of radioactive materials using [~~by the use of~~] continuous physical barriers allowing [~~that allow~~] access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(ii) direct control of the security zone by approved individuals at all times; or

(iii) a combination of continuous physical barriers and direct control.

(D) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee must [~~shall~~], at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(E) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(13) Monitoring, detection, and assessment.

(A) Monitoring and detection.

(i) Licensees must [~~shall~~]:

(I) establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones;

(II) provide the means to maintain continuous monitoring and detection capability in case [~~the event~~] of a loss of the primary power source; or

(III) provide for an alarm and response in case [~~the event~~] of a loss of this capability to continuously monitor and detect unauthorized entries.

(ii) Monitoring and detection must be performed by:

(I) a monitored intrusion detection system [~~that is~~] linked to an onsite or offsite central monitoring facility;

(II) electronic devices for intrusion detection alarms alerting [~~that will alert~~] nearby facility personnel;

(III) a monitored video surveillance system;

(IV) direct visual surveillance by approved individuals located within the security zone; or

(V) direct visual surveillance by a licensee designated individual located outside the security zone.

(iii) A licensee subject to paragraphs (9) - (12), this paragraph, and paragraphs (14) - (17) of this subsection must [~~shall~~] also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(I) for category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(-a-) electronic sensors linked to an alarm;

(-b-) continuous monitored video surveillance; or

(-c-) direct visual surveillance; and

(II) for category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure [~~that~~] the radioactive material is present.

(B) Assessment. Licensees must [~~shall~~] immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(C) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees must [~~shall~~]:

(i) maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(ii) provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in case [~~the event~~] of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(D) Response. Licensees must [~~shall~~] immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response must [~~shall~~] include requesting, without delay, an armed response from the LLEA.

(14) Maintenance and testing.

(A) Each licensee subject to paragraphs (9) - (13), this paragraph, and paragraphs (15) - (17) of this subsection must [~~shall~~] implement a maintenance and testing program to ensure [~~that~~] intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this subsection must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(B) The licensee must [~~shall~~] maintain records on the maintenance and testing activities for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(15) Requirements for mobile devices. Each licensee possessing [~~that possesses~~] mobile devices containing category 1 or category 2 quantities of radioactive material must [~~shall~~]:

(A) have two independent physical controls forming [~~that form~~] tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(B) for devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee must [~~shall~~] utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees must [~~shall~~] not rely on the removal of an ignition key to meet this requirement.

(16) Security program review.

(A) Each licensee is [~~shall be~~] responsible for the continuing effectiveness of the security program. Each licensee must [~~shall~~] ensure [~~that~~] the security program is reviewed to confirm compliance with the requirements of paragraphs (9) - (15), this paragraph, and paragraph (17) of this subsection, and [~~that~~] comprehensive

actions are taken to correct any noncompliance [~~that is~~] identified. The review must [~~shall~~] include the radioactive material security program content and implementation. Each licensee must [~~shall~~] review the security program content and implementation at least every 12 months.

(B) The results of the review, along with any recommendations, must be documented.

(i) Each review report must:

(I) identify conditions [~~that are~~] adverse to the proper performance of the security program;

(II) identify the cause of each condition [~~the condition(s)~~]; and

(III) when applicable, recommend corrective actions, and identify and document any corrective actions taken.

(ii) The licensee must [~~shall~~] review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(C) The licensee must [~~shall~~] make, maintain, and retain the documentation of the review required under subparagraph (B) of this paragraph for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(17) Reporting of events.

(A) The licensee must [~~shall~~] immediately notify the LLEA after determining [~~that~~] an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee must [~~shall~~] notify the department at (512) 458-7460. Notification [~~In no case shall notification~~] to the department must not be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(B) The licensee must [~~shall~~] assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four [4] hours after notifying the LLEA, the licensee must [~~shall~~] notify the department at (512) 458-7460.

(C) Each initial telephonic notification required by subparagraphs (A) and (B) of this paragraph must be followed by, within a period of 30 days, [~~by~~] a written report submitted to the department. The report must include sufficient information for department analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(18) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the department, the NRC, or any agreement state must [~~shall~~] meet the license verification requirements listed below instead of those listed in subsection (cc)(4) of this section.

(A) Any licensee transferring category 1 quantities of radioactive material to a licensee of the department, the NRC, or any agreement state, before conducting such transfer, must [~~shall~~] verify with the NRC's license verification system or the license issuing authority [~~that~~] the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and [~~that~~] the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor must [~~shall~~] document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(B) Any licensee transferring category 2 quantities of radioactive material to a licensee of the department, the NRC, or any agreement state, before conducting such transfer, must [~~shall~~] verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor must [~~shall~~] document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(C) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred.

(i) The certification must include:

(I) the license number;

(II) the current revision number;

(III) the issuing authority;

(IV) the expiration date; and

(V) for a category 1 shipment, the authorized address.

(ii) The licensee must [~~shall~~] keep a copy of the certification.

(iii) The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(D) The transferor must [~~shall~~] keep a copy of the verification documentation required under this paragraph as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(19) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping licensee is [~~shall be~~] responsible for meeting the requirements of paragraph (18), this paragraph, and paragraphs (20) - (23) of this subsection unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this paragraph, and paragraphs (20) - (23) of this subsection.

(20) Preplanning and coordination of shipment of category 1 and category 2 quantities of radioactive material.

(A) Each licensee planning [~~that plans~~] to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage must [~~shall~~]:

(i) preplan and coordinate shipment arrival and departure times with the receiving licensee;

(ii) preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(I) discuss the state's intention to provide law enforcement escorts; and

(II) identify safe havens; and

(iii) document the preplanning and coordination activities.

(B) Each licensee planning [~~that plans~~] to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage must [~~shall~~] coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee must [~~shall~~] document the coordination activities.

(C) Each licensee receiving [~~who receives~~] a shipment of a category 2 quantity of radioactive material must [~~shall~~] confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee must [~~shall~~] notify the originator.

(D) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material[~~,~~] and determines [~~that~~] the shipment will arrive after the no-later-than arrival time provided pursuant to subparagraph (B) of this paragraph, must [~~shall~~] promptly notify the receiving licensee of the new no-later-than arrival time.

(E) The licensee must [~~shall~~] make, maintain, and retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(21) Advance notification of shipment of category 1 quantities of radioactive material. As specified in subparagraphs (A) and (B) of this paragraph, for shipments initially made by an agreement state licensee, each licensee must [~~shall~~] provide advance notification to the Texas Department of Public Safety and the governor of the State of Texas, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport[~~,~~] or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(A) Procedures for submitting advance notification.

(i) The notification must be made to the Texas Department of Public Safety and to the office of each appropriate governor or governor's designee.

(I) The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website [~~Web site~~] at https://scp.nrc.gov/special/designee.pdf. A list of agreement state advance notification contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(II) Notifications to the Texas Department of Public Safety must be to the Director, Texas Department of Public Safety, Office of Homeland Security, P.O. Box 4087, Austin, Texas 78773 or by fax to (512) 424-5708.

(ii) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(iii) A notification delivered by any means other than mail must reach the Texas Department of Public Safety at least four days before the transport of the shipment commences; and

(iv) A notification delivered by any means other than mail must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(B) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(i) the name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(ii) the license numbers of the shipper and receiver;

(iii) a description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(iv) the point of origin of the shipment and the estimated time and date [~~that~~] shipment will commence;

(v) the estimated time and date [~~that~~] the shipment is expected to enter each state along the route;

(vi) the estimated time and date of arrival of the shipment at the destination; and

(vii) a point of contact, with a telephone number, for current shipment information.

(C) Revision notice.

(i) The licensee must [~~shall~~] provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the Director, Texas Department of Public Safety, Office of Homeland Security, P.O. Box 4087, Austin, Texas 78773 or by fax to (512) 424-5708.

(ii) A licensee must [~~shall~~] provide notice as follows of any changes to the information provided under [~~in accordance with~~] subparagraphs (B) and (C)(i) of this paragraph.

(I) Promptly notify the governor of the state or the governor's designee.

(II) Immediately notify the Director, Texas Department of Public Safety, Office of Homeland Security, P.O. Box 4087, Austin, Texas 78773 or by fax to (512) 424-5708.

(D) Cancellation notice.

(i) Each licensee who cancels a shipment for which advance notification has been sent must [~~shall~~] send a cancellation notice to:

(I) the governor of each state or to the governor's designee previously notified; and

(II) the Director, Texas Department of Public Safety, Office of Homeland Security, P.O. Box 4087, Austin, Texas 78773 or by fax to (512) 424-5708.

(ii) The licensee must [~~shall~~] send the cancellation notice before the shipment would have commenced or as soon thereafter as possible.

(iii) The licensee must [~~shall~~] state in the notice [~~that~~] it is a cancellation and identify the advance notification [~~that is~~] being cancelled.

(E) Records. The licensee must [~~shall~~] make, maintain, and retain a copy of the advance notification and any revision and cancellation notices as a record for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section.

(F) Protection of information. State officials, state employees, and other individuals, whether [~~whether or not~~] licensees of

the department, the NRC, or any agreement state, receiving [~~who receive~~] schedule information of the kind specified in subparagraph (B) of this paragraph must [~~shall~~] protect that information against unauthorized disclosure as specified in paragraph (10)(D) of this subsection.

(22) Requirements for physical protection of category 1 or category 2 quantities of radioactive material during shipment.

(A) Shipments by road.

(i) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material must [~~shall~~]:

(I) ensure [~~that~~] movement control centers are established maintaining [~~that maintain~~] position information from a remote location. These control centers must [~~shall~~] monitor shipments 24 hours a day, seven [~~7~~] days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies;

(II) ensure [~~that~~] redundant communications are established allowing [~~that allow~~] the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication;

(III) ensure [~~that~~] shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must [~~shall~~] provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include the identification of and contact information for the appropriate LLEA along the shipment route;

(IV) provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver; and

(V) develop written normal and contingency procedures to address:

(-a-) notifications to the communication center and law enforcement agencies;

(-b-) communication protocols, which must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(-c-) loss of communications; and

(-d-) responses to an actual or attempted theft or diversion of a shipment.

(ii) Each licensee who arranges [~~makes arrangements~~] for the shipment of category 1 quantities of radioactive material must [~~shall~~] ensure [~~that~~] drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(iii) Each licensee transporting [~~that transports~~] category 2 quantities of radioactive material must [~~shall~~] maintain constant control or [~~and/or~~] surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(iv) Each licensee delivering [~~who delivers~~] to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material must [~~shall~~]:

(I) use carriers having [~~that have~~] established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or [~~and/or~~] surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(II) use carriers maintaining [~~that maintain~~] constant control or [~~and/or~~] surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(III) use carriers having [~~that have~~] established tracking systems requiring [~~that require~~] an authorized signature before releasing the package for delivery or return.

(B) Shipments by rail.

(i) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material must [~~shall~~]:

(I) ensure [~~that~~] rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center must [~~shall~~] provide positive confirmation of the location of the shipment and its status. The communications center must [~~shall~~] implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include the identification of and contact information for the appropriate LLEA along the shipment route; and

(II) ensure [~~that~~] periodic reports to the communications center are made at preset intervals.

(ii) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material must [~~shall~~]:

(I) use carriers having [~~that have~~] established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or [~~and/or~~] surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(II) use carriers maintaining [~~that maintain~~] constant control or [~~and/or~~] surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(III) use carriers having [~~that have~~] established tracking systems requiring [~~that require~~] an authorized signature before releasing the package for delivery or return.

(C) Investigations.

(i) Each licensee making [~~who makes~~] arrangements for the shipment of category 1 quantities of radioactive material must [~~shall~~] immediately investigate [~~conduct an investigation~~] upon the discovery [~~that~~] a category 1 shipment is lost or missing.

(ii) Each licensee making [~~who makes~~] arrangements for the shipment of category 2 quantities of radioactive material must [~~shall~~] immediately investigate [~~conduct an investigation~~], in coordination with the receiving licensee, [~~of~~] any shipment [~~that has~~] not arriving [~~arrived~~] by the designated no-later-than arrival time.

(23) Reporting of events during shipment.

(A) The shipping licensee must [~~shall~~] notify the appropriate LLEA and must [~~shall~~] notify the department at (512) 458-7460 within one hour of its determination [~~that~~] a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA is [~~would be~~] the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by paragraph (22)(C) of this subsection, the shipping licensee provides [~~will provide~~] agreed upon updates to the department on the status of the investigation.

(B) The shipping licensee must [~~shall~~] notify the department at (512) 458-7460 within four hours of its determination [~~that~~] a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination [~~that~~] the shipment is lost or missing, the radioactive material has not been located and secured, the licensee must [~~shall~~] immediately notify the department.

(C) The shipping licensee must [~~shall~~] notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee must [~~shall~~] notify the department at (512) 458-7460 upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(D) The shipping licensee must [~~shall~~] notify the department at (512) 458-7460 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(E) The shipping licensee must [~~shall~~] notify the department at (512) 458-7460 and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(F) The shipping licensee must [~~shall~~] notify the department at (512) 458-7460 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(G) The initial telephonic notification required by subparagraphs (A) - (D) of this paragraph must be followed, within [~~a period of~~] 30 days, by a written report submitted to the department. A written report is not required for notifications on suspicious activities required by subparagraphs (C) and (D) of this paragraph. The report must set forth the following information:

(i) a description of the licensed material involved, including kind, quantity, and chemical and physical form;

(ii) a description of the circumstances under which the loss or theft occurred;

(iii) a statement of disposition, or probable disposition, of the licensed material involved;

(iv) actions [~~that have been~~] taken, or to [~~will~~] be taken, to recover the material; and

(v) procedures or measures adopted [~~that have been~~], or to [~~will~~] be[~~,~~] adopted, to ensure against a recurrence of the loss or theft of licensed material.

(H) Subsequent to filing the written report, the licensee must [~~shall~~] also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(24) Form of records. Each record required by this subsection must include all pertinent information and [~~shall~~] be stored in a legible and reproducible format [~~legible~~] throughout the retention period specified in the department's rules. [~~The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures.~~] The licensee must [~~shall~~] maintain adequate safeguards against tampering with and loss of records.

(25) Record retention. All records/documents referenced in this subsection must [~~shall~~] be made and maintained by the licensee for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. If a retention period is not otherwise specified, these records must be retained until the department terminates the facility's license. All records related to this subsection may be destroyed upon department termination of the facility license.

(jj) Appendices.

(1) Subjects to be included in training courses:

(A) fundamentals of radiation safety:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity of radioactivity (curie);

(iii) significance of radiation dose;

(I) radiation protection standards; and

(II) biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose;

(I) time;

(II) distance; and

(III) shielding;

(vi) radiation safety practices, including prevention of contamination and methods of decontamination; and

(vii) discussion of internal exposure pathways;

(B) radiation detection instrumentation to be used:

(i) radiation survey instruments:

(I) operation;

(II) calibration; and

(III) limitations;

(ii) survey techniques; and

(iii) individual monitoring devices;

(C) equipment to be used:

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage, control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's written operating, safety, and emergency procedures; and

(F) the licensee's record keeping procedures.

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252 (jj)(2) (No change.)

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration [~~that~~] the parent company passes a financial test. This paragraph establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(B) Financial test.

(i) To pass the financial test, the parent company must [~~shall~~] meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company must [~~shall~~] have:

(-a-) two of the following three ratios:

(-1-) a ratio of total liabilities to net worth less than 2.0;

(-2-) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(-3-) a ratio of current assets to current liabilities greater than 1.5;

(-b-) net working capital and tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used.)

(II) The parent company must [~~shall~~] have:

(-a-) a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(-b-) tangible net worth each at least six times the current decommissioning cost estimate for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if certification is used).

(ii) The parent company's independent certified public accountant must [~~shall~~] have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee must [~~shall~~] inform the department within 90 days of any matters coming to the auditor's attention causing [~~that cause~~] the auditor to believe [~~that~~] the data specified in the financial test should be adjusted and [~~that~~] the company no longer passes the test.

(iii) After the initial financial test, the parent company must [~~shall~~] repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iv) If the parent company no longer meets the requirements of clause (i) of this subparagraph, the licensee must [~~shall~~] send notice to the department of intent to establish alternate financial assurance as specified in the department's regulations. The notice must [~~shall~~] be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show [~~that~~] the parent company no longer meets the financial test requirements. The licensee must [~~shall~~] provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains must [~~shall~~] provide [~~that~~]:

(i) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the department, as evidenced by the return receipts;

(ii) if the licensee fails to provide alternate financial assurance as specified in the department's rules within 90 days after receipt by the licensee and the department of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;

(iii) the parent company guarantee and financial test provisions must [~~shall~~] remain in effect until the department has terminated the license; and

(iv) if a trust is established for decommissioning costs, the trustee and trust must [~~shall~~] be acceptable to the department. An acceptable trustee includes an appropriate state or federal government agency or an entity having [~~that has~~] the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(4) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee [~~that~~] funds will be available for decommissioning costs and on a demonstration [~~that~~] the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test, a company must [~~shall~~] meet all of the following criteria:

(I) tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor);

(II) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and

(III) a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.

(ii) To pass the financial test, a company must [~~shall~~] meet all of the following additional criteria:

(I) the company must [~~shall~~] have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(II) the company's independent certified public accountant must [~~shall~~] have compared the data used by the company in the financial test [~~that is~~] derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the [~~such~~] financial statement. In connection with that procedure, the licensee must [~~shall~~] inform the department within 90 days of any matters coming to the auditor's attention causing [~~that cause~~] the auditor to believe [~~that~~] the data specified in the financial test should be adjusted and [~~that~~] the company no longer passes the test; and

(III) after the initial financial test, the company must [~~shall~~] repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iii) If the licensee no longer meets the criteria of clause (i) of this subparagraph, the licensee must [~~shall~~] send immediate notice to the department of its intent to establish alternate financial assurance as specified in the department's rules within 120 days of the [~~such~~] notice.

(C) Company self-guarantee. The terms of a self-guarantee [~~that~~] an applicant or licensee furnishes must [~~shall~~] provide [~~that~~]:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the department, as evidenced by the return receipt.

(ii) the licensee must [~~shall~~] provide alternate financial assurance as specified in the department's rules within 90 days following receipt by the department of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions must [~~shall~~] remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee;

(iv) the licensee will promptly forward to the department and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission as specified in [~~accordance with~~] the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing [~~of such fact~~] to the department within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the criteria of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee must [~~shall~~] provide to the department a written guarantee (a written commitment by a corporate officer) stating [~~that states that~~] the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(5) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by commercial companies having [~~that have~~] no outstanding rated bonds.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee [~~that~~] funds will be available for decommissioning costs and on a demonstration [~~that~~] the company passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test a company must [~~shall~~] meet the following criteria:

(I) tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(II) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(III) a ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

(ii) In addition, to pass the financial test, a company must [~~shall~~] meet all [~~of~~] the following requirements.[~~:~~]

(I) The [~~the~~] company's independent certified public accountant must [~~shall~~] have compared the data used by the company in the financial test, [~~that is~~] required to be derived from the independently audited year-end financial statement, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee must [~~shall~~] inform the department within 90 days of any matters causing [~~that may cause~~] the auditor to believe [~~that~~] the data specified in the financial test should be adjusted and [~~that~~] the company no longer passes the test.[~~;~~]

(II) After [~~after~~] the initial financial test, the company must [~~shall~~] repeat passage of the test within 90 days after the close of each succeeding fiscal year.[~~; and~~]

(III) If [~~if~~] the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph, the licensee must [~~shall~~] send notice to the department of its intent to establish alternative financial assurance as specified in the department's rules. The notice must [~~shall~~] be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show [~~that~~] the licensee no longer meets the financial test requirements. The licensee must [~~shall~~] provide alternative financial assurance within 120 days after the end of such fiscal year.

