PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8058

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to make clarifying and corrective updates to this rule. In accordance with the existing rule regarding state-owned or state-operated teaching hospitals, HHSC uses the Centers for Medicare & Medicaid Services (CMS) final audited cost report (ACR) from state fiscal year (SFY) 2007 to calculate the base year average per resident amount for state-owned or state-operated teaching hospitals. The proposed rule will instruct HHSC to use the most recent final audited cost report to make this calculation. In addition, Medicare cost report line references will be updated to align with the calculation methodology for the GME programs.

SECTION-BY-SECTION SUMMARY

Formatting, punctuation, and grammar edits are made throughout the rule for clarity and consistency.

The proposed amendment to §355.8058(a)(2)(B)(i) updates the definition of "Base year average per resident amount" to be based on the most recent CMS final ACR instead of the final ACR ending in state fiscal year 2007. The proposed amendment also corrects the cost report line references for Medicaid allowable inpatient direct GME cost and unweighted full time equivalent (FTE) residents. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(B)(ii) updates the definition of "Current FTE residents" by correcting the cost report form and line references for unweighted FTE residents. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(B)(iii) updates the definition of "GME Medicaid inpatient utilization percentage" by correcting the cost report form and line references for inpatient days and clarifying the numerator and denominator used in the calculation. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(E) clarifies the description of "quarterly FTE data" used to calculate the quarterly interim GME payments made to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(B) corrects the cost report line references for FTE residents. This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(C) clarifies which value is used for Medicare per resident amount (PRA). This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(D) more specifically cites the cost report line references for Medicaid and total inpatient days used to calculate the GME Medicaid inpatient utilization percentage. This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(c)(2)(B)(i) corrects the cost report line references for FTE residents. This section of the rule applies to privately-owned hospitals.

The proposed amendment to §355.8058(c)(2)(C) clarifies the cost report line references for Medicare per resident amount (PRA). This section of the rule applies to privately-owned hospitals.

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 not expand, limit, or repeal 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 this rule does not impose cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule due to increased accuracy in the description of the Inpatient Direct GME program methodology.

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 fees or costs on those who 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 HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance communications website at https://pfd.hhs.texas.gov/provider-finance-communications.

Please contact the Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin Texas 78714-9030, in person at 4601 West Guadalupe Street, Austin, TX 78751, or by email to pfd_hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If 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 §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement." in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state- operated teaching hospitals.[~~:~~]

(A) Inpatient direct GME cost, as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 is calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions.

(i) Base year average per resident amount--The [~~the~~] hospital's Medicaid allowable inpatient direct GME cost as reported on CMS Form 2552-10, [~~2552-96,~~] Hospital Cost Report of the most recent Centers for Medicare & Medicaid Services (CMS) final audited cost report (ACR) [~~ending in state fiscal year 2007~~]; Worksheet B; Part I; Column 25[~~26~~]; Line 118[~~95~~], divided by the unweighted full time equivalent (FTE) [~~FTE~~] residents from Worksheet S-3; Part I; Column 9; the sum of Lines 14, 16, 17, and 18[~~Line 25~~].

(ii) Current FTE residents--The [~~the~~] hospital's number of FTE [~~full time equivalent (FTE)~~] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-10 [~~2552-96~~], Hospital Cost Report; Worksheet S-3; Part I; Column 9; the sum of Lines 14, 16, 17, and 18 [~~Line 25~~].

(iii) GME Medicaid inpatient utilization percentage--The [~~the~~] hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on CMS Form 2552-10; Worksheet S-3; Part 1;

columns 7 and 8. [2552-96, Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.]

(I) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(II) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable CMS [Centers for Medicare and Medicaid Services (CMS)] Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current FTE [full-time equivalent (FTE)] residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's annualized [quarterly] resident FTEs based on quarterly [FTE] data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate [reimbursement for] GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--A [a] hospital with a properly approved medical residency program that is owned and operated by a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--The [the] hospital's number of unweighted FTE [full time equivalent (FTE)] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program, including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; the sum of Lines 14, 16, 17, and 18 [Line 27].

(C) Medicare per resident amount (PRA)--Average [average] direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18; the greater of Column 1 or Column 2.

(D) GME Medicaid inpatient utilization percentage--The [the] hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(i) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(ii) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount; and

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subsection [subchapter] will be made on a semi-annual basis.

(c) HHSC uses the methodology in this subsection to calculate [reimbursement for] GME cost reimbursement for teaching hospitals not described in subsections (a) or (b) of this section.

(1) Effective April 1, 2019, HHSC or its designee may reimburse a non-government owned or operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Teaching hospital--A [a] hospital with a properly approved medical residency program.