(C) Company self-guarantee. The terms of a self-guarantee [~~that~~] an applicant or licensee furnishes must [~~shall~~] provide the following.

(i) The guarantee must [~~shall~~] remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the department. Cancellation may not occur until an alternative financial assurance mechanism is in place.

(ii) The licensee must [~~shall~~] provide alternative financial assurance as specified in the department's rules within 90 days following receipt by the department of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions must [~~shall~~] remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee.

(iv) The applicant or licensee must [~~shall~~] provide to the department a written guarantee (a written commitment by a corporate officer) stating [~~that states that~~] the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee [~~that~~] funds will be available for decommissioning costs and on a demonstration [~~that~~] the applicant or licensee passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test, a college or university must [~~shall~~] meet the criteria of subclause (I) or (II) of this clause. The college or university must [~~shall~~] meet one of the following:

(I) for applicants or licensees issuing [~~that issue~~] bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or

(II) for applicants or licensees [~~that do~~] not issuing [~~issue~~] bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(ii) To pass the financial test, a hospital must [~~shall~~] meet the criteria in subclause (I) or (II) of this clause. The hospital must [~~shall~~] meet one of the following:

(I) for applicants or licensees issuing [~~that issue~~] bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or

(II) for applicants or licensees [~~that do~~] not issuing [~~issue~~] bonds, all the following tests must [~~shall~~] be met:

(-a-) (total revenues less total expenditures) divided by total revenues must [~~shall~~] be equal to or greater than 0.04;

(-b-) long term debt divided by net fixed assets must [~~shall~~] be less than or equal to 0.67;

(-c-) (current assets and depreciation fund) divided by current liabilities must [~~shall~~] be greater than or equal to 2.55; and

(-d-) operating revenues must [~~shall~~] be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

(iii) In addition, to pass the financial test, a licensee must [~~shall~~] meet all the following requirements.[~~:~~]

(I) The [~~the~~] licensee's independent certified public accountant must [~~shall~~] have compared the data used by the licensee in the financial test [~~that is~~] required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee must [~~shall~~] inform the department within 90 days of any matters coming to the attention of the auditor causing [~~that cause~~] the auditor to believe [~~that~~] the data specified in the financial test should be adjusted and [~~that~~] the licensee no longer passes the test.[~~; and~~]

(II) After [~~after~~] the initial financial test, the licensee must [~~shall~~] repeat passage of the test within 90 days after the close of each succeeding fiscal year.[~~;~~]

(III) If [~~if~~] the licensee no longer meets the requirements of subparagraph (A) of this paragraph, the licensee must [~~shall~~] send notice to the department of its intent to establish alternative financial assurance as specified in the department's rules. The notice must [~~shall~~] be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show [~~that~~] the licensee no longer meets the financial test requirements. The licensee must [~~shall~~] provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Self-guarantee. The terms of a self-guarantee [~~that~~] an applicant or licensee furnishes must [~~shall~~] provide [~~the following~~]:

(i) The guarantee must [~~shall~~] remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the department. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(ii) The licensee must [~~shall~~] provide alternative financial assurance as specified in the department's regulations within 90 days following receipt by the department of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions must [~~shall~~] remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee.

(iv) The applicant or licensee must [~~shall~~] provide to the department a written guarantee (a written commitment by a corporate officer or officer of the institution) stating [~~that states that~~] the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee must [~~shall~~] provide notice in writing of the fact to the department within 20 days after publication of the change by the rating service.

(7) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. The following table contains quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.
Figure: 25 TAC §289.252 (jj)(7) (No change.)

(8) Requirements for demonstrating financial qualifications.

(A) If an applicant or licensee is not required to submit financial assurance as specified in [~~accordance with~~] subsection (gg) of this section, that applicant or licensee must [~~shall~~] demonstrate financial qualification by submitting an attestation [~~that~~] the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the department issues a license.

(B) If an applicant or licensee is required to submit financial assurance as specified in [~~accordance with~~] subsection (gg) of this section, the [~~that~~] applicant or licensee must [~~shall~~]:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratio in clause (ii) of this subparagraph) [~~that was~~] used to obtain the financial assurance instrument used to meet the financial assurance requirement as specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance as specified in subsection (gg) of this section, the applicant or licensee must [~~shall~~] demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) Securities and Exchange Commission documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly held [~~publicly-held~~] company); or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues); and

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to-liabilities [~~assets-to liabilities~~] (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the department considers [~~will consider~~] that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of this [~~such~~] will suffice as demonstration [~~that~~] the government entity is financially qualified to conduct the requested or licensed activities.

(D) The department will consider other types of documentation if the [~~that~~] documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph.

(9) Category 1 and category 2 radioactive materials. Licensees must [~~shall~~] use Figure: 25 TAC §289.252(jj)(9) to determine whether a quantity of radioactive material constitutes a Category 1 or Category 2 quantity of radioactive material.
Figure: 25 TAC §289.252(jj)(9)
[~~Figure: 25 TAC §289.252 (jj)(9)~~]

(10) Broad scope license limits (for use in subsection (h) of this section).
Figure: 25 TAC §289.252 (jj)(10) (No change.)

(kk) Requirements for the issuance of specific licenses for a medical facility or educational institution to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to licensees in its consortium.

(1) A license application will be approved if the department determines [~~that~~] an application from a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under [~~in accordance with~~] §289.256 of this subchapter [~~title~~] includes:

(A) a request for authorization for the production of PET radionuclides or evidence of an existing license issued under [~~in accordance with~~] this section, the NRC, or another agreement state's [~~states~~]requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

(B) evidence [~~that~~] the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in subsection (r)(1)(A) of this section;

(C) identification of each individual [~~individual(s)~~] authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation [~~that~~] each individual meets the requirements of an authorized nuclear pharmacist as specified in subsection (r)(3)(B) of this section; and

(D) information identified in subsection (r)(1)(B) of this section on the PET drugs to be noncommercially transferred to members of its consortium.

(2) Authorization under [~~in accordance with~~] paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

(3) Each licensee authorized under [~~in accordance with~~] paragraph (1) of this subsection to produce PET radioactive drugs for

noncommercial transfer to medical use licensees in its consortium must [~~shall~~]:

(A) satisfy the labeling requirements in subsection (r)(1)(C) of this section for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium; and

(B) possess and use instrumentation meeting the requirements of §289.202(p)(3)(D) of this chapter [~~title~~] to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in subsection (r)(2) of this section.

(4) A licensee that is a pharmacy authorized under [~~in accordance with~~] paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium must [~~shall~~] require [~~that~~] any individual preparing [~~that prepares~~] PET radioactive drugs to [~~shall~~] be:

(A) an authorized nuclear pharmacist meeting [~~that meets~~] the requirements in subsection (r)(3)(B) of this section; or

(B) an individual under the supervision of an authorized nuclear pharmacist as specified in §289.256(s) of this subchapter [~~title~~].

(5) A pharmacy, authorized under [~~in accordance with~~] paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium allowing [~~that allows~~] an individual to work as an authorized nuclear pharmacist, must [~~shall~~] meet the requirements of subsection (r)(3)(E) of this section.

(ll) Specific licenses for installation, repair, or maintenance of devices containing sealed sources of radioactive material.

(1) In addition to the requirements in subsection (e) of this section, a specific license authorizing a person [~~persons~~] to perform installation, repair, or maintenance of devices containing sealed sources, [~~source(s)~~] including source exchanges will be issued if the department approves the information submitted by the applicant.

(2) Each installation, repair, or maintenance activity must [~~shall~~] be documented and a record maintained for inspection by the department as specified in [~~accordance with~~] subsection (mm) of this section. The record must [~~shall~~] include the date, description of the service, initial survey results, and the names of each individual [~~name(s) of the individual(s)~~] who performed the work.

(3) Installation, repair, maintenance, or source exchange activities must [~~shall~~] be performed by a specifically licensed person unless otherwise authorized under [~~in accordance with~~] subsection (v) of this section.

(mm) Records/documents retention. Each licensee must [~~shall~~] make, maintain, and retain at each authorized use site and for the time period set forth in the table, the records/documents described in the following table and in the referenced rule provision, and must [~~shall~~] make them available to the department for inspection, upon reasonable notice.

Figure: 25 TAC §289.252 (mm)

[~~Figure: 25 TAC §289.252(mm)~~]

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

Filed with the Office of the Secretary of State on July 2, 2024.

TRD-202402924
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-6655

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.47

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §509.47, concerning Emergency Services.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 1402, 88th Legislature, Regular Session, 2023.

S.B. 1402 amended Texas Health and Safety Code (HSC) §323.0045 and added new HSC §323.0046. Amended HSC §323.0045 requires a person who performs a forensic medical examination on a sexual assault survivor to complete at least two hours of basic forensic evidence collection training or equivalent education. Amended HSC §323.0045 also requires each health care facility with an emergency department that is not a sexual assault forensic exam-ready facility (SAFE-ready facility) to develop a written policy to require staff who perform forensic medical examinations on sexual assault survivors to complete at least two hours of basic forensic evidence collection training. New HSC §323.0046 requires each health care facility with an emergency department to provide at least one hour of basic sexual assault response training to certain facility employees and outlines the training content requirements. New HSC §323.0046 also requires each non-SAFE-ready health care facility with an emergency department to develop a written policy to ensure all appropriate facility personnel complete the basic sexual assault response training.

The proposed amendment adds the new training requirements in HSC §323.0045 and §323.0046 to the freestanding emergency medical care facility rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §509.47 adds new subsection (h)(3) and (4), which require a freestanding emergency medical care facility to comply with the forensic medical examination training requirements under HSC §323.0045 and the basic sexual assault response training requirements under HSC §323.0046.

The proposed amendment also corrects a typographical error in subsection (d)(2), updates the term "sexual assault survivor" to "survivor of sexual assault" for consistency with industry standard language, and updates a reference.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule is codifying current practices as required by statute.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that are consistent with statutory requirements for forensic evidence collection and basic sexual assault response training requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule is codifying current practices as required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R002" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services agencies; and HSC §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The amendment implements Texas Government Code §531.0055 and HSC §§254.101, 323.0045, and 323.0046.

§509.47. Emergency Services.

(a) A facility shall provide to each patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists, and any necessary stabilizing treatment.

(b) The organization of emergency services shall be appropriate to the scope of the services offered. The services shall be organized under the direction of a qualified physician member of the medical staff who is the medical director or clinical director.

(c) A facility shall maintain patient medical records for all emergency patients. The medical records shall contain patient identification, complaints, name of physician, name of nurse, time admitted to the emergency suite, treatment, time discharged, and disposition.

(d) A facility shall comply with the following personnel requirements.

(1) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

(2) As determined by the medical staff, there must always be at least one person qualified and at least one nurse with current advanced cardiac life support and pediatric advanced life support certification on duty and on-site [a] to initiate immediate appropriate lifesaving measures.

(3) Qualified personnel shall always be physically present in the emergency treatment area.

(4) One or more physicians shall always be on-site during facility hours of operation.

(5) A facility shall maintain schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates. The facility shall retain the schedules for at least one year.

(e) Adequate age-appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. The facility shall periodically test the emergency equipment according to its policy.

(f) Age-appropriate emergency equipment and supplies shall include:

(1) emergency call system;

(2) oxygen;

(3) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;

(4) cardiac defibrillator;

(5) cardiac monitoring equipment;

(6) laryngoscopes and endotracheal tubes;

(7) suction equipment;

(8) emergency drugs and supplies specified by the medical staff;

(9) stabilization devices for cervical injuries;

(10) blood pressure monitoring equipment; and

(11) pulse oximeter or similar medical device to measure blood oxygenation.

(g) A facility shall participate in the local Emergency Medical Service (EMS) system, based on the facility's capabilities and capacity, and the locale's existing EMS plan and protocols.

(h) A facility shall comply with the following emergency services requirements for survivors of sexual assault [~~survivors~~].

(1) This subsection does not affect the duty of a facility to comply with subsection (a) of this section.

(2) The facility shall develop, implement, and enforce policies and procedures to ensure that after a survivor of sexual assault [~~survivor~~] presents to the facility following a sexual assault, the facility shall provide the care specified under Texas Health and Safety Code Chapter 323, Subchapter A [~~(relating to Emergency Services for Survivors of Sexual Assault)~~].

(3) The facility shall develop, implement, and enforce policies and procedures to ensure a person who performs a forensic medical examination on a survivor of sexual assault completes the required forensic evidence collection training or equivalent education required by Texas Health and Safety Code §323.0045.

(4) The facility shall develop, implement, and enforce policies and procedures to provide basic sexual assault response training that meets the requirements under Texas Health and Safety Code §323.0046 to facility employees who provide patient admission functions, patient-related administrative support functions, or direct patient care.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402980

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.44

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §510.44, concerning Miscellaneous Policies and Protocols.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 186, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

The proposed amendment adds information regarding the new discharge requirements in HSC §256.003.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.44 adds new subsection (e), which requires a private psychiatric hospital or a crisis stabilization unit to comply with the discharge requirements in HSC §256.003. The proposed amendment also makes other minor changes to correct outdated information; align with the other rules in 26 Texas Administrative Code Chapter 510, such as replacing "hospital" with "facility;" and updates references.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule is codifying current practices as required by statute.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that are consistent with statutory requirements for discharging patients to licensed group-centered facilities.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule is codifying current practices as required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R002" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services agencies; and HSC §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendment implements Texas Government Code §531.0055 and HSC §577.010 and §256.003.

§510.44. Miscellaneous Policies and Protocols.

(a) Determination of death. The facility [~~hospital~~] shall adopt, implement, and enforce protocols to be used in determining death which comply with Texas Health and Safety Code (HSC)[~~, Title 8, Subtitle A,~~] Chapter 671, Subchapter A [~~(relating to Determination of Death)~~].

(b) Organ and tissue donors. The facility [~~hospital~~] shall adopt, implement, and enforce a written protocol to identify potential organ and tissue donors which complies [~~is in compliance~~] with the [~~Texas Anatomical Gift Act,~~] HSC[~~,~~] Chapter 692A [~~692~~]. The facility [~~hospital~~] shall make its protocol available to the public during the facility's [~~hospital's~~] normal business hours. The facility's [~~hospital's~~] protocol shall include all requirements in HSC §692A.015[~~, §692.013 (relating to Hospital Protocol)~~].

(c) Professional nurse reporting and peer review. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Texas Occupations Code Chapter 301, Subchapter I[~~, §301.401 (relating to Grounds for Reporting Registered Nurse), §301.402 (relating to Duty of Registered Nurse to Report), §301.403 (relating to Duty of Peer Review Committee to Report), §301.404 (relating to Duty of Nursing Educational Program to Report), §301.405 (relating to Duty of Person Employing Registered Nurse to Report),~~] and Texas Occupations Code Chapter 303 [~~(relating to Nursing Peer Review)~~], and with the rules adopted by the Texas Board of Nursing [~~Board of Nurse Examiners~~] at [~~22~~] Texas Administrative Code, Title 22 §217.16 (relating to Minor Incidents), §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections [~~for RNs~~]).

(d) Discrimination prohibited. A facility shall not discriminate based on a patient's disability and shall comply with HSC [~~Texas Health and Safety~~] Code Chapter 161, Subchapter S [~~(relating to Allocation of Kidneys and Other Organs Available for Transplant)~~].

(e) Prohibited discharge of a patient to certain group-centered facilities. A facility shall comply with HSC §256.003.

(1) Except as provided by paragraph (2) of this subsection, a facility may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility only if the person operating the group-centered facility holds a license or permit issued in accordance with applicable state law.

(2) A facility may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility operated by a person who does not hold a license or permit issued in accordance with applicable state law only if:

(A) there is no group-centered facility operated in the county where the patient is discharged that is operated by a person holding the applicable license or permit; or

(B) the patient voluntarily chooses to reside in the group-centered facility operated by an unlicensed or unpermitted person.

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §511.62

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §511.62, concerning Discharge Planning.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 186, 88th Legislature, Regular Session, 2023.

S.B. 186 added new Texas Health and Safety Code (HSC) §256.003, which prohibits a hospital or other health care facility from discharging or otherwise releasing a patient to a group home, boarding home facility, or similar group-centered facility unless the person operating the group-centered facility holds a license or permit in accordance with applicable state law. New HSC §256.003 also contains provisions to allow a hospital or other health care facility to discharge a patient to a group-centered facility that does not hold an applicable license or permit under certain circumstances.

The proposed amendment adds information regarding the new discharge requirements in HSC §256.003.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §511.62 adds new subsection (m), which requires a limited services rural hospital (LSRH) to comply with the discharge requirements in HSC §256.003.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule is codifying current practices as required by statute.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that are consistent with statutory requirements for discharging patients to licensed group-centered facilities.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule is codifying current practices as required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

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

indicate "Comments on Proposed Rule 24R002" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services agencies; and HSC §241.302(b), which provides that the Executive Commissioner of HHSC shall adopt rules to implement that section and establish minimum standards for LSRHs.

The amendment implements Texas Government Code §531.0055 and HSC §241.302(b) and §256.003.

§511.62. Discharge Planning.

(a) A limited services rural hospital (LSRH) shall have an effective, ongoing, discharge planning process that facilitates the provision of follow-up care and focuses on the patient's goals and treatment preferences and includes the patient and their caregivers or support persons as active partners in the discharge planning for post-discharge care.

(b) The discharge planning process and the discharge plan shall be consistent with the patient's goals for care and their treatment preferences, ensure an effective transition of the patient from the LSRH to post-discharge care, and reduce the factors leading to preventable LSRH admissions or readmissions.

(c) An LSRH's discharge planning process shall identify, at an early stage of the provision of services, those patients who are likely to suffer adverse health consequences on discharge in the absence of adequate discharge planning and must provide a discharge planning evaluation for those patients so identified as well as for other patients upon the request of the patient, patient's legally authorized representative, or patient's physician.

(d) Any discharge planning evaluation must be made on a timely basis to ensure appropriate arrangements for post-LSRH care will be made before discharge and to avoid unnecessary delays in discharge.

(e) A discharge planning evaluation must include:

(1) an evaluation of a patient's likely need for appropriate services following those furnished by the LSRH, including:

(A) hospice care services;

(B) post-LSRH extended care services;

(C) home health services;

(D) non-health care services; and

(E) community-based care providers;

(2) a determination of the availability of the appropriate services; and

(3) a determination of the patient's access to those services.

(f) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's legally authorized representative).

(g) On the request of a patient's physician, the LSRH must arrange for the development and initial implementation of a discharge plan for the patient.

(h) Any discharge planning evaluation or discharge plan required under this section must be developed by, or under the supervision of, a registered nurse, social worker, or other appropriately qualified personnel.

(i) The LSRH's discharge planning process must require regular re-evaluation of the patient's condition to identify changes that require modification of the discharge plan. The discharge plan must be updated, as needed, to reflect these changes.