(B) FTE residents--The [the] hospital's number of unweighted FTE [full time equivalent (FTE)] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board:

(i) as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; the sum of Lines 14, 16, 17, and 18; [Line 27,] or

(ii) for hospitals excluded from the Prospective Payment System (PPS) for Medicare, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; the sum of Column 1, Line 6 and Column 2, Line 10.01.

(C) Interim Medicare per resident amount (PRA)--If a hospital does not have a Medicare PRA reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18; the greater of Column 1 or Column 2, then HHSC shall establish an interim Medicare PRA as follows.[:]

(i) The annual estimated cost of FTE residents will be the amount on Hospital Cost Report; CMS Form 2552-10; Worksheet B, Part I, Column 25, Line 118.

(ii) Divided by the FTE residents as determined in subparagraph (B) of this paragraph.

(D) Medicare per resident amount (PRA)--Average [average] direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(E) GME Medicaid inpatient utilization percentage--The [the] hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(i) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(ii) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare PRA or the interim Medicare PRA; and

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee[,] will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC:

(A) a hospital under this subsection must be enrolled as a Medicaid provider with HHSC;

(B) HHSC must receive the non-federal portion of reimbursement for GME costs through a method approved by HHSC and CMS for reimbursement through this program; and

(C) a hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in paragraph (3) of this subsection, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(6) Payments under this subsection [subchapter] will be made on a semi-annual basis.

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 31, 2024.

TRD-202403531
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 487-3480

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules are necessary to complete the Department's administrative rulemaking effort for the implementation of HB 1560, Article 5 for the DES program, which addresses rule amendments relating to: (1) driver training curriculum, driver education certificate prerequisites, and enforcement; and (2) implementing the recommendations of the DES Curriculum Workgroup (Workgroup).

House Bill 1560, Article 5, Driver Education (Phase 2)

House Bill 1560, Article 5, Regular Session (2021) represented a significant reorganization and modification in the Driver Education and Traffic Safety program, which the Department is implementing in two phases. The first phase of the DES bill implementation project included: (1) repealing specific driver training license types, program courses, endorsements, and administrative functions to promote simplicity and transparency for stakeholders; and (2) amending program fees and requirements related to the revised license types. The Department accomplished these objectives in its first rulemaking to implement the bill, through the adoption of rules that became effective June 1, 2023.

This second phase of rulemaking will address additional amendments that will impact issues such as: (1) driver education course curriculum, classroom and behind-the-wheel instruction hours, and course creation; (2) provider administration of driver education certificates after course auditing; and (3) authorizing

the Commission to change minimum hours for driver education course instruction.

The Workgroup conducted three meetings in this second phase to address the proposed changes to the DES program brought about by HB 1560, Article 5. The Workgroup review was limited to 16 TAC Chapter 84, Subchapters A, C-E, G, M and N, and the proposed rules reflect their recommendations.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Driver Education and Traffic Safety Advisory Committee (Committee) at its meeting on April 25, 2024. The Advisory Board approved changes to the proposed rules at 16 TAC §§84.500, 84.502, 84.505 and 84.601. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The proposed rules amend §84.2, Definitions, by: (1) adding new definitions for "behind-the-wheel instruction", "in-car instruction", "registered agent", and "supervised practice"; and (2) renumbering the provisions as needed.

The proposed rules amend §84.3, Materials Adopted by Reference, by updating the DES Program Guides adopted by reference to their new 2024 editions, which include updates to reflect current laws, rules, and Department policies and to improve organization and clarity. The DES Program Guides will be published separately in the *Texas Register* in the "In-Addition" section of the publication with the proposed rules.

Subchapter C, Driver Education Schools and Instructors.

The proposed rules amend §84.40, Driver Education Provider Licensure Requirements, by: (1) repealing the requirement that a school provide a current list of inventoried motor vehicles used for instruction as a part of the license renewal application; and (2) correcting rule language.

The proposed rules amend §84.43, Driver Education Certificates, by: (1) adding a provision that a school's failure to update curriculum following an audit recommendation could result in the Department's suspension of the school's right to receive driver education certificates; (2) expanding suspension or revocation penalties to a school's credentials in the event of any misrepresentation made by a school or instructor in issuing a driver education certificate; and (3) clarifying rule language and grammar.

The proposed rules amend §84.44, Driver Education Instructor License, by correcting rule language.

The proposed rules amend §84.46, Attendance and Makeup, by correcting rule language.

Subchapter D, Parent-Taught Driver Education.

The proposed rules amend §84.50, Parent-Taught Driver Education Program Requirements, by (1) adding language clarifying the minimum amount of behind-the-wheel instruction and supervised practice a student must complete after receiving a learner license upon completion of Module One; and (2) repealing language requiring that behind-the-wheel parent taught driver education be conducted solely on Texas highways.

The proposed rules add new §84.51, Submission of Parent-Taught Course for Department Approval. The new rule replaces existing §84.51 to repeal the department's practice of pre-approval of course material at initial application, and course review upon renewal, consistent with HB 1560 directives.

The proposed rules add new §84.52, Revocation of Department Approval (formerly entitled "Cancellation of Department Approval"). The new rule replaces existing §84.52 to: (1) expand the Department's authority to revoke a parent-taught driver education (PTDE) provider license in the event the course material is inconsistent with applicable state law; (2) provide a 90-day window for a PTDE provider to correct any deficiencies in the course material noticed by the Department before possible revocation; (3) establish a 30-day waiting period for a PTDE provider to reapply for a new parent-taught driver education provider license after revocation; and (4) clarified rule language.

The proposed rules repeal existing §84.51, Submission of Parent-Taught Course for Department Approval.

The proposed rules repeal existing §84.52, Cancellation of Department Approval.

Subchapter E, Providers.

The proposed rules amend §84.60, Driving Safety Provider License Requirements, by correcting rule language.

The proposed rules amend §84.63, Uniform Certificate of Course Completion for Driving Safety Course, by correcting rule language.

Subchapter G, General Business Practices.

The proposed rules amend §84.80, Names and Advertising, by correcting rule language.

Subchapter M, Curriculum and Alternative Methods of Instruction.

The proposed rules add new §84.500, Courses of Instruction for Driver Education Providers. The new rule replaces existing §84.500 to: (1) update the educational objectives of driver training courses consistent with current state law; (2) reduce the minimum of classroom instruction hours in driver education courses from 32 to 24 hours; (3) govern the administration and teaching of driver education materials to maximize student mastery of educational content; (4) clarify driver education requirements related to behind-the-wheel and in-car instruction; (5) transfer the rule requirements for in-person and online adult six-hour driver education courses to new §§84.502 and 84.503, respectively; (6) restrict students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction; (7) allow DE providers more flexibility in the presentation of driver education instruction to students, consistent with the provisions of HB 1560; and (8) reorganize subsections as needed.

The proposed rules add new §84.501, Driver Education Course Alternative Method of Instruction. The new rule replaces existing §84.501 to: (1) clarify minimum Department standards for AMI approval to ensure secure testing and security measures for content and personal validation, and integrity and consistency in presentation of driver education course curriculum with in-person and online instruction; (2) reduce the total duration of student break intervals, and the minimum hours of driver education instructional content presented in an AMI format from 32 hours to 24 hours; (3) increase the minimum amount of minutes allocated to an AMI for multimedia presentations from 640 minutes to 720 minutes; (4) simplify the academic integrity standards and instructional design concepts for an AMI driver education course;

(5) add multifactor authentication requirements for personal validation of students for an AMI driver education course; (6) clarify the process by which a DE provider may modify AMI instructional methods and ensure that such changes are consistent with applicable law, rules and DE Program Guides; and (7) reorganize subsections as needed.

The proposed rules add new §84.502, In-Person Driver Education Course Exclusively for Adults. The new rule replaces existing §84.502 to: (1) move the Department rules related to the Adult In-Person Six Hour Driver Education Course from §84.500(b)(2) and place them in a separate section for greater ease in location and clarity for the public; and (2) reorganize the subsections as needed.

The proposed rules add new §84.503, Online Driver Education Course Exclusively for Adults, to: (1) move the Department rules related to the Adult Online Six Hour Driver Education Course from §84.500(b)(2)(B) and place them in a separate section for greater ease in location and clarity for the public; (2) add multifactor authentication requirements for personal validation of students for an online adult six-hour driver education course; and (3) reorganize the subsections as needed.

The proposed rules add new §84.504, Driving Safety Courses of Instruction. The new rule replaces existing §84.504 to: (1) relocate the Driving Safety rules from §84.502 to this new rule location; (2) update the educational objectives of driver training courses consistent with current state law; (3) remove authorship requirements for those providers that compose customized driving safety curriculum; (4) simplify rule language; and (5) reorganize the subsections as needed.

The proposed rules add new §84.505, Driving Safety Course Alternative Delivery Method, to: (1) relocate existing §84.504 to this new rule location; (2) add multifactor authentication requirements for personal validation of students for an ADM six-hour driving safety education course; (3) simplify rule language; and (4) reorganize the subsections as needed.

The proposed rules repeal existing §84.500, Courses of Instruction for Driver Education Schools.