(j) The LSRH must assess its discharge planning process on a regular basis. The assessment must include ongoing periodic review of a representative sample of discharge plans.

(k) The LSRH must assist patients, their families, or the patient's legally authorized representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, home health agency, skilled nursing facility (SNF), inpatient rehabilitation facility, or long-term care hospital data on quality measures and data on resource use measures. The LSRH must ensure that the post-acute care data on quality measures and data on resource use measures is relevant and applicable to the patient's goals of care and treatment preferences.

(l) The LSRH must discharge the patient, and also transfer or refer the patient where applicable, along with all necessary medical information pertaining to the patient's current course of illness and treatment, post-discharge goals of care, and treatment preferences, at the time of discharge, to the appropriate post-acute care service providers and suppliers, facilities, agencies, and other outpatient service providers and practitioners responsible for the patient's follow-up or ancillary care.

(m) An LSRH shall comply with Texas Health and Safety Code §256.003.

(1) Except as provided by paragraph (2) of this subsection, an LSRH may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility only if the person operating the group-centered facility holds a license or permit issued in accordance with applicable state law.

(2) An LSRH may discharge or release a patient to a group home, boarding home facility, or similar group-centered facility operated by a person who does not hold a license or permit issued in accordance with applicable state law only if:

(A) there is no group-centered facility operated in the county where the patient is discharged that is operated by a person holding the applicable license or permit; or

(B) the patient voluntarily chooses to reside in the group-centered facility operated by an unlicensed or unpermitted person.

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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CHAPTER 568. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §568.22, concerning Voluntary Admission, andnew §568.42, concerning Responding to a Psychiatric Emergency.

BACKGROUND AND PURPOSE

This proposal is necessary to implement Senate Bill (S.B.) 26, 88th Legislature, Regular Session, 2023, which, in part, amended Texas Health and Safety Code (THSC) Chapter 572 by adding new THSC §572.0026.

This statute authorizes a private psychiatric hospital's facility administrator or their designee to approve the admission of a person who files a request for voluntary inpatient services only if the hospital has available space when the person files the request.

This proposal is also necessary to increase consistency in emergency medication monitoring requirements between state rules and federal Centers for Medicare & Medicaid Services (CMS) Conditions of Participation for psychiatric hospitals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §568.22(f)(5) is consistent with THSC §572.0026 and authorizes a private psychiatric hospital to voluntarily admit a prospective patient only if the hospital has available space at the time the prospective patient requests voluntary admission. The proposed amendment to §568.22 also makes minor, non-substantive changes to formatting and grammar for clarity and consistency with HHSC rulemaking guidelines and corrects an internal reference in §568.22(h)(1).

Proposed new §568.42 defines certain terms and outlines requirements for responding to a psychiatric emergency, including ordering and administering a psychoactive medication; monitoring a patient after administering a psychoactive medication; adopting, implementing, and enforcing certain policies and procedures; requiring staff, physicians, registered nurses, and other licensed practitioners to receive certain trainings; requiring a patient evaluation within one hour after administering a psychoactive medication; and documenting certain information in the patient's clinical record.

FISCAL NOTE

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

There is one state-licensed-only psychiatric hospital owned or operated by a local government that may incur costs if they need to make staffing changes or develop new policies and procedures to comply with the new and amended rules. Because facilities across the state use a wide variety of systems and will be developing individualized policies and procedures, HHSC lacks the data needed to estimate the costs that this entity may incur to comply with the new and amended rule requirements.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing regulations;

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities to comply with new §568.42. The proposed amendment to §568.22 does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices because entities subject to the rule are already required to comply with S.B. 26 provisions.

There are currently 63 private psychiatric hospitals subject to the rules. Additionally, licensed general and special hospitals that provide mental health services must comply with these rules. Currently, there are 658 licensed general and special hospitals. HHSC lacks the data to determine how many of these facilities are small businesses, micro-businesses, or run by rural communities.

Most hospitals subject to the rules must comply with federal CMS requirements because they have voluntarily sought CMS certification. Therefore, this proposal codifies practices that most hospitals already do because new §568.42 is consistent with existing federal CMS regulations. However, there may be costs to comply with new §568.42 for the 13 private psychiatric hospitals and 38 general or special hospitals that are state-licensed-only and do not have to comply with CMS regulations. Most of these state-licensed-only hospitals do not meet the definition of a small business or micro-business and none meet the definition of a rural community.

HHSC determined that alternative methods to achieve the purpose of proposed new §568.42 for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of individuals receiving mental health services. This rule also implements the required state statute and HHSC has no regulatory flexibility in the implementation.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased consistency between the psychiatric hospital standards of care

rules, new statutory requirements for voluntary admission to psychiatric hospitals, and existing federal regulations regarding monitoring requirements for psychoactive medications administered to patients.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with new §568.42 may incur economic costs. Facilities may incur costs if they need to make staffing changes or develop new policies and procedures to comply with the new rule. Because facilities across the state use a wide variety of systems and will be developing individualized policies and procedures, HHSC lacks the data needed to estimate the costs that entities may incur to comply with the new §568.42 requirements.

There are no anticipated economic costs to persons who are required to comply with amended §568.22 because the rule does not require persons subject to the rule to alter their current business practices as these entities are required to comply with the law as added by S.B. 26, and the amended rule only ensures consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R017" in the subject line.

SUBCHAPTER B. ADMISSION

26 TAC §568.22

STATUTORY AUTHORITY

The amendment and new rule are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; THSC §572.0025, which requires that the Executive Commissioner of HHSC adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; and THSC §577.010, which requires that the Executive Commissioner of HHSC adopt rules and standards the Executive Commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under THSC Chapter 577.

The amendment and new rule implement Texas Government Code §531.0055 and THSC §572.0026.

§568.22. Voluntary Admission.

(a) A request for voluntary admission:

(1) may be made only by a person authorized to do so under Texas Health and Safety Code §572.001;

(2) must be in writing and signed by the individual making the request; and

(3) must include a statement that the individual making the request:

(A) certifies [~~that~~] the individual is legally authorized to act on the prospective patient's behalf;

(B) has provided the facility with documentation demonstrating [~~that~~] the individual is legally authorized to act on the prospective patient's behalf;

(C) agrees [~~that~~] the prospective patient will remain in the hospital until discharged; and

(D) consents to diagnosis, observation, care, and treatment of the prospective patient until the earlier of:

(i) the discharge of the prospective patient; or

(ii) the prospective patient is entitled to leave the hospital, in accordance with Texas Health and Safety Code §572.004, after a request for discharge is made.

(b) The consent given under subsection (a)(3)(D) of this section does not waive any rights a patient has under any statute or rule.

(c) [~~Capacity to consent.~~] If a prospective patient does not have the capacity to consent to diagnosis, observation, care, and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 573 or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code Chapter 574.

(d) An individual who voluntarily presents to the hospital may leave the hospital at any time during the pre-admission screening and assessment process prior to their admission.

(e) A hospital shall comply with the following pre-admission [~~Pre-admission~~] screening requirements.

(1) Before voluntary admission of a prospective patient, pre-admission screening personnel (PASP) shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the hospital may not admit the prospective patient and shall refer the prospective patient to alternative services. If the PASP determines the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (f)(2)(A) of this section.

(f) [~~Requirements for voluntary admission.~~] A hospital may voluntarily admit a prospective patient only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has, in accordance with Texas Health and Safety Code §572.0025:

(A) conducted, or consulted with a physician who has conducted, either in person or through audiovisual telecommunications [~~telemedicine medical services~~], an admission examination in accordance with subsection (h) of this section within 72 hours before or 24 hours after admission; and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the hospital's admission criteria;

(4) the prospective patient is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; [~~and~~]

(5) the hospital has available space at the time the prospective patient files the request for voluntary admission, in accordance with Texas Health and Safety Code §572.0026; and

(6) [~~(5)~~] [~~in accordance with Texas Health and Safety Code §572.0025(f)(2),~~] the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient, in accordance with Texas Health and Safety Code §572.0025(f)(2).

(g) [~~Intake.~~] In accordance with Texas Health and Safety Code §572.0025(b), a hospital shall, before voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining[,] orally and in writing to the patient and, as applicable, the patient's legally authorized representative, the prospective patient's rights described in 25 TAC Chapter 404, Subchapter E (relating to [~~concerning~~] Rights of Persons Receiving Mental Health Services), including:

(A) the hospital's services and treatment as they relate to the prospective patient; and

(B) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, pursuant to Texas Health and Safety Code §576.008.

(h) An admission [~~Admission~~] examination shall comply with the following requirements.

(1) The admission examination referenced in subsection (f)(2)(A) [~~(d)(2)(A)~~] of this section shall be conducted by a physician in accordance with Texas Health and Safety Code Chapter 572 and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non-physician.

(i) [~~Documentation of admission order.~~] In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (f)(2)(B) of this section shall:

(1) be issued in writing and signed by the issuing physician; or

(2) be issued orally or electronically if, within 24 hours after its issuance, the hospital has a written order signed by the issuing physician.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402983
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 834-4591

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SUBCHAPTER C. EMERGENCY TREATMENTS

26 TAC §568.42

STATUTORY AUTHORITY

The amendment and new rule are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; THSC §572.0025, which requires that the Executive Commissioner of HHSC adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; and THSC §577.010, which requires that the Executive Commissioner of HHSC adopt rules and standards the Executive Commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under THSC Chapter 577.

The amendment and new rule implement Texas Government Code §531.0055 and THSC §572.0026.

§568.42. Responding to a Psychiatric Emergency.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Emergency psychoactive medication--A psychoactive medication administered to a patient in a psychiatric emergency.

(2) Psychiatric emergency--A situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) Psychoactive medication--A medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central

nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this section:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(b) In accordance with 25 TAC §414.41 (relating to Psychiatric Emergencies), only a treating physician may issue an order to administer emergency psychoactive medication without a patient's consent.

(c) A treating physician may only issue an order to administer emergency psychoactive medication without a patient's consent when less restrictive interventions are determined ineffective to protect the patient or others from harm.

(d) A hospital shall adopt, implement, and enforce written policies and procedures to ensure safe administration of an emergency psychoactive medication. These policies and procedures shall:

(1) identify the staff members authorized to administer an emergency psychoactive medication;

(2) identify the psychoactive medications permitted and approved by the hospital for administration in a psychiatric emergency;

(3) prescribe how and with what frequency a staff member shall monitor a patient who has received an emergency psychoactive medication, in addition to the in-person evaluation conducted as required by subsection (f) of this section; and

(4) ensure staff members follow all monitoring and evaluation requirements under this section and all hospital policies and procedures regarding administration of an emergency psychoactive medication each time a patient receives a separate dose of an emergency psychoactive medication.

(e) Staff members authorized by the hospital's policies and procedures to administer an emergency psychoactive medication shall receive training on and demonstrate competency in the following:

(1) knowledge of the psychoactive medications permitted and approved by the hospital for administration in a psychiatric emergency;

(2) safe and appropriate administration of an emergency psychoactive medication; and

(3) management of emergency medical conditions in accordance with the hospital's policies and procedures and other applicable requirements for:

(A) obtaining emergency medical assistance; and

(B) obtaining training in and using techniques for cardiopulmonary respiration and airway obstruction removal.

(f) When a staff member administers a psychoactive medication to a patient experiencing a psychiatric emergency, a physician, other licensed practitioner, or registered nurse trained in accordance with the requirements specified in subsection (g) of this section shall examine the patient in person within one hour after the administration of the psychoactive medication to evaluate and document in the patient's clinical record:

(1) the patient's immediate situation;

(2) the patient's reaction to the medication;

(3) the patient's medical and behavioral condition; and

(4) the need to continue or safely discontinue administration of the emergency psychoactive medication.

(g) A physician, other licensed practitioner, or registered nurse who conducts the in-person evaluation specified in subsection (f) of this section shall have completed training in the following:

(1) techniques identifying staff member and patient behaviors, events, and environmental factors that may trigger a psychiatric emergency;

(2) use of nonphysical intervention skills;

(3) choosing the least restrictive intervention based on an individualized assessment of the patient's medical or behavioral status or condition;

(4) safe administration of emergency psychoactive medications and how to recognize and respond to signs of physical and psychological distress;

(5) clinical identification of specific behavioral changes indicating the psychiatric emergency's conclusion;

(6) monitoring the physical and psychological well-being of the patient who has received an emergency psychoactive medication, including the patient's respiratory and circulatory status, vital signs, and any special requirements specified by hospital policy associated with conducting the in-person evaluation; and

(7) the use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.

(h) If a trained registered nurse conducts the in-person evaluation specified in subsection (f) of this section, the trained registered nurse shall consult the attending physician or other licensed practitioner responsible for the patient's care as soon as possible after completing the evaluation.

(i) The physician or other licensed practitioner responsible for the patient's care shall document in the patient's clinical record in specific medical or behavioral terms:

(1) the information required by 25 TAC §414.410(b) (relating to Psychiatric Emergencies) as applicable;

(2) the evaluation findings specified in subsection (f)(1) - (4) of this section;

(3) a description of the patient's behavior and the emergency psychoactive medication used;

(4) alternatives or other less restrictive interventions attempted, as applicable;

(5) the patient's condition or symptoms warranting the emergency psychoactive medication; and

(6) the patient's response to the emergency psychoactive medication, including the rationale for continued use of the medication.

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 745. LICENSING
SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY
DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

26 TAC §745.8401, §745.8411

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.8401, concerning Who may inspect or investigate an operation under this division, and §745.8411, concerning What are my responsibilities when Licensing or the Texas Department of Family and Protective Services inspects or investigates my operation.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 amended Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c) to specify that HHSC is responsible for investigating an allegation of abuse, neglect, and exploitation of an elderly person or an adult with a disability who resides in a residential child-care facility. Accordingly, HHSC Child Care Regulation (CCR) is proposing to amend rules that clarify what authorized entities may inspect or investigate according to Title 26, Chapter 745, Subchapter K, Division 1, and responsibilities an operation has when an authorized entity conducts an inspection or investigation. This rule project contains most of the rules needed to implement H.B. 4696, and a separate rule project is amending one rule relating to confidentiality to complete the rule development needed to implement the bill.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8401 (1) adds that HHSC is responsible for investigating an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation; and (2) makes non-substantive changes for better readability and understanding.

The proposed amendment to §745.8411 (1) amends the title of the rule so that it is not specific to CCR and the Texas Department of Family and Protective Services, since a department of HHSC other than CCR is responsible for conducting some investigations; (2) extends an operation's responsibilities during an inspection or investigation to a representative of an HHSC department other than CCR; and (3) makes non-substantive changes for better readability and understanding.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be no cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be increased compliance with statutory requirements.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not require any training or resources to meet compliance.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R033" in the subject line.

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531.

The amendments affect Texas Government Code §531.0055, Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c).

§745.8401. Who is responsible for inspecting [~~may~~ ~~inspect~~] or investigating [~~investigate~~] an operation under this division?

(a) Child Care Regulation (CCR) is responsible for inspecting [~~An authorized representative of Licensing may inspect~~] or investigating [~~investigate~~]:

(1) An operation that is subject to regulation under Texas Human Resources Code (HRC) Chapter 42 to:

(A) Monitor the operation's compliance with [~~licensing~~] statutes, rules, and minimum standards; and

(B) Investigate an allegation of non-compliance with [~~licensing~~] statutes, rules, and minimum standards; and

(2) An unlicensed program providing care to children to determine whether the program is subject to regulation by CCR [~~Licensing~~].

(b) The following entities are responsible for investigating an allegation [~~An authorized representative~~] of abuse, neglect, or exploitation:

(1) The [~~the~~] Texas Department of Family and Protective Services is responsible for investigating [~~(DFPS) may investigate an operation that is subject to regulation under HRC Chapter 42 to investigate~~] an allegation of child abuse, neglect, or exploitation at an operation that is subject to regulation under HRC Chapter 42, as described in Title 40, Part 19, Chapter 707, Subchapter C, Child Care Investigations; and [~~.~~]

(2) The Texas Health and Human Services Commission (HHSC) is responsible for investigating an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, as described in Texas Human Resources Code, Chapter 48, Subchapter F.

(c) An authorized representative of CCR [~~Licensing~~] may inspect under subsection (a) of this section during or after an [~~a DFPS~~] investigation under subsection (b) of this section.

§745.8411. What are my responsibilities when an authorized representative [~~Licensing or the Texas Department of Family and Protective Services~~] inspects or investigates my operation?

(a) You must ensure that no one at your operation interferes with an inspection or investigation by Child Care Regulation (CCR), another department of the Texas Health and Human Services Commission (HHSC), or [~~Licensing or an investigation by~~] the Department of Family and Protective Services (DFPS).

(b) For an inspection or investigation described in Subsection (a), you [~~You~~] must ensure your operation:

(1) Admits authorized [~~the Licensing or DFPS~~] representatives involved in conducting the inspection or investigation [~~to the operation~~];

(2) Provides access to all areas of the operation;

(3) Provides access to all records; and

(4) Does not delay or prevent authorized [~~the Licensing or DFPS~~] representatives from conducting an inspection or investigation.

(c) If anyone at your operation refuses to admit, refuses access, or prevents or delays an authorized [~~a Licensing or DFPS~~] representative of CCR, another department of HHSC, or DFPS from visiting, inspecting, or investigating the operation, [~~Licensing may take~~] any or all of the following may occur [~~actions~~]:

(1) CCR may issue [~~Issue~~] the operation a deficiency;

(2) CCR may recommend [~~Impose~~] an enforcement action as specified in Subchapter L of this chapter (relating to Enforcement Actions); or

(3) CCR, DFPS, or HHSC may seek [~~Seek~~] a court order granting [~~Licensing~~] access to the operation and records maintained by the operation.

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

Filed with the Office of the Secretary of State on July 8, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-3269

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SUBCHAPTER N. ADMINISTRATOR'S LICENSING
DIVISION 7. REMEDIAL ACTIONS

26 TAC §745.9037

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.9037, concerning Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 4170, 88th Legislature, Regular Session, 2023. H.B. 4170 amended Texas Human Resources Code (HRC) §43.010, which

makes a person ineligible to apply for another administrator's license for five years after the date HHSC refused to renew the person's administrator's license. Prior to this amendment, this subsection only applied the five-year ban to when HHSC revoked an administrator's license. The proposed amendment to §745.9037 is necessary to be consistent with HRC §43.010(b).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.9037 updates the rule to include that a person is not eligible to apply for an administrator's license under HRC Chapter 43 for five years after HHSC refuses to renew the administrator's license.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be that the rule will be consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because this rule is merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to E'Portia Williams, Program Specialist VII, by e-mail to enforcementcoordinationteam@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R035" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HRC §43.005, which states the Executive Commissioner for HHSC may adopt rules to administer Chapter 43, HRC.

The amendment affects Texas Government Code §531.0055 and HRC §43.005.

§745.9037. Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?

(a) We may take remedial action against your administrator's license or administrator's license application if you:

(1) Violate Chapter 43 of the Human Resources Code (HRC) or a rule adopted under that chapter;

(2) Circumvent or attempt to circumvent the requirements of Chapter 43 of the HRC or a rule adopted under that chapter;

(3) Engage in fraud or deceit related to the requirements of Chapter 43 of the HRC or a rule adopted under that chapter;

(4) Provide false or misleading information to us during the application or renewal process for your own or someone else's application or license;

(5) Make a statement about a material fact during the license application or renewal process that you know or should know is false;

(6) Do not comply with Subchapter F of this chapter (relating to Background Checks);

(7) Use or abuse drugs or alcohol in a manner that jeopardizes your ability to function as an administrator;

(8) Perform your duties as an administrator in a negligent manner; or

(9) Engage in conduct that makes you ineligible to:

(A) Receive a permit under HRC §42.072; or

(B) Be employed as a controlling person or serve in that capacity in a facility or family home under HRC §42.062.

(b) If we deny you a full Child-Care Administrator's License (CCAL) for an issue identified in subsection (a) of this section while you have a provisional CCAL, your provisional CCAL is no longer valid. You may not continue serving or representing yourself as a licensed child-care administrator pending the outcome of due process.

(c) If we revoke or refuse to renew your administrator's license, you are not eligible to apply for another administrator's license for five years after the date the revocation or refusal to renew was imposed [~~license was revoked~~].

(d) If you have both a Child Care Administrator's License and a Child-Placing Agency Administrator's License, remedial action may be taken against both licenses. If we take remedial action against both of your licenses, you will be notified that the action applies to both licenses. In such a case, any administrative review or due process hearing for both licenses may be combined at our discretion.

(e) If we revoke your full administrator's license, deny you a full CCAL after issuing you a provisional CCAL, refuse to renew your full administrator's license, or you do not meet the renewal requirements, you must return your license certificate to us.

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

Filed with the Office of the Secretary of State on July 8, 2024.

TRD-202402972
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 751-8438

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
SUBCHAPTER D. PERSONNEL
DIVISION 1. CHILD-CARE CENTER DIRECTOR

26 TAC §§746.1053, 746.1065, 746.1067, 746.1069

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §746.1053, concerning Will the director's certificate expire; and new §746.1065, concerning What is an interim director; §746.1067, concerning When may I designate someone as the interim director of my child-care center; and §746.1069, concerning May someone serving as interim director of my child-care center continue to serve as director after my child-care center receives a full license.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 1327, 88th Legislature, Regular Session, 2023. S.B. 1327 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04201 and amending §42.0761(a). HRC §42.04201 allows a child-care center operating under an initial license to designate an individual who meets all the director qualifications, except the education requirement, to serve as an interim director. Since an initial license is valid for six months from the date that HHSC Child Care Regulation (CCR) issues it and may be renewed for an additional six months, the statute allows a person to serve as an interim director for up to 12 months. Before the prospective 12-month period expires, the interim director may obtain the education requirements and be designated as a qualified director. If the interim director does not meet the education requirements at the end of the 12-month period, the child-care center must obtain an approved waiver for the requirements or employ a new director. HRC §42.04761(a) adds the term "interim director" to the statute that requires a child-care center to designate a qualified director who is routinely present at the operation. Accordingly, CCR is proposing to add rules to provide a definition of "interim director" and describe the requirements related to qualifying for that designation. CCR is also proposing to amend one rule related to expiring director certificates.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.1053 (1) updates language to improve readability; (2) reorganizes the rule to separate the types of expiring director certificates into paragraphs; and (3) adds an interim director certificate to the list of types of director's certificates that expire.

New §746.1065 provides a definition of "interim director." The definition specifies that the interim director (1) is an individual the child-care center designates to serve in that role if the individual meets the requirements in proposed new §746.1067; and (2) has the same responsibilities as a child-care center director.

New §746.1067 outlines when a child-care center may designate someone as the interim director of the child-care center. The rule specifies that the child-care center may designate an individual to serve as the interim director if (1) the child-care center is operating with an initial license; and (2) the individual meets all director requirements except for the educational requirements.

New §746.1069 clarifies the circumstances under which someone serving as an interim director may continue to serve as a director after a child-care center receives a full license. The rule specifies that (1) an individual serving as an interim director may serve as the child-care center director for an operation with a full license if (A) the individual has completed the required education and fully qualifies as a director, or (B) the child-care center obtains a waiver or variance from CCR that allows the child-care center to employ a director who does not meet the educational requirement; and (2) the child-care center must employ a new director if the individual does not qualify under subsection (a) of the rule.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) increase the number of child-care center director candidates for new operations, potentially expanding licensed child-care capacity in areas challenged with finding qualified directors; and (2) comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because choosing to designate an interim director during a child-care center's initial license period is optional and the associated rules do not impose fees, require a child-care center to purchase curriculum or equipment, or require a child-care center to alter current staffing patterns.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R027" in the subject line.

STATUTORY AUTHORITY

The amended and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amended and new sections affect Texas Government Code §531.0055 and HRC §42.042.

§746.1053. Will the director's certificate expire?

The director's certificate will not expire unless [~~have an expiration date, if~~] the director was qualified: [~~under~~]

(1) Under (5) or (6) in Figure: 26 TAC §746.1015 [~~subsection (a), options (5) or (6) in §746.1015~~] of this division [~~title~~] (relating to What qualifications must the director of my child-care center licensed for 13 or more children meet?);

(2) Under (4) or (6) in Figure: 26 TAC §746.1017 [~~or subsection (a), options (4) or (6) in §746.1017~~] of this division [~~title~~] (relating to What qualifications must the director of my child-care center licensed for 12 or fewer children meet?); or

(3) As an interim director as outlined in §746.1067 of this division (relating to When may I designate someone as the interim director of my child-care center?). [~~Otherwise the Licensing *Child-Care Center Director's Certificate* will not expire.~~]

§746.1065. What is an interim director?

(a) An interim director is an individual designated to serve as the director of a child-care center under §746.1067 of this division (relating to When may I designate someone as the interim director of my child-care center?).

(b) The interim director has the same responsibilities as a child-care center director as outlined in this chapter.

§746.1067. When may I designate someone as the interim director of my child-care center?

You may designate someone to serve as the interim director of your center if:

(1) Your center is operating with an initial license; and

(2) The individual you designate as interim director meets all the requirements to serve as director except the educational requirement in:

(A) §746.1015 of this division (relating to relating to What qualifications must the director of my child-care center licensed for 13 or more children meet?); or

(B) §746.1017 of this division (relating to What qualifications must the director of my child-care center licensed for 12 or fewer children meet?).

§746.1069. May someone serving as interim director of my center continue to serve as director after my center receives a full license?

(a) Someone serving as interim director of your center may serve as your center's director after your center receives a full license if:

(1) The individual has completed the educational requirement and fully qualifies to serve as a child-care center director; or

(2) You obtain a waiver or variance from Child Care Regulation that allows you to have a director who does not meet the educational requirement.

(b) You must employ a new director if the individual who served as interim director does not qualify under subsection (a) of this section.

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

Filed with the Office of the Secretary of State on July 2, 2024.

TRD-202402925
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-3269

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §748.303

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §748.303, concerning When must I report and document a serious incident.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 amended Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c) to specify that HHSC is responsible for investigating an allegation of abuse, neglect, and exploitation of an elderly person or an adult with a disability who resides in a residential child-care facility. Presently, Title 26 §748.303(d)(3) says that Adult Protective Services at the Texas Department of Family and Protective Services is responsible for conducting such an investigation.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.303 (1) clarifies that a general residential operation must report a serious incident involving the possible abuse, neglect, or exploitation of an adult resident to HHSC through the Texas Abuse and Neglect Hotline; and (2) makes non-substantive changes to the rule for better readability and understanding.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be no cost to state government as a result of enforcing or administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require any training or resources to meet compliance.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R033" in the subject line.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531.

The amendment affects Texas Government Code §531.0055, Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c).

§748.303. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:
Figure: 26 TAC §748.303(a) (No change.)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) If a [~~the~~] child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §748.303(a) [~~subsection (a)(8) - (10) of this section~~], you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in the same manner as for a serious incident, as described in §748.311 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, [~~resident, you do not have to report the incident to Licensing, but~~] you must document the incident in the same manner as a serious incident. You must also [~~do have to~~] report the incident to:

(1) The Department of Family and Protective and Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) [~~(1)~~] Law enforcement, if there is a fatality; and

(3) [~~(2)~~] The parent, if the adult resident is not capable of making decisions about the resident's own care.[~~; and~~]

[~~(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.~~]

(e) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frames:
Figure: 26 TAC §748.303(e) (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 July 8, 2024.

TRD-202402986
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-3269

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §749.503

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §749.503, concerning When must I report and document a serious incident.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 amended Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c) to specify that HHSC is responsible for investigating an allegation of abuse, neglect, and exploitation of an elderly person or an adult with a disability who resides in a residential child-care facility. Presently, Title 26 §749.503(d)(3) says that Adult Protective Services at the Texas Department of Family and Protective Services is responsible for conducting such an investigation.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.503 (1) clarifies that a child placing agency must report a serious incident involving the possible abuse, neglect, or exploitation of an adult resident to HHSC through the Texas Abuse and Neglect Hotline; and (2) makes non-substantive changes to the rule for better readability and understanding.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there

will be no cost to state government as a result of enforcing or administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will not expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require any training or resources to meet compliance.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R033" in the subject line.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531.

The amendment affects Texas Government Code §531.0055, Texas Health and Safety Code §253.001(4), and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c).

§749.503. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:
Figure: 26 TAC §749.503(a) (No change.)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §749.503(a) [~~subsection (a)(8) - (10) of this section~~], you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in the same manner as for a serious incident, as described in §749.511 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, [~~resident, you do not have to report the incident to Licensing, but~~] you must document the incident in the same manner as a serious incident. You must also [~~do have to~~] report the incident to:

(1) The Department of Family and Protective Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) [~~(1)~~] Law enforcement, if there is a fatality; and

(3) [~~(2)~~] The parent, if the adult resident is not capable of making decisions about the resident's own care.[~~; and~~]

[~~(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.~~]

(e) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §749.503(e) (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 July 8, 2024.

TRD-202402987
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 438-3269

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§115.470, 115.471, and 115.473.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Effective November 7, 2022, EPA reclassified nonattainment areas under the 2008 ozone National Ambient Air Quality Standards (NAAQS) (87 *Federal Register* (FR) 60926). A 10-county Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and an eight-county Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) were reclassified from serious to severe nonattainment with a 2026 attainment year and an attainment deadline of July 20, 2027. Reclassification to severe nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and SIP submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that were submitted to EPA on May 7, 2024, to meet the deadline established in EPA's reclassification action for the 2008 ozone NAAQS.

The proposed rule revisions would address federal Clean Air Act (FCAA) contingency measure requirements for the DFW and HGB ozone nonattainment areas. Contingency measures are control requirements that would take effect and result in emissions reductions if an area fails to attain a NAAQS by the applicable attainment date or fails to demonstrate reasonable further progress (RFP). Requirements for SIP contingency measures are established under FCAA, §172(c)(9) and §182(c)(9). This rule proposal specifically addresses the requirement for a contingency measure that would take effect if either or both of the DFW and HGB nonattainment areas fail to attain or fail to demonstrate RFP under the 2008 eight-hour ozone NAAQS. Contingency measures for the DFW and HGB 2008 eight-hour ozone nonattainment areas were developed and submitted to EPA in a 30 TAC Chapter 115 rulemaking (Project No. 2023-116-115-AI) and three SIP revisions adopted April 24, 2024: the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR). The contingency measures included in this proposed rulemaking were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024.

Prior to adoption of the previous Chapter 115 rulemaking (Project No. 2023-116-115-AI), TCEQ staff determined there were omissions and incorrect limits in 30 TAC Chapter 115, Subchapter E, Division 7 rule revisions relating to Miscellaneous Industrial Adhesives. Omissions and incorrect limits in the rulemaking for the industrial adhesive volatile organic compounds (VOC) category resulted in an adopted industrial adhesive contingency measure that was insufficient to achieve the intended emission reductions in the associated SIP revisions. The industrial adhesives contingency measure was developed and intended to achieve VOC emissions reductions of 3.31 tons per day (tpd) in the DFW area and 3.12 tpd in the HGB area. However, the April 24, 2024 rulemaking implemented a measure that would only achieve 1.05 tpd in the DFW area and 0.99 tpd in the HGB area. If adopted and the contingency measures were triggered, this proposed rule revision would result in additional VOC emissions reductions of 2.26 tpd in the DFW area and 2.13 tpd in the HGB area. These additional SIP contingency emissions reductions would achieve the total contingency emissions reductions originally intended, 3.31 tpd in the DFW area and 3.12 tpd in the HGB area. Therefore, if adopted, this rulemaking would restore the emissions reductions to the amounts described in the contingency plan narratives in the adopted DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

The revisions proposed in this draft rule proposal (Project No. 2024-024-115-AI) would apply independently and separately for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Implementation of a contingency measure would be triggered upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to meet the applicable ozone NAAQS by the applicable attainment date or demonstrate RFP and the commission's subsequent publication in the *Texas Register* that compliance with the contingency measure is required. Affected sources would be required to comply with the contingency rules by no later than 270 days after *Texas Register* publication.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

Under FCAA, §110(l), EPA cannot approve a SIP revision if it "would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the FCAA]." The commission provides the following information to demonstrate why the proposed changes to the Chapter 115, Subchapter E, Division 7 rules in §115.470 (relating to Applicability and Definitions) and §115.473 (relating to Control Requirements) would not negatively impact the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS in the DFW or HGB nonattainment areas.

The commission proposes changes to Subchapter E, Division 7, Miscellaneous Industrial Adhesives, to implement a SIP contingency measure, as required by FCAA, §172(c)(9) and §182(c)(9). This measure, if triggered, would reduce VOC emissions in the DFW and/or HGB areas by revising VOC content limits on various types of industrial adhesives. The changes add new and revised VOC content limits in 30 TAC §115.473(e) and (f) that would apply if the contingency measure were triggered for the DFW or HGB area, respectively. These limits would, upon triggering, replace the current Chapter 115 VOC content limits in §115.473(a) for the DFW and/or HGB areas with limits taken from South Coast Air Quality Management District (SCAQMD) Rule 1168, as amended November 4, 2022.

Existing limits for industrial adhesives in 30 TAC §115.473(a) were developed to meet reasonably available control technology (RACT) requirements established by the 2008 EPA Control Techniques Guidelines (CTG) for Miscellaneous Industrial Adhesives. The emission limit recommended in the CTG is based on the 2005 version of SCAQMD Rule 1168. Since 2005, SCAQMD Rule 1168 has been amended to establish emission limits for bonding specific substrates. After the 2005 amendment of SCAQMD Rule 1168, several industry groups commented that no available adhesives could meet the VOC content limits for several categories of materials, and SCAQMD amended the rule in 2005 to allow higher interim VOC content adhesives while lower VOC content adhesives were being developed. This process continued through 2022, with multiple studies, interim limits, and revised lower VOC content limits once compliant adhesives were developed.

The six VOC content limits reduced in this proposed rule are beyond the limits in the rulemaking adopted April 24, 2024 (Project No. 2023-116-115-AI), which were set at the interim limits for those materials categories in SCAQMD Rule 1168. The proposed limits would replace the Rule 1168 interim limits previously adopted with the SCAQMD Rule 1168 final limits for those materials categories. Changes in SCAQMD Rule 1168 since 2005 for pressure sensitive adhesive primers, adhesives to join two specialty plastics, adhesives used in the manufacturing of computer diskettes, and adhesives for structural wood components have increased VOC content limits beyond the VOC content in §115.473(a). The adhesive applications in these categories were new subcategories of previous SCAQMD Rule 1168 and TCEQ adhesive rule categories. TCEQ chose its industrial adhesive contingency measure VOC content limits to equal the SCAQMD Rule 1168 limits adopted November 4, 2022, because TCEQ agrees with SCAQMD's analysis on technological feasibility for these limits. SCAQMD's analysis can be found in SCAQMD's *Preliminary Draft Staff Report for Rule 1168 - Adhesive and Sealant Applications*, dated August 2022.

Calculated emissions reductions for this measure sum the reductions in some adhesive categories and the increases in other categories to produce net emission reductions. In the current proposed rulemaking, TCEQ provides the contingency measure emission reductions in a manner that avoids negatively impacting the status of the state's progress towards attainment or preventing reasonable further progress toward attainment of the ozone NAAQS in the DFW and HGB nonattainment areas or any other applicable requirement of the FCAA.

Section by Section Discussion

In addition to the information provided above for a background and summary of the proposed rules, including a demonstration of noninterference with §110(l) of the FCAA, the commission also proposes non-substantive changes to update the rules in accordance with current Texas Register style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

The commission proposes amendments to Subchapter E, Division 7 to establish lower contingency VOC content limits for some existing industrial adhesive source categories, to add new subcategories of industrial adhesives with associated contingency measure VOC content limits, and to specify that the contingency VOC content limits, if triggered, would apply to adhesives used in the field. All contingency measure VOC content limits proposed in this rulemaking are the same or lower than the contingency measure limits added in the rulemaking adopted April 24, 2024 (Project No. 2023-116-115-AI). These amendments would be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes.

In the rulemaking adopted April 24, 2024 (Project No. 2023-116-115-AI), staff inadvertently used interim higher VOC content limits from SCAQMD Rule 1168 for six industrial adhesive categories in Figures 30 TAC §115.473(e) and §115.473(f): acrylonitrile-butadiene-styrene (ABS) to polyvinyl chloride (PVC) Transition Cement, chlorinated polyvinyl chloride (CPVC) Welding Cement, Higher Viscosity CPVC, PVC Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. This proposed rulemaking would correct each of these unintended VOC content limits with limits that are more stringent, as previously intended. The proposed rulemaking would also specify that the contingency VOC content limits, if triggered, would apply to adhesives used in the field. The proposed VOC content limits and applicability specification would align the SIP contingency rules in Chapter 115 with the limits used to calculate SIP contingency measure VOC emission reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

Four of the contingency VOC content limits included in the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) would be revised in this proposed rulemaking to be higher than the associated non-contingency VOC content limits in existing §115.473(a): ABS to PVC Transition Cement, PVC

Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. These changes will not interfere with meeting FCAA requirements in the DFW or HGB areas, as described elsewhere in this preamble, with all changes collectively producing net emission reductions.

This proposal would also add 20 industrial adhesive subcategories and establish industrial adhesive VOC content limits that, if triggered for SIP contingency purposes, would achieve VOC emissions reductions consistent with the limits used to calculate VOC emissions reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR). The 20 industrial adhesive category VOC content limits were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024 (Project No. 2023-116-115-AI).

§115.470 Applicability and Definitions

The commission proposes to add a provision to §115.470(a) which, upon triggering for SIP contingency purposes for either the DFW or HGB area, or both, would make adhesives and adhesive primers applied for compensation subject to this rule division. This is intended to exclude consumer use while including institutional, commercial, and industrial uses. It would also exclude use by volunteers such as a Habitat for Humanity home build or volunteers repairing homes. Home building and remodeling contractors would be included since they are compensated for their work applying adhesives. Adhesive use in commercial, institutional, and industrial settings is included because those uses are assumed to be for compensation. Emissions from consumer use were not included in the emissions reductions calculation for this contingency measure. Prior to triggering for contingency, field use of adhesives would continue not to be subject to the division.