The proposed rules repeal existing §84.501, Driver Education Course Alternative Method of Instruction.

The proposed rules repeal existing §84.502, Driving Safety Courses of Instruction.

The proposed rules repeal existing §84.504, Driving Safety Course Alternative Delivery Method.

Subchapter N, Program Instruction for Public Schools, Education Service Centers, and Colleges or Universities Course Requirements.

The proposed rules amend §84.600, Program of Organized Instruction, by: (1) reducing the minimum of classroom instruction hours in a driver education course from 32 to 24 hours; (2) restricting students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction in a 24-hour program; (3) limiting driver education training (including in-car instruction) to a maximum of six hours each day; and (4) clarifying rule language.

The proposed rules amend §84.601, Additional Procedures for Student Certification and Transfers, by reducing the record retention period for Texas schools of driver education course completion certificates from seven years to three years, or as mandated by the school district.

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.

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 is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

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 will be that the proposed rules become clearer and easier to understand, and aids license holders to comply with the rules more fully.

Adoption of the limited changes contained in the proposed rules by the Texas Commission of Licensing and Regulation will: (1) clarify and update the curriculum requirements to reflect the current roles and responsibilities for the driver education provider types; (2) align the standards for parent-taught course approvals to conform with current department practices; (3) reduce the minimum number of classroom hours for a driver education course from 32 hours to 24 hours, allowing providers to streamline educational materials delivered to students and increase content mastery; and (4) increase the maximum hours of daily driver education for prospective students by providers from four to six hours, allowing providers to more efficiently offer classroom and in-car instruction.

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.

Many holders of driver education provider licenses are small or micro-businesses. However, the agency does not track employee numbers or gross receipt amounts for its license holders, so the number of such businesses cannot be estimated. The proposed rules do not impose any adverse costs on small or micro-businesses. All driver education courses currently exceed the minimum number of hours, and no provider is required

to reduce the hours in their driver education course curriculum, therefore no cost is required to comply. Any costs that might be entailed in complying with the minor changes to the curriculum language will be minimal.

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 do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules require a decrease in the classroom hours for the teen course from 32 to 24.

The proposed rules expand an existing regulation by adding failure to update curriculum post-audit as required as an additional reason for the suspension of the provider's right to receive driver education certificates; and by authorizing a public school to determine a combination of methods of instruction that can be provided in the six hours of driver education training allowed.

The proposed rules limit a regulation by removing the requirement for a renewing driver education provider to submit a current list of all motor vehicles used for instruction, and by removing the signature requirement for a driving training entity ordering driver education certificates.

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 Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2, §84.3

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.2. Definitions.

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

(1) ADE-1317--The driver education certificate of completion confirming student completion of a department-approved driver education course exclusively for adults.

(2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a driver training provider or course [~~in order~~] to evoke a desire to patronize that driver training provider or course. This includes meta tags and search engines.

(3) Behind-the-wheel instruction - Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or authorized parent or individual pursuant to Texas Education Code §1001.112.

(4) [~~(3)~~] Branch location--A licensed in-person driver education provider that has the same ownership and name as a licensed primary in-person driver education provider but has a different physical address from the primary provider.

(5) [~~(4)~~] Code--Refers to Texas Education Code, Chapter 1001.

(6) [~~(5)~~] Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider.

(7) [~~(6)~~] DE-964--The driver education certificate of completion confirming completion of an approved minor and adult driver education course.

(8) [~~(7)~~] Education Service Center (ESC)--A public school district service organization of the Texas Education Agency governed by Texas Education Code, Chapter Eight.

(9) [(8)] Endorsement - The method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

(10) In-car instruction - Refers to observation instruction and behind-the-wheel instruction.

(11) [(9)] Instructional Hour (also known as "Clock Hour"):

(A) Driver Education Provider Instructional Hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety Provider Instructional Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(12) [(10)] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(13) [(11)] Primary driver education provider--The main business location for a licensed in-person driver education provider.

(14) [(12)] Public or private school--A public or private secondary school accredited by the Texas Education Agency.

(15) Registered agent - An individual Texas resident or an organization on whom may be served process, notice, or demand required or permitted by law to be served on a filing entity, domestic or foreign. Registered agents must be designated and maintained in accordance with Texas Business Organizations Code, Chapter Five.

(16) [(13)] Relevant driver training entity--Refers to a licensed driver education provider, exempt driver education school, public or private school, education service center, college, or university.

(17) Supervised practice - Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2), or authorized parent or individual pursuant to Texas Education Code §1001.112.

(18) [(14)] Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered, and supplied by driving safety providers for issuance to students confirming completion of an approved driving safety course, and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(19) [(15)] Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

§84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), December 2024 [May 2022] Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), December 2024 [May 2022] Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Driving Safety, (COI-Driving Safety), December 2024 [May 2022] Edition, created and distributed by the department, which is adopted into these rules by reference.

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

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Doug Jennings
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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40, 84.43, 84.44, 84.46

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.40. Driver Education Provider Licensure Requirements.

(a) Application. An application for licensure as a driver education provider must be made on forms prescribed by the department[,] and be accompanied by the appropriate fees. An application for a branch driver education provider license must not have the same physical address as the primary provider. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements. In the case of an original or a change of owner application, an original bond must be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file must be submitted. The bond or the continuation agreement must be executed on the form provided by the department.

(c) Verification of driver education provider ownership. In the case of an original or change of owner application for a driver education provider, the owner must provide verification of ownership to the department.

(d) Change of ownership of a driver education provider. A change of ownership occurs when there is a change in the control of the provider. The control of a provider is considered to have changed:

(1) in the case of ownership by an individual, when more than 50 percent of the provider has been sold or transferred;

(2) in the case of ownership by a partnership or a corporation, when more than 50 percent of the provider, or of the owning partnership or corporation has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the provider.

(e) Purchase of a driver education provider.

(1) A person who purchases a licensed driver education provider must obtain an original license or branch location license as applicable.

(2) The purchaser must assume all refund liabilities incurred by any former owner as well as the liabilities, duties, and obligations under the enrollment contracts between the students and any former owner before the transfer of ownership.

(f) New location or change of address.

(1) The department must be notified in writing of any change of address at least fifteen (15) working days before the move.

(2) The driver education provider must submit the appropriate change of address fee prior to the actual move.

(3) If a student is not willing or able to change locations, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(g) Renewal of driver education provider license. An application for the renewal of a license for a driver education provider must be submitted before the expiration of the license and include the following:

(1) the renewal fee;

(2) a current list of instructors at the school, if applicable; and

(3) an executed bond or executed continuation agreement for the bond, currently approved by and on file with the department. [~~; and~~]

[~~(4) if applicable, a current list of all motor vehicles used for instruction.~~]

(h) Denial, revocation, or conditional license. The authority to operate a branch location ceases if a primary driver education provider license is denied or revoked. The operation of a branch location license may be subject to any conditions placed on the continued operation of the primary driver education provider. A driver education provider license for a branch location may be denied, revoked, or conditioned separately from the license for the primary location.

(i) Driver education provider closure.

(1) The driver education provider owner must notify the department at least fifteen (15) working [~~business~~] days before the anticipated provider closure. In addition, the driver education provider owner must provide written notice of the actual discontinuance of the operation on the day of cessation of classes. A driver education provider must make all records available for review to the department upon department request.

(2) The department may declare a driver education provider to be closed:

(A) when the provider no longer has the facilities, vehicles, instructors, or equipment to provide training pursuant to this chapter;

(B) when the provider has stopped delivering instruction and training in driver education and has failed to fulfill contractual obligations to its students;

(C) when the provider informs the department in writing of its intention to no longer deliver instruction or training in driver education and returns all unissued driver education certificates or certificate numbers; or

(D) when the provider owner allows the license to expire.

(3) If a branch location closes and a student is not willing or able to complete the training at the primary location, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(j) A driver education provider must not state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individual who will take or complete any instruction, or enroll, or otherwise receive instruction from any driver education provider.

(k) Contract site. An in-person driver education provider may conduct a course at a contract site, upon execution of a legal written agreement between the licensed driver education provider and an authorized representative for the contract site to provide driver education instruction. The course is subject to the same rules that apply to the licensed driver education provider, including inspections by department representatives. An on-site inspection is not required prior to use of the site. The written agreement is subject to the recordkeeping requirements under §84.81.

§84.43. Driver Education Certificates.

(a) Relevant driver training entities.

(1) A relevant driver training entity may request driver education certificates or certificate numbers by submitting an online[~~, mailed or faxed~~] department prescribed order form, [~~signed by an authorized representative of the relevant driver training entity,~~] stating the number of driver education certificates or certificate numbers to be purchased and include payment of all appropriate fees. [~~A signature is not required for orders placed through the online system.~~]

(2) Relevant driver training entities must:

(A) issue driver education certificates or certificate numbers only to students who have successfully completed the applicable portion of the approved driver education course;

(B) issue driver education certificates or certificate numbers in serial number order as purchased from the department;

(C) indicate the serial number of the original driver education certificate or certificate number on such certificate or certificate number and any issued duplicate, if necessary;

(D) not use an ADE-1317 driver education certificate or certificate number to replace a DE-964 driver education certificate or certificate number;