The commission proposes to add 43 new definitions and to amend three existing definitions in §115.470(b). The new definitions were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) and would be necessary to implement VOC content limits for the proposed industrial adhesive source categories. New definitions are proposed to differentiate the new application-specific adhesives VOC content limits proposed in §115.473(e) and (f); to clarify the proposed lower VOC content limits for existing application-specific adhesive content limits in proposed §115.473(e) and (f); to clarify the applicability of existing control requirements in §115.473(b); and to clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

New definitions are proposed for architectural application; building envelope; building envelope membrane adhesive; carpet pad adhesive; chlorinated polyvinyl chloride (CPVC) welding or CPVC welding cement for life safety systems; computer diskette manufacturing; dry wall adhesive; ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive; glass, porcelain, and stone tile adhesive; hot applied modified bitumen or built up roof adhesive; modified bituminous material; modified bituminous primer; panel adhesive; roof adhesive primer; rubber flooring adhesive; rubber vulcanization adhesive; shingle laminating adhesive; structural glazing adhesive; structural wood member adhesive; subfloor adhesive; vinyl compositions tile (VCT); vinyl compositions tile or VCT adhesive; and wood flooring adhesive. The proposed new definitions in §115.470(b) would specify the meaning of VOC limits for the application-specific adhesives included in the tables in proposed §115.473(e) and §115.473(f).

The commission also proposes new definitions in §115.470(b) for acrylonitrile-butadiene-styrene (ABS); acrylonitrile-butadiene-styrene or ABS to polyvinyl chloride (PVC) transition cement; acrylonitrile-butadiene-styrene or ABS welding cement; edge glue; fiberglass; higher viscosity CPVC welding cement; pressure sensitive adhesive; tire tread adhesive; top and trim adhesive; traffic marking tape; and vehicle glass adhesive primer. The proposed new definitions would clarify which adhesives and primers would be subject to the lower VOC content limits in proposed §115.473(e) and (f) if triggered for contingency purposes.

The commission also proposes new definitions in §115.470(b) for dip coat; electrostatic spray; flow coat; hand application methods; high volume low-pressure (HVLP) spray; and transfer efficiency. The proposed new definitions would clarify the applicability of control requirements in existing §115.473(b).

The commission also proposes new terms and definitions for adhesive tapes; shoe repair, luggage, and handbag adhesive; and solvent welding in §115.470(b). The proposed new terms and definitions would clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

The commission proposes to amend three existing definitions in §115.470(b). Language would be added to the definition for chlorinated polyvinyl chloride or CPVC welding to clarify that the VOC content limit in §115.473 (e) and (f) would apply to adhesives used in CPVC components for shower pan liner, drain, closet flange, and backwater valve systems as well as CPVC pipe and fittings. The commission also proposes amendments to the definitions for the existing terms indoor floor covering installation adhesive and multipurpose construction adhesive. The commission proposes to add language to each of these two definitions that would maintain the existing definition for use with the existing exemption provisions in §115.471(a) - (c) and add a revised definition for use with the exemption provisions in §115.471(d) and the control requirements in §115.473(e) and (f) if a contingency scenario is triggered in the DFW area, the HGB area, or both areas. Existing definitions in §115.470 would be renumbered and reordered accordingly but would not otherwise be substantively changed.

§115.471 Exemptions

The commission proposes to amend the last sentence of §115.471(d) to reference §115.479(c) or (d), rather than §115.479(c) or (e). This amendment would correctly stipulate the compliance schedule for a contingency scenario in either the DFW or HGB area, or both areas.

§115.473 Control Requirements

The commission proposes to adjust VOC content limits associated with the miscellaneous industrial adhesives to correct contingency measure deficiencies in existing subsection §115.473(e) for the DFW area and §115.473(f) for the HGB area. The existing contingency control requirements are the same for both areas and specify that the limits must be met by applying low-VOC adhesives or adhesive primers. Proposed changes would correct some VOC content limits included in a Chapter 115 rulemaking adopted April 24, 2024, and would add VOC content limits meant to be included in that previous rulemaking. The proposed revisions would establish emissions limits in §115.473(e) and §115.473(f) that are consistent with

the current SCAQMD Rule 1168, as originally intended for the previously adopted rulemaking.

Proposed VOC content limits in the architectural applications category consist of building envelope membrane adhesive; carpet pad adhesive; ceramic tile installation adhesive; cove base installation adhesive, dry wall adhesive, glass, porcelain, and stone tile adhesive; multipurpose construction adhesives; and panel adhesive

Proposed VOC content limits in the roofing category consist of hot applied modified bitumen or built up roof adhesive, ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive, single-ply roof installation and repair membrane adhesive (except EPDM and TPO), shingle laminating adhesive, and all other roof adhesives.

Other individual VOC content limits for application-specific adhesives are proposed for rubber floor adhesive, structural glazing adhesive, structural wood member adhesive, subfloor adhesive, vinyl compositions tile (VCT) and asphalt tile adhesive, wood flooring adhesive, all other indoor floor covering adhesives, and all other outdoor floor covering adhesives.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of VOC emission standards for the DFW and HGB areas. The proposed rulemaking is not anticipated to result in fiscal implications for individuals.

Proposed rulemaking in Subchapter E, Division 7 would incorporate additional contingency control provisions for the DFW and HGB areas. Should contingency requirements be triggered in these areas, this rulemaking would result in an estimated $1.6 million annual costs for all sources in the DFW area and $1.5 million annual costs for all sources in the HGB area. The total fiscal impact estimated to implement contingency requirements remains identical to that specified in an earlier rulemaking adopted on April 24, 2024 (Project No. 2023-116-115-AI). It is conservatively estimated at $2.3 million annually for all sources in the DFW area and $2.2 million annually for all sources in the HGB area as necessary to achieve VOC emission reductions of 1,208 and 1,139 tons VOC per year for the DFW area and the HGB area, respectively.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments are specific to sources in the DFW and HGB areas. These areas have large urban populations, though there are some communities in these counties which are rural. The amendments would not disproportionately affect rural communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The proposed rule addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonat-

tainment areas, as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules would not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules would not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also would not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking would not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §26.12(l)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §26.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §26.12(1) and the CMP policy in 31 TAC §26.32. Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §29.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Announcement of Hearing

The commission will hold a hold a virtual public hearing on this proposal on July 25, 2024, at 10:00 a.m. Central Daylight Time (CDT). The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m. CDT.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by July 23, 2024. To register for the hearing, please e-mail Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your e-mail address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on July 24, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_OTZiNTAyNjgtN2Y3My00MD-hhLTg2ODEtMDNlZGRiYzk4NDc1%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-024-115-AI. The comment period closes on July 29, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Kimberly Sauceda, Air Quality Planning Section, at (512) 239-1493 or kimberly.sauceda@tceq.texas.gov, Stationary Source Programs Team, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753, Mail: MC-206, P.O. Box 13087, Austin, Texas 78711-3087.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.470. Applicability and Definitions.

(a) Applicability. Except as specified in §115.471 of this title (relating to Exemptions), the requirements in this division apply to the owner or operator of a manufacturing operation using adhesives or adhesive primers for any of the application processes specified in §115.473 of this title (relating to Control Requirements) in the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). Adhesives or adhesive primers applied in the field (e.g., construction jobs in the field) are not subject to this division. If the commission publishes notice in the *Texas Register*, as provided in §115.479(c) of this title (relating to Compliance Schedules) for either the Dallas-Fort Worth area, or §115.479(d) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.473(e) of this title for the Dallas-Fort Worth area and/or §115.473(f) of this title for the Houston-Galveston-Brazoria area, all adhesives or adhesive primers applied for compensation, regardless of location within the specified area, are subject to this division as of the compliance date specified in §115.479(c) or (d) of this title.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Acrylonitrile-butadiene-styrene (ABS)--A plastic that is made by reacting monomers of acrylonitrile, butadiene, and styrene and is normally identified with an ABS marking.

(2) [~~(1)~~] Acrylonitrile-butadiene-styrene or ABS welding--Any process to weld acrylonitrile-butadiene-styrene pipe.

(3) Acrylonitrile-butadiene-styrene or ABS to polyvinyl chloride (PVC) transition cement--A plastic welding cement used to join ABS and PVC building drains or building sewers.

(4) Acrylonitrile-butadiene-styrene or ABS welding cement--A plastic welding cement that is used to join ABS pipe, fittings, and other system components, including, but not limited to, components for shower pan liner, drain, closet flange, and backwater valve systems.

(5) [~~(2)~~] Adhesive--Any chemical substance applied for the purpose of bonding two surfaces together other than by mechanical means.

(6) [~~(3)~~] Adhesive primer--Any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

(7) Adhesive tape--A backing material coated with an adhesive, and includes, but is not limited to, drywall tape, heat sensitive tape, pressure-sensitive adhesive tape, and water-activated tape.

(8) [~~(4)~~] Aerosol adhesive or adhesive primer--An adhesive or adhesive primer packaged as an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for handheld application without the need for ancillary hoses or spray equipment.

(9) [~~(5)~~] Aerospace component--Any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles. This definition includes electronic components.

(10) Architectural application--The use of adhesives or adhesive primers or both adhesive primers and adhesives on stationary structures, or their appurtenances including but not limited to mobile homes, hand railings; cabinets; bathroom and kitchen fixtures; fences; rain-gutters and down-spouts; window screens; lampposts; heating and air conditioning equipment; other mechanical equipment; large fixed stationary tools; signs; motion picture and television production sets; and concrete forms.

(11) [~~(6)~~] Application process--A series of one or more application systems and any associated drying area or oven where an adhesive or adhesive primer is applied, dried, or cured. An application process ends at the point where the adhesive is dried or cured, or prior to any subsequent application of a different adhesive. It is not necessary for an application process to have an oven or flash-off area.

(12) [~~(7)~~] Application system--Devices or equipment designed for the purpose of applying an adhesive or adhesive primer to a surface. The devices may include, but are not limited to, brushes, sprayers, flow coaters, dip tanks, rollers, and extrusion coaters.

(13) Building envelope--The exterior and demising partitions of a building that enclose conditioned space.

(14) Building envelope membrane adhesive--An adhesive used to adhere membranes applied to the building envelope to provide a barrier to air or vapor leakage through the building envelope that separates conditioned from unconditioned spaces. Building envelope

membranes are applied to diverse materials, including, but not limited to, concrete masonry units, oriented stranded board, gypsum board, and wood substrates.

(15) Carpet pad adhesive--An adhesive used for the installation of a carpet pad (or cushion) beneath a carpet.

(16) [~~(8)~~] Ceramic tile installation adhesive--Any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

(17) [~~(9)~~] Chlorinated polyvinyl chloride plastic or CPVC plastic welding--A polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a chlorinated polyvinyl chloride marking.

(18) Chlorinated polyvinyl chloride or CPVC welding cement for life safety systems--A CPVC welding cement with an increased resistance to high temperatures which is used for life safety systems, including standalone and multipurpose fire sprinkler systems.

(19) [~~(10)~~] Chlorinated polyvinyl chloride welding or CPVC welding--An adhesive labeled for welding of chlorinated polyvinyl chloride that is used to join CPVC pipe, fittings, and other system components, including, but not limited to, components for shower pan liner, drain, closet flange, and backwater valve systems.

(20) Computer diskette manufacturing--The process where the fold-over flaps are glued to the body of a vinyl jacket.

(21) [~~(11)~~] Contact adhesive--An adhesive:

(A) designed for application to both surfaces to be bonded together;

(B) allowed to dry before the two surfaces are placed in contact with each other;

(C) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other;

(D) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and

(E) does not include rubber cements that are primarily intended for use on paper substrates or vulcanizing fluids that are designed and labeled for tire repair only.

(22) [~~(12)~~] Cove base--A flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

(23) [~~(13)~~] Cove base installation adhesive--Any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

(24) [~~(14)~~] Cyanoacrylate adhesive--Any adhesive with a cyanoacrylate content of at least 95% by weight.

(25) [~~(15)~~] Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all adhesives or adhesive primers subject to the same VOC content limit in §115.473(a) of this title (relating to Control Requirements), divided by the total volume of those adhesives or adhesive primers (minus water and exempt solvent) delivered to the application system each day. Adhesives or adhesive primers subject to different emission standards in §115.473(a) of this title must not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each adhesive or adhesive primer application process.

(26) Dip coat--A method of application to a substrate by submersion into, and removal from, a bath.

(27) Dry wall adhesive--An adhesive used during the installation of gypsum dry wall to studs or solid surfaces.

(28) Edge glue--An adhesive applied to the edge of multisheet carbonless forms prior to being fanned apart after drying.

(29) Electrostatic spray--A spray method where the atomized droplets are charged and subsequently deposited on the substrate by electrostatic attraction.

(30) Ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive--Any adhesive to be used for the installation or repair of ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane. Installation includes, but is not limited to, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, or ducts that protrude through the membrane.

(31) [~~(16)~~] Ethylene propylene diene [~~propylenediene~~] monomer [~~(EPDM)~~] roof membrane--A prefabricated single sheet of elastomeric material composed of ethylene propylene diene [~~propylenediene~~] monomer and that is field-applied to a building roof using one layer or membrane material.

(32) Fiberglass--A material composed of fine filaments of glass.

(33) [~~(17)~~] Flexible vinyl--Non-rigid polyvinyl chloride plastic with a 5.0% by weight plasticizer content.

(34) Flow coat--An application method that coats an object by flowing a stream of an adhesive or adhesive primers or both adhesive primers and adhesives over the object and draining off any excess.

(35) Glass, porcelain, and stone tile adhesive--Any adhesive used for the installation of tile products.

(36) Hand application methods--The application of adhesives or adhesive primers or both adhesive primers and adhesives using handheld equipment. Such equipment includes paint brush, hand roller, trowel, spatula, dauber, rag, sponge, and mechanically- and/or pneumatic-driven syringe provided there is no atomization of the materials.

(37) High-volume, low-pressure (HVLP) spray--Application method to apply adhesives or adhesive primers or both adhesive primers and adhesives by means of a spray gun that is designed to be operated between 0.1 and 10 pounds per square inch gauge air pressure measured dynamically at the center of the air cap and at the air horns.

(38) Higher viscosity CPVC welding cement--A CPVC welding cement with a viscosity greater than or equal to 500 centipoise.

(39) Hot applied modified bitumen or built up roof adhesive-A thermoplastic hot melt adhesive which requires high temperature conversion to a fluid at the point of application and complies with ASTM International Test Method D312 or D6152. Installation or repair includes the application of roofing insulation, roofing ply sheets, roofing membranes, and aggregate surfacing.

(40) [~~(18)~~] Indoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl-backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter-bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this definition. In the context of the provisions of

§115.471(d) of this title (relating to Exemptions), and §115.473(e) and (f) of this title (relating to Control Requirements), indoor floor covering installation adhesive is defined as any adhesive used during the installation of a carpet or indoor flooring that is in an enclosure and is not exposed to ambient weather conditions during normal use.

(41) [~~(19)~~] Laminate--A product made by bonding together two or more layers of material.

(42) [~~(20)~~] Metal to urethane/rubber molding or casting adhesive--Any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

(43) Modified bituminous material--A material obtained from natural deposits of asphalt or residues from the distillation of crude oil petroleum or coal which consist mainly of hydrocarbons, and include, but are not limited to, asphalt, tar, pitch, and asphalt tile that are soluble in carbon disulfide.

(44) Modified bituminous primer--A primer coating consisting of bituminous materials, and a high flash solvent used to prepare a surface by improving the adhesion and absorbing dust from the surface for adhesive or flashing cement bitumen membrane.

(45) [~~(21)~~] Motor vehicle adhesive--An adhesive, including glass-bonding adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

(46) [~~(22)~~] Motor vehicle glass-bonding primer--A primer, used in a process that is not an automobile or light-duty truck assembly coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Motor vehicle glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive-bonded glass.

(47) [~~(23)~~] Motor vehicle weatherstrip adhesive--An adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

(48) [~~(24)~~] Multipurpose construction adhesive--Any adhesive intended by the manufacturer for use in the installation or repair of multiple [~~various~~] construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile. In the context of the provisions of §115.471(d) of this title, and §115.473(e), and (f) of this title, multipurpose construction adhesive is defined as adhesives designated by the manufacturer to be used to adhere multiple different substrates together. Adhesives such as ABS to CPVC transition cement; carpet pad adhesive; glass, porcelain, and stone tile adhesive; or adhesives used to install ceramic tile and perimeter-bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this definition.

(49) [~~(25)~~] Outdoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

(50) Panel adhesive--An adhesive used for the installation of plywood, pre-decorated hardboard (or tileboard), fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces.

(51) [~~(26)~~] Panel installation--The installation of plywood, pre-decorated hardboard or tileboard, fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

(52) [~~(27)~~] Perimeter bonded sheet flooring installation--The installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

(53) [~~(28)~~] Plastic solvent welding adhesive--Any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

(54) [~~(29)~~] Plastic solvent welding adhesive primer--Any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

(55) [~~(30)~~] Plastic foam --Foam constructed of plastics.

(56) [~~(31)~~] Plastics--Synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, or reinforcers and are capable of being molded, extruded, cast into various shapes and films, or drawn into filaments.

(57) [~~(32)~~] Polyvinyl chloride plastic or PVC plastic--A polymer of the chlorinated vinyl monomer that contains 57% chlorine.

(58) [~~(33)~~] Polyvinyl chloride welding adhesive or PVC welding adhesive--Any adhesive intended by the manufacturer for use in the welding of polyvinyl chloride plastic pipe.

(59) [~~(34)~~] Porous material--A substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. For the purposes of this definition, porous material does not include wood.

(60) [~~(35)~~] Pounds of volatile organic compounds (VOC) per gallon of adhesive (minus water and exempt solvent)--The basis for content limits for application processes that can be calculated by the following equation:
Figure: 30 TAC §115.470(b)(60)
[~~Figure: 30 TAC §115.470(b)(35)~~]

(61) [~~(36)~~] Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for content limits for application processes that can be calculated by the following equation:
Figure: 30 TAC §115.470(b)(61)
[~~Figure: 30 TAC §115.470(b)(36)~~]

(62) Pressure sensitive adhesive--An adhesive, typically coated on backings or release liners that forms a bond when pressure is applied, without the need for solvent, water, or heat.

(63) [~~(37)~~] Reinforced plastic composite--A composite material consisting of plastic reinforced with fibers.

(64) Roof adhesive primer--A film-forming material applied to a substrate, prior to the application of an adhesive or adhesive tape to increase adhesion or bond strength, promote wetting, or form a chemical bond with a subsequently applied adhesive and is marketed and sold exclusively for the installation or repair of roofing materials.

(65) [~~(38)~~] Rubber--Any natural or manmade rubber substrate, including, but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene, and ethylene propylene diene terpolymer.

(66) Rubber flooring adhesive--An adhesive that is used for the installation of flooring material in which both the back and top surfaces are made of synthetic rubber, and which may be in sheet or tile form.

(67) Rubber vulcanization adhesive--A reactive adhesive used for rubber-to-substrate bonding achieved during vulcanization of the rubber elastomer at temperatures greater than 250°F. Vulcanized rubber adhesive does not include bonding previously vulcanized rubber.

(68) [~~(39)~~] Sheet rubber lining installation--The process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These processes also include laminating sheet rubber to fabric by hand.

(69) Shingle laminating adhesive--An asphalt based thermoplastic hot melt adhesive used to adhere individual layers during the manufacture of multi-layer asphalt shingles.

(70) Shoe repair, luggage, and handbag adhesive--An adhesive used to repair worn, torn, or otherwise damaged uppers, soles, and heels of shoes, or for making repairs to luggage and handbags.