(E) not transfer unassigned or blank driver education certificates or certificate numbers at any time;

(F) maintain effective protective measures to ensure the security of driver education certificates or certificate numbers to pre-

vent the unauthorized production or misuse of the certificates, and for the recovery of lost data (electronic or otherwise) for such certificates or certificate numbers;

(G) maintain reconciliation records of all purchased, issued, unissued or unassigned driver education certificates or certificate numbers in ascending serial number order, and ensure security and recovery of the reconciliation record data;

(H) make all records available for review by representatives of the department upon request;

(I) return unissued driver education certificates or certificate numbers to the department within thirty (30) calendar days from the date of the discontinuance of the driver education program, unless otherwise notified by the department;

(J) report to the department all unaccounted driver education certificates or certificate numbers within fifteen (15) working days of the discovery of the incident;

(K) conduct an investigation to determine the circumstances surrounding their unaccounted driver education certificates and report the investigation findings, including preventative measures for recurrence, to the department within thirty (30) calendar days of the discovery;

(L) develop and maintain effective policies and processes to ensure constant privacy, security, and integrity of confidential student information, personal and financial, and make the privacy policy available to all students; and

(M) ensure that the front of each driver education certificate contains the department's complaint contact information and current department telephone number in a font that is visibly recognizable.

(3) Each unaccounted original or duplicate driver education certificate or certificate number (whether lost, stolen, blank, or unissued) may be considered a separate violation.

(4) The right to receive driver education certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the relevant driver training entity or its designee fails to provide information on records requested by the department, or fails, post-audit, to update curriculum based on changes in department rules or applicable law within the required time.

(5) The driver education certificate is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the driver education certificate may result in suspension or revocation of instructor and/or provider credentials or program approval and/or criminal prosecution.

(b) Driver education provider responsibilities.

(1) Driver education certificates or certificate numbers must only be ordered by driver education providers. The primary driver education provider must order all driver education certificates and certificate numbers for its branch locations.

(2) A driver education provider must issue the "For Learner License Only" portion of the DE-964 certificate to the student upon successful completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) A driver education provider must issue the "For Driver License Only" portion of the DE-964 certificate to the student upon successful completion of the driver education course.

(4) The exception to paragraphs (2) and (3) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor, or the designated parent-taught driver education instructor as applicable. The name of the driver education provider owner or its designee may be written, stamped, or typed.

(c) Public or Private Schools, Education Service Centers, Colleges, or Universities responsibilities.

(1) The driver education certificates must be issued to the superintendent, college, or university chief school official, ESC director, or their designee responsible for managing the certificates for the school. This does not remove the superintendent, college, or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program.

(2) The department will accept purchase requisitions from school districts.

(3) Each superintendent, college, or university chief school official, ESC director, or their designee must ensure that the policies concerning driver education certificates are followed by all individuals who have responsibility for the certificates.

(4) The superintendent, college, or university chief school official, ESC director, or their designee must ensure that employees issue a driver education certificate only to a person who has successfully completed the entire portion of the course for which the driver education certificate is being used.

(A) The "For Learner License Only" portion of the driver education certificate must be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the driver education certificate must be issued to the student upon completion of the driver education program.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor. The name of the superintendent, college, or university chief school official, ESC director, or their designee may be written, stamped, typed, or omitted.

(6) The superintendent, college, or university chief school official, ESC director, or their designee must complete the affidavit on the driver education certificate if the licensed instructor has left the driver education program, become seriously ill or deceased.

§84.44. Driver Education Instructor License.

(a) An application for licensure as a driver education instructor must be made on forms prescribed by the department and be accompanied by the appropriate fees. A license application is valid for one year from the date it is filed with the department. A person applying for an original driver education instructor license must:

(1) hold a valid class A, B, C, or CDL driver's license, other than a learner license or provisional license, for the preceding three years, that has not been revoked or suspended in the preceding three years;

(2) submit a completed application with non-refundable application fee as prescribed by the department;

(3) submit the instructor licensing fees;

(4) submit a national criminal history record information review fee; and

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

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

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

(1) the renewal fee;

(2) provide a valid driver license record that meets the requirements stated in §84.44(a)(1); and

(3) if selected for audit, proof of successful completion of at least two hours of continuing education credit during the license renewal period relating to driver education, driving safety, and instructional techniques.

(d) The department will employ an audit system for reporting completion of continuing education. The licensee is responsible for maintaining a record of the licensee's continuing education experiences. The certificates, transcripts, or other documentation verifying the completion of continuing education hours must not be forwarded to the department at the time of renewal unless the department has selected the licensee for audit.

(e) The audit process for continuing education will be as follows:

(1) The department will select for audit a random sample of licensees for each renewal period. Licensees will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee must submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of the renewal.

(3) Failure to timely furnish documentation or providing false information during the audit process or renewal process are grounds for disciplinary action against the licensee.

(f) An applicant for a driver education instructor license or its renewal must [~~successfully~~] pass a criminal history background check.

§84.46. Attendance and Makeup.

(a) Written or electronic records of student attendance must be prepared daily to document the attendance and absence of the students. A student must make up any time missed. Electronic signatures must comply with Texas Business and Commerce Code, Chapter 322.

(b) Driver education training offered by the provider must not exceed six hours per day. In-person driver education providers may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers [~~Schools~~]). In-car instruction provided by the provider must not exceed four hours per day as follows:

(1) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(2) four hours or less of simulation instruction; or

(3) four hours or less of multicar range instruction; or

(4) any combination of the methods delineated in this subsection that does not exceed four hours per day.

(c) A student must complete the hours of instruction for the required classroom and in-car phases of the minor or adult driver education course, including any makeup lessons, within the timeline specified in the original student enrollment contract.

(d) Amendments [~~Variances~~] to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the provider owner and must be agreed to in writing by the parent or guardian.

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

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SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §§84.50 - 84.52

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.50. Parent-Taught Driver Education Program Requirements.

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

(b) After receiving the Parent-Taught Driver Education Instructor Designation Service Application, the instructor must obtain one of the department approved parent-taught driver education courses to fulfill program requirements.

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

(d) The program includes both classroom and in-car instruction phases. Instruction is limited to six hours per day, including not more than two hours of behind-the-wheel instruction per day.

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

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

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

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

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

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

(k) Behind-the-wheel parent-taught driver education instruction and supervised practice may begin after the student receives a learner license. The required curriculum that must be followed includes:

(1) a minimum of 44 hours that consists of: seven hours behind-the-wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code;

(2) seven hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and

(3) 30 hours of behind-the-wheel supervised practice, including at least 10 hours at night, certified by a parent or guardian who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of behind-the-wheel supervised practice must be endorsed by a parent or legal guardian if the student is a minor.

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

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(d) The department will retain submitted materials according to the department's retention schedule.

(e) Course identification. All parent-taught courses must display the parent-taught provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(f) A parent-taught driver education provider may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and license number offering the course. This information must be visible before and during the student registration and course payment processes.

§84.52. Revocation of Department Approval.

(a) A parent-taught driver education provider may be revoked upon finding that the course does not meet the standards required under §1001.112 or §1001.2043(a) of the Code.

(b) Prior to revocation, the department will allow the parent-taught driver education provider ninety (90) days from the date of notification the opportunity to correct the noted deficiencies in the curriculum.

(c) Failure to adequately respond within the required time will result in revocation of the course.

(d) If a parent-taught driver education course is revoked by the department, the entity must wait thirty (30) days before applying for a new Parent Taught Driver Education Provider 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.

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16 TAC §84.51, §84.52

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.51. Submission of Parent-Taught Course for Department Approval.

§84.52. Cancellation of Department Approval.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

SUBCHAPTER E. PROVIDERS

16 TAC §84.60, §84.63

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.60. Driving Safety Provider License Requirements.

(a) Application for driving safety provider license. An application for a driving safety provider license must be made on forms prescribed by the department, and be accompanied by the appropriate fee. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements for providers. In the case of an original or a change of owner application, an original bond must be provided in the amount of $10,000. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement must be executed on the form prescribed by the department.

(c) Provider license. The provider license must indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for driving safety provider. In the case of an original or change of owner application for a driving safety provider, the provider owner must provide verification of ownership.

(e) Purchase of driving safety provider. A person or persons purchasing a licensed driving safety provider must obtain an original license and bond. The contract or any instrument transferring the ownership of the driving safety provider must include the following statements:

(1) The purchaser must assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership; and

(2) The purchaser must assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(f) New location. The department must be notified in writing of any change of address of a driving safety provider or its registered agent at least fifteen (15) working days before the move. The appropriate fee and all documents must also be submitted.

(g) Renewal of driving safety provider license. A complete application for the renewal of a license for a driving safety provider must be submitted before the expiration of the license and must include the following:

(1) a completed application for renewal;

(2) an annual renewal fee; and

(3) an executed bond or executed continuation agreement for the bond currently on file with the department.

(h) Provider closure. A provider owner must notify the department of its closure date at least fifteen (15) working [business] days before the closure. A provider must make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by the department upon request.

§84.63. Uniform Certificate of Course Completion for Driving Safety Course.