(71) [~~(40)~~] Single-ply roof membrane--A prefabricated single sheet of rubber, normally ethylene propylene diene [~~propylenediene~~] terpolymer, that is field-applied to a building roof using one layer of membrane material. For the purposes of this definition, single-ply roof membrane does not include membranes prefabricated from ethylene propylene diene [~~propylenediene~~] monomer.

(72) [~~(41)~~] Single-ply roof membrane installation and repair adhesive--Any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole, and reapplying flashings to vents, pipes, or ducts installed through the membrane.

(73) [~~(42)~~] Single-ply roof membrane adhesive primer--Any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

(74) Solvent welding--The softening of the surfaces of two substrates by wetting them with solvents or adhesives or both and joining them together through a chemical reaction or series of reactions to form a fused union.

(75) [~~(43)~~] Specialty adhesives--A contact adhesive that is used to bond all of the following substrates to any surface: melamine covered board, metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, and wood veneer 1/16 inch or less in thickness.

(76) [~~(44)~~] Structural glazing--A process that includes the application of adhesive to bond glass, ceramic, metal, stone, or composite panels to exterior building frames.

(77) Structural glazing adhesive--An adhesive used to adhere glass, ceramic, metal, stone, or composite panels to exterior building frames.

(78) Structural wood member adhesive--An adhesive used for the construction of any load bearing joints in wooden joists, trusses, or beams.

(79) Subfloor adhesive--is an adhesive used for the installation of subflooring material over floor joists.

(80) [~~(45)~~] Subfloor installation--The installation of subflooring material over floor joists, including the construction of any load-bearing joists. Subflooring is covered by a finish surface material.

(81) [~~(46)~~] Thin metal laminating adhesive--Any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line(s) is less than 0.25 mil.

(82) [~~(47)~~] Tire repair--A process that includes expanding a hole, tear, fissure, or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

(83) Tire tread adhesive--Any adhesive to be applied to the back of precured tread rubber and to the casing and cushion rubber, or to be used to seal buffed tire casings to prevent oxidation while the tire is being prepared for a new tread.

(84) Top and trim adhesive--An adhesive used during the installation of automotive and marine trim, including, but not limited to, headliners, vinyl tops, vinyl trim, sunroofs, dash covering, door covering, floor covering, panel covering, and upholstery.

(85) Traffic marking tape--Preformed reflective tape that is applied to public streets, highways, and other surfaces, including, but not limited to, curbs, berms, driveways, and parking lots.

(86) Transfer efficiency--The ratio of the amount of adhesive or adhesive primer adhering to an object to the total weight or volume, respectively, of the solids dispensed in the application process, expressed as a percentage.

(87) [~~(48)~~] Undersea-based weapon system components--The fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

(88) Vehicle glass adhesive primer--A primer applied to vehicle glass or to the frame of a vehicle prior to installation or repair of the vehicle glass using an adhesive or sealant to improve adhesion to the pinch weld. For the purposes of this definition, a vehicle is a mobile machine that transports passengers or cargo, and includes, but is not limited to, automobiles, trucks, buses, motorcycles, trains, ships, and boats.

(89) Vinyl compositions tile (VCT)-- A material made from thermoplastic resins, fillers, and pigments.

(90) Vinyl compositions tile adhesive or VCT adhesive--An adhesive that is used for the installation of VCT material.

(91) [~~(49)~~] Waterproof resorcinol glue--A two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

(92) Wood flooring adhesive--an adhesive used to install a wood floor surface, which may be in the form of parquet tiles, wood planks, or strip-wood.

§115.471. Exemptions.

(a) Except as specified in subsection (d) of this section, the owner or operator of application processes located on a property with actual combined emissions of volatile organic compounds (VOC) less than 3.0 tons per calendar year, when uncontrolled, from all adhesives, adhesive primers, and solvents used during related cleaning operations, is exempt from the requirements of this division, except as specified in §115.478(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, adhesives and

adhesive primers that are exempt under subsections (b) and (c) of this section are excluded.

(b) Except as specified in subsection (d) of this section, the following application processes are exempt from the VOC limits in §115.473(a) of this title (relating to Control Requirements) and the application system requirements in §115.473(b) of this title:

(1) adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory;

(2) adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace components or undersea-based weapon system components;

(3) adhesives or adhesive primers used in medical equipment manufacturing operations;

(4) cyanoacrylate adhesive application processes;

(5) aerosol adhesive and aerosol adhesive primer application processes;

(6) polyester-bonding putties used to assemble fiberglass parts at fiberglass boat manufacturing properties and at other reinforced plastic composite manufacturing properties; and

(7) processes using adhesives and adhesive primers that are supplied to the manufacturer in containers with a net volume of 16 ounces or less or a net weight of 1.0 pound or less.

(c) Except as specified in subsection (d) of this section, the owner or operator of any process or operation subject to another division of this chapter that specifies VOC content limits for adhesives or adhesive primers used during any of the application processes listed in §115.473(a) of this title, is exempt from the requirements in this division. Adhesives and adhesive primers used for miscellaneous metal and plastic parts surface coating processes in §115.453(a)(1)(C) - (F) and (2) of this title (related to Control Requirements) meeting a specialty application process definition in §115.470 of this title (relating to Applicability and Definitions) are not included in this exemption. Contact adhesives are not included in this exemption. When an adhesive or adhesive primer meets more than one adhesive application process definition in §115.470 of this title, the least stringent applicable VOC content limit applies.

(d) If the commission publishes notice in the *Texas Register*, as provided either in §115.479(c) of this title (relating to Compliance Schedules) for [~~either~~] the Dallas-Fort Worth area or §115.479(d) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.473(e) of this title for the Dallas-Fort Worth area and/or §115.473(f) of this title for the Houston-Galveston-Brazoria area, then the exemptions in subsections (a) - (c) of this section are no longer available, and the following exemptions apply in the applicable area as of the compliance date specified in §115.479(c) or (d) [~~(e)~~] of this title.

(1) The owner or operator of application processes who demonstrates that the total volume of noncompliant products, including all adhesives, adhesive primers, and solvents used during related cleaning operations, located on the property is less than 55 gallons per calendar year is exempt from the requirements of this division, except as specified in §115.478(b)(2) of this title. The owner or operator may not use this paragraph to exclude noncompliant adhesives used in architectural applications; contact adhesives; special purpose contact adhesives; adhesives used on porous substrates; rubber vulcanization adhesives and top and trim adhesives.

(2) The requirements in §115.473(e) and (f) do not apply to:

(A) adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace components;

(B) adhesive tape;

(C) aerosol adhesives and primers dispensed from nonrefillable aerosol spray systems;

(D) regulated products sold in quantities of one fluid ounce or less;

(E) adhesives used to glue flowers to parade floats;

(F) adhesives used to fabricate orthotics and prosthetics under a medical doctor's prescription;

(G) shoe repair, luggage, and handbag adhesives;

(H) research and development programs and quality assurance labs;

(I) solvent welding operations used in the manufacturing of medical devices; or

(J) adhesives used in tire repair.

§115.473. Control Requirements.

(a) The owner or operator shall limit volatile organic compounds (VOC) emissions from all adhesives and adhesive primers used during the specified application processes to the following VOC content limits in pounds of VOC per gallon of adhesive (lb VOC/gal adhesive) (minus water and exempt solvent compounds), as delivered to the application system. These limits are based on the daily weighted average of all adhesives or adhesive primers delivered to the application system each day. If an adhesive or adhesive primer is used to bond dissimilar substrates together, then the applicable substrate category with the least stringent VOC content limit applies. The requirements in this subsection are replaced with the requirements in subsection (e) of this section in the Dallas-Fort Worth area upon the compliance date specified in §115.479(c) of this title (relating to Compliance Schedules) or with the requirements in subsection (f) of this section in the Houston-Galveston-Brazoria area upon the compliance date specified in §115.479(d) of this title.
Figure: 30 TAC §115.473(a) (No change.)

(1) The owner or operator shall meet the VOC content limits in this subsection by using one of the following options.

(A) The owner or operator shall apply low-VOC adhesives or adhesive primers.

(B) The owner or operator shall apply adhesives or adhesive primers in combination with the operation of a vapor control system.

(2) As an alternative to paragraph (1) of this subsection, the owner or operator may operate a vapor control system capable of achieving an overall control efficiency of 85% of the VOC emissions from adhesives and adhesive primers. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.475(3) and (4) of this title (relating to Approved Test Methods and Testing Requirements). If the owner or operator complies with the overall control efficiency option under this paragraph, then the owner or operator is exempt from the application system requirements of subsection (b) of this section.

(3) An owner or operator applying adhesives or adhesive primers in combination with a vapor control system to meet the VOC content limits in paragraph (1) of this subsection, shall use the follow-

ing equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.475(3) and (4) of this title.
Figure: 30 TAC §115.473(a)(3) (No change.)

(b) The owner or operator of any application process subject to this division shall not apply adhesives or adhesive primers unless one of the following application systems is used:

(1) electrostatic spray;

(2) high-volume, low-pressure spray (HVLP);

(3) flow coat;

(4) roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;

(5) dip coat;

(6) airless spray;

(7) air-assisted airless spray; or

(8) other application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%. The owner or operator shall demonstrate that either the application system being used is equivalent to the transfer efficiency of an HVLP spray or that the application system being used has a transfer efficiency of at least 65%.

(c) The following work practices apply to the owner or operator of each application process subject to this division.

(1) For the storage, mixing, and handling of all adhesives, adhesive primers, thinners, and adhesive-related waste materials, the owner or operator shall:

(A) store all VOC-containing adhesives, adhesive primers, and process-related waste materials in closed containers;

(B) ensure that mixing and storage containers used for VOC-containing adhesives, adhesive primers, and process-related waste materials are kept closed at all times;

(C) minimize spills of VOC-containing adhesives, adhesive primers, and process-related waste materials; and

(D) convey VOC-containing adhesives, adhesive primers, and process-related waste materials from one location to another in closed containers or pipes.

(2) For the storage, mixing, and handling of all surface preparation materials and cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(E) minimize VOC emissions from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(d) An application process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.471(a) of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused a throughput or emission rate to fall below the exemption limits in §115.471(a) of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

(e) In accordance with the compliance schedule for contingency requirements in §115.479(c) of this title in the Dallas-Fort Worth area, the owner or operator shall apply low-VOC adhesives or adhesive primers to limit VOC emissions from all adhesives and adhesive primers used during the specified application processes to the VOC content limits listed in the tables in this subsection in grams of VOC per liter of adhesive (minus water and exempt solvent compounds), as delivered to the application system. If an adhesive or adhesive primer is used to bond dissimilar substrates together, then the applicable substrate category with the least stringent VOC content limit applies.
Figure: 30 TAC §115.473(e)
[~~Figure: 30 TAC §115.473(e)~~]

(f) In accordance with the compliance schedule for contingency requirements in §115.479(d) of this title in the Houston-Galveston-Brazoria area, the owner or operator shall apply low-VOC adhesives or adhesive primers to limit VOC emissions from all adhesives and adhesive primers used during the specified application processes to the VOC content limits listed in the tables in this subsection in grams of VOC per liter of adhesive (minus water and exempt solvent compounds), as delivered to the application system. If an adhesive or adhesive primer is used to bond dissimilar substrates together, then the applicable substrate category with the least stringent VOC content limit applies.
Figure: 30 TAC §115.473(f)
[~~Figure: 30 TAC §115.473(f)~~]

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-202403028
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER B. AUTHORITY TO CONTRACT

31 TAC §51.61

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to 31 TAC §51.61, concerning Enhanced Contract Monitoring. The proposed amendment would add a comprehensive provision to the list of factors in subsection (b) that the department considers when making a determination to implement enhanced contract monitoring measures.

Under Government Code, §2261.253(c), a state agency is required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring. The current rule lists multiple factors that TPWD will consider when determining whether a contract requires enhanced monitoring. The proposed amendment would add new paragraph (17) to provide for the consideration of any factors in addition to those enumerated in subsection (b) and is intended to provide the department with additional flexibility to consider other important factors, especially those recommended by the Comptroller of Public Accounts Statewide Procurement Division.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Tammy Dunham, Director of Contracting, 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.

Ms. Dunham 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 enhancement of the department's ability to ensure that contracts and contractors are effectively monitored, which will ensure that the public trust is preserved.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

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 small and microbusinesses and rural communities. 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. 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 proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. 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 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 an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Tammy Dunham at (512) 389-4752, e-mail: tammy.dunham@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring.

The proposed amendment affects Government Code, §2261.253.

§51.61. Enhanced Contract Monitoring.

(a) (No change.)

(b) In determining if a contract requires enhanced contract monitoring, the department will consider the following factors, to the extent applicable:

(1) - (16) (No change.)

(17) Additional Factors. The department will consider additional factors that it determines appropriate, in accordance with Government Code, §2261.253(c).

(c) - (d) (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 July 8, 2024.

TRD-202402989
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 389-4775

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SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.168

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.168, concerning Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans. The proposed amendment would replace an inaccurate acronym where necessary throughout the section. Under the provisions of §51.161, concerning Definitions, the acronym for "Nonprofit partner" in Subchapter G is "NP." However, in §51.168, the acronym "NPP" is employed, which could cause confusion. The proposed amendment would rectify the inaccuracy.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, 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. Macdonald 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 accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

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 small and microbusinesses and rural communities. 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. 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 proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. 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 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 an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §11.208, which allows the commission to establish by rule the criteria under which the department may select a nonprofit partner and the guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities provided by the nonprofit partner.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.168. Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans.

(a) The department shall select one or more NP [~~nonprofit partners~~ ~~(NPP)~~] to promote hunting and fishing by residents of this state who are veterans of the United States Armed Forces. A prospective (NP) [~~(NPP)~~] under this section must exist exclusively to serve veterans of the United States Armed Forces. The selection process shall be conducted according to the applicable provisions of this subchapter, and shall occur at three-year intervals by means of a request for proposals published by the department.

(b) The following guidelines shall govern hunting and fishing activities under this section.

(1) An (NP) [~~(NPP)~~] must provide angling and hunting opportunities on private lands and/or public waters in Texas.

(2) (No change.)

(3) Hunting and fishing opportunity provided by an (NP) [~~(NPP)~~] under this section:

(A) (No change.)

(B) must be advertised by the (NP) [~~(NPP)~~] by providing public notice.

(4) Hunting and fishing opportunity provided by an (NP) [~~(NPP)~~] shall be at no cost to participants, not to include travel, lodging, meals, and other expenses ancillary to hunting and fishing activities unless those costs are provided by the (NP) [~~(NPP)~~] at the discretion of the (NP) [~~(NPP)~~].

(5) Not less than 30 days before any hunting or fishing activity may be provided or engaged in, an (NP) [~~(NPP)~~] shall complete and provide to the department on a form provided or approved by the department, the specific hunting and/or angling opportunities to be provided, to include the following, at a minimum:

(A) - (C) (No change.)

(D) the name and address of each representative of the (NP) [~~(NPP)~~] who will be participating in the activity.

(6) (No change.)

(7) The representative of an (NP) [~~(NPP)~~] who accompanies a participant who engages in hunting activities shall immediately tag any animal or bird killed by a participant for which a tag is required under Parks and Wildlife Code, Chapter 42 with a tag issued by the department to the (NP) [~~(NPP)~~] for the hunting opportunity.

(8) The representative of an (NP) [~~(NPP)~~] who accompanies a participant who engages in fishing activities shall immediately tag any fish caught by a participant for which a tag is required under Parks and Wildlife Code, Chapter 46 with a tag issued by the department to the (NP) [~~(NPP)~~] for the fishing opportunity.

(9) A wildlife resource document provided by the department to the (NP) [~~(NPP)~~] and completed by the representative of an (NP) [~~(NPP)~~] who accompanies a participant who engages in hunting or fishing activities shall accompany any harvested wildlife resource or portion thereof not accompanied by a tag until the wildlife resource reaches:

(A) - (C) (No change.)

(10) An (NP) [~~(NPP)~~] shall maintain a daily harvest log of hunting or fishing activity conducted.

(A) (No change.)

(B) The representative of an (NP) [~~(NPP)~~] who accompanies a participant who engages in hunting or fishing activities shall, on the same day that a wildlife resource is killed or caught, legibly enter the following information in the daily harvest log:

(i) the name of the (NP) [~~(NPP)~~] representative;

(ii) - (v) (No change.)

(C) (No change.)

(D) The daily harvest log shall be retained by an (NP) [~~(NPP)~~] for a period of two years following the latest entry of hunting or fishing activity required to be recorded in the log.

(11) An (NP) [~~(NPP)~~] shall complete and submit an annual report to the department on a form prescribed or approved by the department.

(c) A person acting as a representative of an (NP) [~~(NPP)~~] under this section is not exempt from any licensing, stamp, documentation, or other rule of the department while engaging in hunting or fishing activities under this section.

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

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SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §51.301

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.301, concerning Duties of the Department. The proposed amendment would eliminate subsection (a), which is no longer necessary.

The Texas Parks and Wildlife Commission in 2021 repealed 31 TAC §51.301 (46 TexReg 7891) to conform department rules with statutory changes enacted by the 87th Texas Legislature (R.S.). Section §51.301(a) is unnecessary and should have been removed in the 2021 rulemaking. The proposed amendment rectifies that oversight.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, 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. Macdonald 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 accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

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 small and microbusinesses and rural communities. 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. 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 proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal

department administrative processes and not to any business or person. 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 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 an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.301. Duties of the Department.

(a) [~~The executive director shall prepare and make available a list of the types of information maintained by the department that are included in each of the applicable categories listed in §51.300 of this title (relating to Definitions).~~]

[~~(b)~~] The department will collect only that customer information and personal customer information required to carry out department functions.

(b) [~~(c)~~] The department will use customer information and personal customer information only as required to carry out department functions.

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
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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.82

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §65.82, concerning Disease Detection and Response. The proposed amendment would establish five new Surveillance Zones (SZs) in response to the continued detection of chronic wasting disease (CWD) in deer breeding facilities.

The proposed amendment would implement heightened surveillance efforts in the affected areas as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids (including white-tailed and mule deer) and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and

epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the State of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

When CWD is detected in a deer breeding facility, a SZ is created, consisting of the area within a two-mile radius around the deer breeding facility (the physical facility, not the boundaries of the property where the facility is located), within which the department implements heightened sampling efforts in an effort to quickly determine the prevalence and spread of CWD, if it exists, surrounding the facility where it has been discovered.

On March 11, 2024, the department received confirmation of CWD in a 10.5-year-old female deer in a deer breeding facility in Real County. On April 5, 2024, the department received confirmation of CWD in two 2.6-year-old female deer in a deer breeding facility in Edwards County (the department notes that both deer had tested negative via ante-mortem test one year earlier, which illustrates why ante-mortem testing, at this point in time, cannot be used as a definitive test for individual animals). On April 11, 2024, the department received confirmation of CWD in a 2.6-year-old male deer in a deer breeding facility in Zavala County. On June 7, 2024, the department received confirmation of CWD in a 2.9-year-old female deer in a deer breeding facility in Trinity County. On June 26, 2024, the department received confirmation of CWD in a 1.9-year-old female deer in a deer breeding facility in Sutton County. In response to these detections, per department policy, the proposed amendment would create new SZs in Real, Edwards, Zavala, Trinity, and Sutton counties, to consist of a two-mile radius around each positive facility.

NOTE: Regulation of CWD response and surveillance efforts *within* deer breeding facilities *is not* the subject of this rulemaking; the rules governing CWD response and surveillance *within* deer breeding facilities are located in Division 2 of this subchapter and are not affected or implicated by this rulemaking.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rule as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties.

Mr. Macdonald also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There could be adverse economic impact to persons required to comply with the rules as proposed. Persons who harvest deer within a SZ where mandatory testing requirements are in effect (which would be the case in all four proposed new SZs) are required to preserve and present the heads of harvested animals to the department for CWD testing (testing costs are borne by the department). Therefore, persons who harvest a deer within a SZ would incur the cost of transporting the head to a department-designated check station, unless a tissue sample is removed at the site of harvest by a TAHC-certified CWD sample collector (training and certification are free) or the department has approved an alternative arrangement in writing. The department estimates the cost of compliance to be less than $50, which represents the maximum fuel cost to travel 100 miles round-trip averaging 20 miles per gallon fuel efficiency at the current per-gallon gasoline average cost in Texas of $3.10.

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, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small 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 because the proposed rule does not directly or indirectly regulate any small business, microbusiness or rural community, neither the economic impact statement nor the regulatory flexibility analysis required under Government Code, Chapter 2006, is not 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 result in direct impacts to 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 rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not 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 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; create a new regulation;

will not limit or repeal an existing regulation, but will expand an existing regulation (by adding new SZs); not increase 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 Dr. Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith

School Road, Austin, Texas, 78744; (830) 890-1230 (e-mail: jhunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 42, Chapter 43, Subchapter L, Chapter 61.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable within the described areas.

(1) Surveillance Zones.

(A) - (W) (No change.)

(X) Surveillance Zone 27. Surveillance Zone 27 is that portion of Real County lying within the area described by the following latitude/longitude pairs: -99.63358622690, 29.74740424300; -99.63384664940, 29.74740588320; -99.63630602460, 29.74742972970; -99.63822561720, 29.74749661820; -99.64039583640, 29.74768937750; -99.64254697450, 29.74800554780; -99.64466982810, 29.74844377660; -99.64675531410, 29.74900218880; -99.64879450940, 29.74967839550; -99.65077868790, 29.75046950360; -99.65269935880, 29.75137212810; -99.65454830190, 29.75238240720; -99.65631760350, 29.75349601800; -99.65799968990, 29.75470819550; -99.65958735980, 29.75601375260; -99.66107381480, 29.75740710260; -99.66245268930, 29.75888228260; -99.66371807700, 29.76043297940; -99.66486455660, 29.76205255620; -99.66588721470, 29.76373408120; -99.66678166770, 29.76547035690; -99.66754407970, 29.76725395110; -99.66817117940, 29.76907722870; -99.66866027470, 29.77093238430; -99.66900926350, 29.77281147530; -99.66921664330, 29.77470645650; -99.66928151800, 29.77660921390; -99.66927855890, 29.77747272590; -99.66927764360, 29.77761817260; -99.66926996550, 29.77845652150; -99.66926258990, 29.77887855860; -99.66924042410, 29.77973782920; -99.66917079570, 29.78107273250; -99.66895040620, 29.78296660170; -99.66858848220, 29.78484384230; -99.66808656550, 29.78669641440; -99.66744679790, 29.78851638320; -99.66667191200, 29.79029595330; -99.66576521960, 29.79202750180; -99.66473059780, 29.79370361100; -99.66357247240, 29.79531710050; -99.66229579900, 29.79686105770; -99.66090604180, 29.79832886750; -99.65940915040, 29.79971424070; -99.65781153410, 29.80101124140; -99.65612003490, 29.80221431160; -99.65434189770, 29.80331829610; -99.65248473950, 29.80431846380; -99.65055651660, 29.80521052850; -99.64856549090, 29.80599066700; -99.64652019380, 29.80665553590; -99.64442938980, 29.80720228570; -99.64230203930, 29.80762857290; -99.64014725950, 29.80793257060; -99.63797428540, 29.80811297580; -99.63579243040, 29.80816901510; -99.63333624990, 29.80816193950; -99.63115486740, 29.80809333070; -99.62898330790, 29.80790041000; -99.62683087880, 29.80758400430; -99.62470680510, 29.80714546970; -99.62262018990, 29.80658668590; -99.62057997540, 29.80591004760; -99.61859490440, 29.80511845490; -99.61667348280, 29.80421530040; -99.61482394310, 29.80320445470; -99.61305420890, 29.80209024970; -99.61137186130, 29.80087746030; -99.60978410580, 29.79957128340; -99.60829774200, 29.79817731620; -99.60691913410, 29.79670153150; -99.60565418370, 29.79515025270; -99.60450830490, 29.79353012600; -99.60348640070, 29.79184809250; -99.60259284230, 29.79011135800; -99.60183145040, 29.78832736240; -99.60120547900, 29.78650374740; -99.60071760170, 29.78464832410; -99.60036989990, 29.78276903940; -99.60016385460, 29.78087394180; -99.60010033990, 29.77897114720; -99.60010413750, 29.77862487110; -99.60012056250, 29.77770164640; -99.60013070060, 29.77631311540; -99.60020951860, 29.77449091000; -99.60043123760, 29.77259716500; -99.60079444130, 29.77072012560; -99.60129756640, 29.76886782830; -99.60193845100, 29.76704820330; -99.60271434360, 29.76526904030; -99.60362191550, 29.76353795550; -99.60465727490, 29.76186235890; -99.60581598360, 29.76024942230; -99.60709307600, 29.75870604930; -99.60848308080, 29.75723884530; -99.60998004430, 29.75585408930; -99.61157755570, 29.75455770730; -99.61326877490, 29.75335524680; -99.61504646140, 29.75225185330; -99.61690300570, 29.75125224800; -99.61883046170, 29.75036070820; -99.62082058030, 29.74958104830; -99.62286484520, 29.74891660410; -99.62495450890, 29.74837021860; -99.62708063010, 29.74794422920; -99.62923411210, 29.74764045850; -99.63140574140, 29.74746020600; and -99.63358622690, 29.74740424300.

(Y) Surveillance Zone 28. Surveillance Zone 28 is that portion of Edwards County lying within the area described by the following latitude/longitude pairs: -100.24143575900, 30.02348759070; -100.23781875700, 30.02348063380; -100.23577840300, 30.02342242490; -100.23360080700, 30.02323984810; -100.23144160800, 30.02293369070; -100.22931006000, 30.02250526490; -100.22721529900, 30.02195640690; -100.22516630100, 30.02128946910; -100.22317184700, 30.02050730990; -100.22124048300, 30.01961328150; -100.21938048500, 30.01861121520; -100.21759982100, 30.01750540560; -100.21590611800, 30.01630059130; -100.21430663200, 30.01500193530; -100.21280821100, 30.01361500240; -100.21141727300, 30.01214573530; -100.21013977000, 30.01060042950; -100.20898117300, 30.00898570570; -100.20794643700, 30.00730848180; -100.20703998900, 30.00557594300; -100.20626570500, 30.00379551120; -100.20562689500, 30.00197481290; -100.20512628600, 30.00012164690; -100.20476601500, 29.99824395020; -100.20454761700, 29.99634976470; -100.20447201800, 29.99444720240; -100.20453953400, 29.99254441050; -100.20461978700, 29.99166022680; -100.20479826200, 29.99001389450; -100.20492833800, 29.98900320480; -100.20528057000, 29.98712436310; -100.20577319100, 29.98526959720; -100.20640408500, 29.98344684780; -100.20717054200, 29.98166391820; -100.20806927500, 29.97992844060; -100.20909642900, 29.97824784390; -100.21024760100, 29.97662932150; -100.21151785700, 29.97507980080;

-100.21290175600, 29.97360591340; -100.21439337000, 29.97221396730; -100.21598631100, 29.97090991900; -100.21767375800, 29.96969934900; -100.21944848600, 29.96858743750; -100.22130290000, 29.96757894230; -100.22322906200, 29.96667817840; -100.22521872800, 29.96588900010; -100.22726338300, 29.96521478370; -100.22935427900, 29.96465841400; -100.23148247000, 29.96422227130; -100.23363884900, 29.96390822160; -100.23581419000, 29.96371760840; -100.23770772400, 29.96365289980; -100.24133424100, 29.96361851440; -100.24162570300, 29.96361685350; -100.24381100900, 29.96367496580; -100.24598727800, 29.96385736540; -100.24814519900, 29.96416327200; -100.25027554000, 29.96459137680; -100.25236918500, 29.96513984830; -100.25441717700, 29.96580633980; -100.25641075200, 29.96658799990; -100.25834137900, 29.96748148410; -100.26020079500, 29.96848296950; -100.26198104200, 29.96958817110; -100.26367449900, 29.97079235960; -100.26527391700, 29.97209038230; -100.26677244700, 29.97347668460; -100.26816367100, 29.97494533390; -100.26944163100, 29.97649004490; -100.27060085200, 29.97810420640; -100.27163636500, 29.97978090980; -100.27254373200, 29.98151297830; -100.27331906100, 29.98329299770; -100.27395902800, 29.98511334830; -100.27446088300, 29.98696623710; -100.27482247000, 29.98884373140; -100.27504223400, 29.99073779280; -100.27511922400, 29.99264031130; -100.27505310200, 29.99454314030; -100.27496162900, 29.99553538140; -100.27477259300, 29.99722316270; -100.27465510400, 29.99812591280; -100.27430418600, 30.00000495070; -100.27381280900, 30.00185998760; -100.27318307100, 30.00368307830; -100.27241766100, 30.00546641400; -100.27151985000, 30.00720235560; -100.27049347700, 30.00888346680; -100.26934293200, 30.01050254570; -100.26807313900, 30.01205265570; -100.26668953200, 30.01352715560; -100.26519803400, 30.01491972750; -100.26360503200, 30.01622440460; -100.26191734800, 30.01743559620; -100.26014220900, 30.01854811220; -100.25828722000, 30.01955718500; -100.25636032900, 30.02045849020; -100.25436979100, 30.02124816520; -100.25232413500, 30.02192282560; -100.25023212800, 30.02247957990; -100.24810273400, 30.02291604200; -100.24594508100, 30.02323034110; -100.24376841500, 30.02342113010; -100.24158206600, 30.02348759130; and -100.24143575900, 30.02348759070.

(Z) Surveillance Zone 29. Surveillance Zone 29 is that portion of Zavala County lying within the area described by the following latitude/longitude pairs: -99.68691279230, 28.82582867400; -99.68907222500, 28.82589629680; -99.69122201900, 28.82608811120; -99.69335297670, 28.82640329670; -99.69528037820, 28.82679906960; -99.69691072370, 28.82717952280; -99.69708632770, 28.82722095580; -99.69820768350, 28.82750727510; -99.69827582530, 28.82752582970; -99.69834598970, 28.82753711480; -99.69894341040, 28.82763821740; -99.70104646620, 28.82807533230; -99.70311257680, 28.82863260100; -99.70513290160, 28.82930763950; -99.70709879560, 28.83009755960; -99.70900184580, 28.83099898180; -99.71083390770, 28.83200804910; -99.71258713970, 28.83312044410; -99.71425403680, 28.83433140700; -99.71582746270, 28.83563575590; -99.71730068030, 28.83702790930; -99.71866738030, 28.83850190960; -99.71992170880, 28.84005144870; -99.72105829180, 28.84166989480; -99.72207225860, 28.84335032100; -99.72295926260, 28.84508553450; -99.72371550010, 28.84686810780; -99.72433772640, 28.84869041010; -99.72482327020, 28.85054464020; -99.72517004490, 28.85242285970; -99.72537655770, 28.85431702700; -99.72544191610, 28.85621903160; -99.72543869810, 28.85655912860; -99.72543352620, 28.85688024760; -99.72542913840, 28.85720137580; -99.72535534130, 28.85882548070; -99.72525540900, 28.85985043490; -99.72523936150, 28.85998669040; -99.72512208270, 28.86085498370; -99.72476466730, 28.86273167270; -99.72426857030, 28.86458376540; -99.72363590890, 28.86640332930; -99.72286938540, 28.86818257050; -99.72222581770, 28.86945405140; -99.72190409340, 28.87005081490; -99.72165054830, 28.87051063050; -99.72062667710, 28.87218656460; -99.71948043510, 28.87379995780; -99.71821672730, 28.87534389780; -99.71684096230, 28.87681176950; -99.71535902990, 28.87819728370; -99.71377727530, 28.87949450330; -99.71210247250, 28.88069786980; -99.71034179500, 28.88180222640; -99.70850278480, 28.88280284040; -99.70659332070, 28.88369542350; -99.70462158380, 28.88447615050; -99.70259602300, 28.88514167530; -99.70052531830, 28.88568914550; -99.69841834360, 28.88611621460; -99.69628412890, 28.88642105210; -99.69413182090, 28.88660235150; -99.69197064430, 28.88665933580; -99.68980986190, 28.88659176060; -99.68971724040, 28.88658607300; -99.68779617360, 28.88646570420; -99.68779617360, 28.88646570420; -99.68664422150, 28.88639351180; -99.68605810440, 28.88635677600; -99.68605810440, 28.88635677600; -99.68379316800, 28.88621479160; -99.68173468150, 28.88602853720; -99.67960245650, 28.88571314420; -99.67749825210, 28.88527565650; -99.67543108620, 28.88471794910; -99.67340981760, 28.88404241230; -99.67144310790, 28.88325194150; -99.66953938420, 28.88234992450; -99.66770680320, 28.88134022700; -99.66595321580, 28.88022717630; -99.66428613390, 28.87901554210; -99.66271269760, 28.87771051660; -99.66123964520, 28.87631769200; -99.65987328390, 28.87484303650; -99.65861946300, 28.87329286840; -99.65748354880, 28.87167382960; -99.65647040180, 28.86999285620; -99.65558435590, 28.86825714980; -99.65482919960, 28.86647414580; -99.65420816050, 28.86465148180; -99.65372389090, 28.86279696470; -99.65337845730, 28.86091853770; -99.65317333080, 28.85902424570; -99.65310938190, 28.85712220090; -99.65318687590, 28.85522054860; -99.65340547300, 28.85332743150; -99.65376422880, 28.85145095560; -99.65417222990, 28.84989534010; -99.65485195240, 28.84759377430; -99.65494131770, 28.84729758900; -99.65557513810, 28.84547839050; -99.65634271210, 28.84369958230; -99.65724074650, 28.84196877910; -99.65826539060, 28.84029338950; -99.65941225200, 28.83868058470; -99.66067641600, 28.83713726730; -99.66205246680, 28.83567004260; -99.66353451030, 28.83428518960; -99.66511619960, 28.83298863470; -99.66679076240, 28.83178592600; -99.66855102960, 28.83068221000; -99.67038946610, 28.82968220940; -99.67229820320, 28.82879020280; -99.67426907200, 28.82801000680; -99.67629363830, 28.82734495950; -99.67836323910, 28.82679790610; -99.68046901880, 28.82637118710; -99.68260196760, 28.82606662820; -99.68475295970, 28.82588553230; and -99.68691279230, 28.82582867400.

(AA) Surveillance Zone 30. Surveillance Zone 30 is that portion of Trinity County lying within the area described by the following latitude/longitude pairs: -95.41825903620, 30.91987565240; -95.42046121760, 30.92001665360; -95.42264799820, 30.92028148930; -95.42481002210, 30.92066902660; -95.42693803910, 30.92117760720; -95.42799685780, 30.92147976490; -95.42931635910, 30.92187727490; -95.43034245440, 30.92220255500; -95.43237534520, 30.92294616530; -95.43434750510, 30.92380277750; -95.43625049430, 30.92476872650; -95.43807616800, 30.92583987920; -95.43981671160, 30.92701165210; -95.44146467380, 30.92827903110; -95.44301299890, 30.92963659280; -95.44445505660, 30.93107852770; -95.44578467030, 30.93259866460; -95.44699614430, 30.93419049790; -95.44808428720, 30.93584721430; -95.44904443520, 30.93756172270; -95.44987247120, 30.93932668420; -95.45056484330, 30.94113454360; -95.45111857980, 30.94297756160; -95.45153130180, 30.94484784770; -95.45168984950, 30.94583046340; -95.45170153190, 30.94591317890; -95.45172156340, 30.94599469660; -95.45204820280, 30.94752464490; -95.45231815290, 30.94941419030; -95.45244414500, 30.95131490660; -95.45242563090, 30.95321865500; -95.45226268130, 30.95511728330; -95.45195598540, 30.95700266070; -95.45150684820, 30.95886671290; -95.45091718520, 30.96070145600; -95.45074663350, 30.96115844470; -95.45070131910, 30.96127651180; -95.45014419810, 30.96261709860; -95.44976470130, 30.96342785740; -95.44972935510, 30.96350021710; -95.44970201260, 30.96357510720; -95.44899338020, 30.96532023480; -95.44813076220, 30.96707293470; -95.44713692960, 30.96877325800; -95.44643645170, 30.96982702420; -95.44629526740, 30.97002949370; -95.44615803280, 30.97023396980; -95.44545086040, 30.97124012350; -95.44420787480, 30.97281409130; -95.44284803920, 30.97431462580; -95.44264024460, 30.97452699470; -95.44245258470, 30.97471693710; -95.44118950960, 30.97592523840; -95.43961390750, 30.97725995860; -95.43794032090, 30.97850300970; -95.43617591750, 30.97964906540; -95.43432825530, 30.98069321440; -95.43240524960, 30.98163098210; -95.43058471020, 30.98239317780; -95.43034208550, 30.98248711670; -95.43017251450, 30.98255228830; -95.42812382350, 30.98326570610; -95.42602533470, 30.98386212040; -95.42388604110, 30.98433897500; -95.42171511110, 30.98469422610; -95.42067176220, 30.98482031430; -95.42025288460, 30.98486520430; -95.41910297020, 30.98497123750; -95.41689677470, 30.98507923460; -95.41646984180, 30.98508574490; -95.41622407820, 30.98508815300; -95.41597843730, 30.98509526360; -95.41565537550, 30.98510328120; -95.41344570410, 30.98508667300; -95.41124202970, 30.98494555210; -95.40905379730, 30.98468052340; -95.40689038540, 30.98429272280; -95.40476106630, 30.98378381230; -95.40267496520, 30.98315597310; -95.40064102200, 30.98241189600; -95.39866795240, 30.98155476990; -95.39815043740, 30.98130622990; -95.39751076160, 30.98099264800; -95.39612454410, 30.98027467920; -95.39429829930, 30.97920293460; -95.39255736250, 30.97803054940; -95.39090919050, 30.97676254770; -95.38936084220, 30.97540436270; -95.38791894750, 30.97396181430; -95.38658967980, 30.97244108320; -95.38537872860, 30.97084868500; -95.38429127610, 30.96919144200; -95.38384044870, 30.96842104560; -95.38377650230, 30.96830761660; -95.38326802920, 30.96736302470; -95.38244098290, 30.96559763780; -95.38174972510, 30.96378941490; -95.38119720890, 30.96194610120; -95.38078579260, 30.96007559190; -95.38051723010, 30.95818589820; -95.38039266300, 30.95628511280; -95.38041261590, 30.95438137570; -95.38057699500, 30.95248283890; -95.38075944830, 30.95126417830; -95.38077466290, 30.95117708750; -95.38078152510, 30.95108921390; -95.38089911850, 30.94992992920; -95.38120719660, 30.94804472080; -95.38165765700, 30.94618091330; -95.38192847900, 30.94528198140; -95.38219713100, 30.94444536480; -95.38251720930, 30.94350986920; -95.38307458990, 30.94210307800; -95.38356642230, 30.94095820250; -95.38373783970, 30.94056779840; -95.38460140130, 30.93881552770; -95.38510090270, 30.93792733960; -95.38553325800, 30.93719063890; -95.38602838440, 30.93637898210; -95.38714981300, 30.93473883870; -95.38839324390, 30.93316541860; -95.38873164430, 30.93277291650; -95.38993859090, 30.93139727740; -95.39096026730, 30.93028980720; -95.39243118200, 30.92886970750; -95.39400664490, 30.92753556120; -95.39567990970, 30.92629307760; -95.39744381240, 30.92514757340; -95.39929080230, 30.92410395050; -95.40121297360, 30.92316667430; -95.40320209980, 30.92233975530; -95.40524966840, 30.92162673160; -95.40734691780, 30.92103065380; -95.40948487410, 30.92055407230; -95.41165438970, 30.92019902600; -95.41384618260, 30.91996703410; -95.41605087550, 30.91985908890; and -95.41825903620, 30.91987565240.

(BB) Surveillance Zone 31. Surveillance Zone 31 is that portion of Sutton County lying within the area described by the following latitude/longitude pairs: -100.30709999600, 30.45531644700; -100.30929655300, 30.45537343720; -100.31148411100, 30.45555472780; -100.31365331200, 30.45585954330; -100.31579487400, 30.45628657970; -100.31789963500, 30.45683400980; -100.31995859000, 30.45749949170; -100.32196292700, 30.45828017800; -100.32390407000, 30.45917272850; -100.32577371100, 30.46017332420; -100.32756384700, 30.46127768380; -100.32926681700, 30.46248108180; -100.33087532900, 30.46377836860; -100.33238249700, 30.46516399290; -100.33378186400, 30.46663202480; -100.33437532300, 30.46734486030; -100.33453905200, 30.46750807180; -100.33488142900, 30.46785462040; -100.33594775500, 30.46899057560; -100.33723339600, 30.47053471100; -100.33839973500, 30.47214836470; -100.33944177300, 30.47382463000; -100.34035504400, 30.47555633210; -100.34113563100, 30.47733605840; -100.34178018600, 30.47915619030; -100.34228594000, 30.48100893580; -100.34265072100, 30.48288636280; -100.34287295800, 30.48478043310; -100.34295169300, 30.48668303680; -100.34295216400, 30.48681482550; -100.34288704900, 30.48871781560; -100.34277468300, 30.48989300360; -100.34275229700, 30.49008076470; -100.34265596900, 30.49080080390; -100.34230458000, 30.49268015210; -100.34181199300, 30.49453557230; -100.34118031100, 30.49635911780; -100.34041223000, 30.49814297770; -100.33951103400, 30.49987951090; -100.33902135800, 30.50071192280; -100.33885428600, 30.50098499780; -100.33831350100, 30.50183435270; -100.33750815900, 30.50298798940; -100.33737830400, 30.50316462340; -100.33725313200, 30.50334377430; -100.33649928000,

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(CC) [(X)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (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 July 8, 2024.

TRD-202402992
Todd S. George
Assistant General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

40 TAC §178.5

The Texas Veterans Land Board (VLB) proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 178, §178.5, concerning Burial Eligibility Criteria.

The proposed amendments to §178.5 respond to changes in requirements for those eligible for burial in Texas State Veterans Cemeteries (TSVCs). On June 12, 2023, the Governor signed the Bishop Evans Act (House Bill 90) to provide death benefits to Texas military forces members killed on active state duty and their families. In response, at its October 19, 2023, meeting, the VLB unanimously resolved to allow Texas military forces members killed on active state duty or on training and other duty to be interred in TSVCs.

At its June 25, 2024, meeting and pursuant to the Texas Natural Resources Code, §164.005(f), the Texas State Veterans Cemetery Committee (Committee) established guidelines for determining eligibility for burial in the TSVCs. These guidelines direct the VLB to determine burial eligibility and engage in related rulemaking. These guidelines allow the Board to extend such eligibility to individuals not provided for in laws and regulations associated with the Department of Veterans' Affairs National Cemetery Administration (NCA) to the extent permitted by law, or if such eligibility does not jeopardize future (NCA)-related funding.

In line with the Committee's guidelines, the VLB proposes amendments to §178.5 extending eligibility for interment in TSVCs to these Texas military forces members killed on active state duty or on training and other duty.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Darren Fitz Gerald, Assistant Executive Secretary for the VLB, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Fitz Gerald has determined that for each year of the first five years the proposed amendments are in effect, there will be no

economic effect on businesses or individuals. The economic effect of will be limited to the VLB, as it will pay the costs associated with these interments. The public benefit will be the increase in benefits available to individuals performing duties in support of the state.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Fitz Gerald has determined that the proposed amendments will not affect a local economy, so the VLB is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The VLB has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Fitz Gerald 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, the VLB has determined the following:

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

(2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the VLB;

(4) the proposed amendments will not require an increase or decrease in fees paid to the VLB;

(5) the proposed amendments do not create a new regulation;

(6) the proposed amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

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

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, or by email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed pursuant to Section 164.004 of the Texas Natural Resources Code, which allows the VLB to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping TSVCs.

The code affected by the proposed amendments is Texas Natural Resources Code, Chapter 164.

§178.5. Burial Eligibility Criteria.

For [~~In order to qualify for all funding available from the USDVA through the State Cemetery Program, the Board, for~~] each TSVC, the Board will allow for [~~only~~] the interment of veterans and eligible relatives as defined by the USDVA laws and regulations[~~, as they may be amended from time-to-time~~]. In addition, the Board will allow for the interment of Texas military forces members killed on state active duty or during state training and other duty, as defined in Chapter 437 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on July 2, 2024.

TRD-202402929
Jennifer Jones
Chief Clerk
Texas Veterans Land Board
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 475-1859

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.52, 800.63, 800.71, 800.74, 800.75, and 800.77.

TWC proposes the repeal of the following section of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.65

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to amend Subchapter B, Allocations, to:

--update rule language to conform with current federal program requirements, particularly those relating to the Workforce Innovation and Opportunity Act (WIOA); and

--repeal §800.65 relating to Project Reintegration of Offenders (Project RIO) to align with the Commission's repeal of Texas Administrative Code (TAC), Title 40, Chapter 847, Project RIO Employment Activities and Support Services. Though Project RIO is no longer operational, Local Workforce Development Boards (Boards) continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.52. Definitions

Section 800.52 is amended to align language and references with current federal programs.

§800.63. Workforce Investment Act (WIA) Allocations

Section 800.63 is amended to align language with current federal programs and update statutory references. Section 800.63(i) is amended, and (j) and (k) are removed, to align WIOA statewide funding methodologies with federal regulations. Removal of subsection (k) further clarifies the Commission's ability to use and transmit statewide funds to Boards as needed, including use of funds to address emerging needs in regions throughout Texas.

Section 800.63 is amended to change the section name from "Workforce Investment Act (WIA) Allocations" to "Workforce Innovation and Opportunity Act (WIOA) Allocations."

§800.65. Project Reintegration of Offenders

Section 800.65 is repealed to align with the Commission's repeal of Chapter 847, Project RIO Employment Activities and Support Services.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 is amended to remove inactive programs and add WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.74. Midyear Deobligation of Funds

Section 800.74 is amended to remove inactive programs. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75 is amended to align language with current federal programs.

Section 800.75 is amended to change the section name from "Second-Year WIA Deobligation of Funds" to "Second-Year WIOA Deobligation of Funds."

§800.77. Reallocation of Funds

Section 800.77 is amended to remove inactive programs and include WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend Subchapter B, Allocations, to align with current federal program requirements, primarily those relating to WIOA, and to repeal §800.65, relating to Project RIO, to align with the Commission's repeal of 40 TAC, Chapter 847, Project RIO Employment Activities and Support Services.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--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 TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to enhance availability of Commission-approved initiatives by removing self-imposed agency restrictions for Boards throughout Texas.

PART IV. COORDINATION ACTIVITIES

The proposed amendments update TWC rules to align with federal program requirements under WIOA and the Commission's repeal of 40 TAC, Chapter 847, Project RIO Employment Activities and Support Services. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than August 19, 2024.

SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.52, 800.63, 800.71, 800.74, 800.75, 800.77

STATUTORY AUTHORITY

The proposed rules implement provisions of WIOA by making conforming changes to TWC rules to align with current federal program requirements.

The rules are proposed under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

§800.52. Definitions.

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

(1) Accrued Expenditures--Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.

(2) All-Family Participation Rate--The percentage of all families receiving Temporary Assistance for Needy Families (TANF) benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by Title IV, Part A, §407 of the Social Security Act (42 USC §607) [~~the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §407, as amended~~].

(3) Contract Closeout Settlement Package--Financial, performance, and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:

(A) the contract has expired;

(B) all available funds for the contract period have been paid out;

(C) all accrued expenditures chargeable to the specific contract have been incurred; or

(D) the period of available funds has expired or been terminated.

(4) Contract Period--The length of time in which a contract for allocated funds between the Commission and a Local Workforce Development Board (Board) or an Adult Education and Literacy (AEL) grant recipient is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.

(5) Deobligation--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board or an AEL grant recipient for allocated funds[~~,~~] on the basis of provisions as set forth in §§800.73, 800.74, 800.78, and 800.79 of this subchapter.

(6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one percent) of a total allocation, which shall be provided equally to each local workforce development area (workforce area).

(7) Hold Harmless/Stop Gain--A procedure that ensures [~~assures~~] that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.

(8) Monthly expenditure report--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.

(9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of the [~~a~~] contract period, unless such definition is superseded by federal requirements.

(10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.

(11) WIOA [~~WIA~~] Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of Workforce Innovation and Opportunity Act (WIOA) Title I funding: [~~WIA~~] Adult, Dislocated Worker, and Youth.

§800.63. Workforce Innovation and Opportunity [~~Investment~~] Act WIOA [~~WIA~~] Allocations.

(a) Definitions. The following words and terms when used in this section[~~,~~] shall have the following meanings, unless the context clearly indicates otherwise.

(1) Area of substantial unemployment--As defined in WIOA [~~WIA §127(b)(2)(B) (29 U.S.C.A. §2852(b)(2)(B)) and WIA~~] §132(b)(1)(B)(v)(III) (29 USC §3172(b)(1)(B)(v)(III)) [~~(29 U.S.C.A. §2862(b)(1)(B)(v)(III))~~].

(2) Disadvantaged adult--As defined in WIOA §132(b)(1)(B)(v)(IV - V) (29 USC §3172(b)(1)(B)(v)(IV-V)) [~~WIA §132(b)(1)(B)(v)(IV) (29 U.S.C.A. §2862(b)(1)(B)(v)(IV))~~].

(3) Disadvantaged youth--As defined in WIOA [~~WIA~~] §127(b)(2)(C) (29 USC §31622(b)(2)(C)) [~~(29 U.S.C.A. §2852(b)(2)(C))~~].

(b) Scope and Authority. Funds available to the Commission under Title I of WIOA [~~WIA~~] for youth activities, adult employment and training activities, and dislocated worker employment and training activities shall be allocated to workforce areas or reserved for statewide activities in accordance with:

(1) the provisions of prior consistent state law as authorized by WIOA §193(a)(1)(A) (29 USC §3253(a)(1)(A)) [~~WIA §194(a)(1)(A) (29 U.S.C.A. §2944(a)(1)(A))~~], including, but not limited to, Texas Labor Code §302.062, as amended, and Subchapter B of this title [~~(relating to Allocations and Funding)~~];

(2) WIOA [~~the WIA~~] and related federal regulations as amended; and

(3) the WIOA [~~WIA~~] State Plan.

(c) Reserves and Allocations for Youth and Adult Employment and Training Activities. The Commission shall reserve no more than 15 percent [%] and shall allocate to workforce areas at least 85 percent [%] of the youth activities and adult employment and training activities allotments from the US [~~United States~~] Department of Labor.

(d) Reserves and Allocations for Dislocated Worker Employment and Training Activities. The Commission shall allocate the dislocated worker employment and training allotment in the following manner:

(1) reserve no more than 15 percent [%] for statewide workforce investment activities;

(2) reserve no more than 25 percent [%] for state-level [~~state level~~] rapid response and additional local assistance activities, and determine the proportion allocated to each activity; and

(3) allocate at least 60 percent [%] to workforce areas.

(e) State-Adopted [~~State Adopted~~] Elements, Formulas, and Weights. The Commission shall implement the following elements, formulas, and weights adopted for Texas in the WIOA [~~WIA~~] State Plan in allocating WIOA [~~WIA~~] funds to workforce areas.

(1) WIOA [~~WIA~~] adult employment and training activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIOA §133(b)(2) (29 USC §3173(b)(2)) [~~WIA §132(b)(1)(B) and (29 U.S.C.A. §2863(b)(2))~~] based on the following:

(A) 33-1/3 [~~33 1/3~~] percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in areas of substantial unemployment in the state [~~State~~];

(B) 33-1/3 [~~33 1/3~~] percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the state [~~State~~]; and

(C) 33-1/3 [~~33 1/3~~] percent on the basis of the relative number of disadvantaged adults in each workforce area, compared to the total number of disadvantaged adults in the state [~~State~~].

(2) 33-1/3 [~~33 1/3~~] dislocated worker employment and training activities funds not reserved by the State of Texas under subsection (d) [~~§800.63(d)~~] of this section shall be allocated to the workforce areas as provided in WIOA [~~WIA~~] §133(b)(2) (29 USC §3173(b)(2)) [~~(29 U.S.C.A. §2863(b)(2))~~] based on the following factors:

(A) insured unemployment data;

(B) [~~average~~] unemployment concentrations;

(C) plant closings and mass layoff [~~Worker Adjustment and Retaining Notification Act (29 U.S.C.A. §2101 et seq.)~~] data;

(D) declining industries data;

(E) farmer-rancher economic hardship data; and

(F) long-term unemployment data.

(3) WIOA [~~WIA~~] youth activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIOA [~~WIA~~] §128(b)(2) (29 USC §3163(b)(2)) [~~(29 U.S.C.A. §2853(b)(2))~~] based on the following:

(A) 33-1/3 [~~33 1/3~~] percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the state [~~State~~];

(B) 33-1/3 [~~33 1/3~~] percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the state [~~State~~]; and

(C) 33-1/3 [~~33 1/3~~] percent on the basis of the relative number of disadvantaged youth in each workforce area, compared to the total number of disadvantaged youth in the state [~~State~~].

(f) In making allocations of WIOA [~~WIA~~] formula funds, the Commission will apply minimum funding [~~hold harmless~~] procedures, as set forth in federal regulations (20 CFR 683.125 [~~667.135~~]).

(g) No more than 10 percent [%] of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(h) Reserved Funds. The Commission shall make available the funds reserved under subsection (c) and (d)(1) [~~§§800.63(c) and 800.63(d)(1)~~] of this section to provide required and, if funds are available, allowable statewide activities as outlined in WIOA §129(b) and §134(a) (29 USC §3164 and §3174(a)) [~~WIA §§129 and 134 (29 U.S.C.A. §§2854 and 2864)~~].

(i) The Commission may allocate such proportion of available WIOA Statewide [~~WIA Alternative~~] Funding [~~for Statewide Activities~~] as it determines appropriate[~~, utilizing a distribution methodology that is based on the proportionality of all amounts of WIA formula funds allocated during the same program year, as well as an equal base amount~~].

[~~(j) The Commission may allocate such amounts of available WIA Alternative Funding for Statewide Activities as funding for One-Stop Enhancements, as it determines appropriate.~~]

[~~(k) Expenditure Level for Statewide Activity Funding. A Board shall demonstrate an 80 percent expenditure level of prior year WIA allocated funds in order to be eligible to receive WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. The Commission may reduce the amount of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements if a Board fails to achieve an 80 percent expenditure level of prior year WIA formula allocated funds.~~]

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope. Sections 800.71 - 800.80 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:

(1) Adult Education and Literacy

(2) Child Care

(3) Choices

(4) Employment Service

(5) SNAP E&T

(6) WIOA Formula Funds

[~~(6) Project RIO~~]

[~~(7) WIA Alternative Funding for Statewide Activities~~]

[~~(8) WIA Alternative Funding for One-Stop Enhancements~~]

§800.74. Midyear Deobligation of Funds.

(a) The Commission may deobligate funds from a workforce area during the program year if a workforce area is not meeting the expenditure thresholds set forth in subsection (b) of this section.

(1) Workforce areas that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (that is, [~~i.e.,~~] midyear) will be reviewed to determine the causes for the under expenditure [~~underexpenditure~~] of funds, except as set forth in subsection (d) of this section.

(2) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate the following funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year:

(1) Child care (with the exception of unmatched federal child care funds that are contingent upon a workforce area securing local funds, as set forth in §800.73 of this subchapter)

(2) Choices

(3) Employment Service

(4) SNAP E&T

[~~(5) Project RIO~~]

[~~(6) WIA Alternative Funding for Statewide Activities~~]

[~~(7) WIA Alternative Funding for One-Stop Enhancements~~]

(c) A workforce area subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification with a copy to the Board Chair. The written justification shall provide sufficient detail regarding the actions a workforce area will take to address its deficiencies, including:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) reporting outstanding obligations; and

(4) any other factors a workforce area would like the Commission to consider.

(d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

§800.75. Second-Year WIOA [~~WIA~~] Deobligation of Funds.

(a) In each month of the second year in which the WIOA [~~WIA~~] formula funds are available, the Commission may deobligate funds if a workforce area's unobligated balance of WIOA [~~WIA~~] formula funds exceeds 20 percent of the allocation for each category of WIOA [~~WIA~~] formula funds for the program year.

(b) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount of unobligated funds that exceed 20 percent of the allocation for each category of WIOA [~~WIA~~] formula funds for the program year.

(c) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (a) of this section if within 60 days prior to the potential deobligation period[~~,~~] the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

§800.77. Reallocation of Funds.

(a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:

(1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)

(2) Choices

(3) Employment Service

(4) SNAP E&T

[~~(5) Project RIO~~]

(5) [~~(6)~~] WIOA [~~WIA~~] Formula Funds

[~~(7) WIA Alternative Funding for Statewide Activities~~]

[~~(8) WIA Alternative Funding for One-Stop Enhancements~~]

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2) - (5) [~~subsection (a)(2) - (8)~~] of this section, the Commission may consider whether a workforce area:

(A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;

(B) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) has an established plan for working with at least one of the governor's [~~Governor's~~] industry clusters, as specified in the local Board plan;

(F) is current on expenditure reporting;

(G) is current with all single audit requirements; and

(H) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:

(A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and

(B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.

(c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:

(1) the amount specified in a workforce area's written request for additional funds;

(2) the amount available for reallocation versus the total dollar amount of requests;

(3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;

(4) the extent to which the project supports activities related to the governor's [~~Governor's~~] industry clusters;

(5) the workforce area's performance during the current and prior program year; and

(6) related factors, as necessary, to ensure that funds are fully used.

(d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

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

Filed with the Office of the Secretary of State on July 2, 2024.

TRD-202402927
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 18, 2024
For further information, please call: (512) 850-8356

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40 TAC §800.65

The repeal is proposed under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal relates to Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

§800.65. Project Reintegration of Offenders.

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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