(a) For purposes of this section, the term "certificate" refers to uniform certificates of course completion issued by the department to driving safety providers in paper format, and certificate numbers issued to driving safety providers for inclusion on department-approved driving safety course certificate completion forms.

(b) Driving safety provider responsibilities. Providers are responsible for original and duplicate certificates in accordance with this subsection. Each driving safety provider must:

(1) submit a plan for the electronic issuance of certificates for approval by the department prior to its implementation;

(2) issue certificates that comply with the design specifications approved by the department;

(3) develop and maintain a department-approved method for securing, issuing, and maintaining original and duplicate certificates that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates, and allows for the recovery of lost data (electronic or otherwise) for such certificates;

(4) issue certificates only to students who have successfully completed all elements of the provider's approved driving safety course;

(5) maintain secure files (electronic or otherwise) with data pertaining to all certificates purchased from the department, and must make available to the department, upon request, an ascending numerical accounting record of the numbered certificates issued;

(6) issue all original and duplicate certificates using first-class or enhanced postage, equivalent commercial delivery method, or a department-approved electronic issuance method;

(7) sequentially number original certificates from the block of numbers purchased from the department;

(8) use certificates only for the course for which the certificates were ordered from the department;

(9) implement and maintain methods for efficiently issuing original certificates so that issuance of duplicate certificates is kept at a minimal rate;

(10) report all unaccounted original and duplicate certificates or unissued certificates or duplicates to the department within 15 working [business] days of the discovery of the incident;

(11) conduct an investigation to determine the circumstances surrounding the unaccounted items noted in paragraph (10), and submit a report of the findings of the investigation, including preventative measures for recurrence, to the department within thirty (30) days of the discovery; and

(12) report original and duplicate certificate data, by secure electronic transmission, to the department within five (5) days of issuance using guidelines established and provided by the department. The issue date indicated on the certificate shall be the date the provider issues the certificate to the student.

(c) Disposition of original or duplicate certificates.

(1) The provider's records, including unissued or unnumbered original and duplicate certificates, must be available for review by representatives of the department.

(2) A driver safety provider must not issue, transfer, or transmit an original or duplicate certificate bearing the serial number of a certificate or duplicate previously issued.

(3) Each unaccounted, missing, blank, or unissued original or duplicate certificate may be considered a separate violation. This may include a lost, stolen, or otherwise unaccounted original or duplicate certificate.

(4) When a duplicate certificate is issued by a provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the department by the provider. The duplicate certificate must clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(5) Any item on a duplicate certificate that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion must show the correct date and "changed from XX," where "XX" is the date shown on the original certificate.

(6) If the student requests a duplicate certificate within thirty (30) days of the date of issue of the original certificate because the original was not received, unusable, or was issued with errors due to no fault of the student, the provider must issue the duplicate at no cost to the student. Driving safety providers must include this information in the student enrollment contract.

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

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §84.80

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.80. Names and Advertising.

(a) A licensed driver training provider must not conduct business or advertise under a name that is not distinguishable from a name used by any other licensed driver training provider [provide], or tax-supported educational establishment in this state, unless specifically approved in writing by the department.

(b) Use of names other than the approved provider name may constitute a violation of this section.

(c) Branch providers must conduct business using the same name as the primary driver education provider.

(d) Any publicly posted advertisement from a license applicant subject to license approval by the department must include the following information:

(1) A notice stating "Driving School Coming Soon"; and

(2) Display a functioning phone number and email address for the provider within the advertisement.

(e) An applicant applying for approval of a new provider license must not:

(1) Enroll students or conduct classes in driver training prior to department approval of the license application;

(2) Accept payments from prospective students; or

(3) Publish advertisements including the provider name or upcoming class sessions.

(f) A driver training provider must not advertise without including the provider name and license number as it appears on the provider license.

(g) All advertisements of a multiple classroom location or alternative delivery method shall meet the requirements in subsections (a) - (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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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.

§84.501. Driver Education Course Alternative Method of Instruction.

§84.502. Driving Safety Courses of Instruction.

§84.504. Driving Safety Course Alternative Delivery Method.

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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16 TAC §§84.500 - 84.505

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.

(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

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

(1) Minor and adult driver education course.

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

(i) a minimum of 24 hours of classroom instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(ii) seven (7) hours of behind-the-wheel instruction in the presence of a person who holds a driver education instructor

license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(iii) seven (7) hours of in-car observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person; and

(iv) 30 hours of behind-the-wheel supervised practice, including at least 10 hours of nighttime practice, in the presence of a person at least 21 years of age, has at least one year of driving experience, and holds a valid driver license. The 30 hours of behind-the-wheel supervised practice are to be certified by a parent, legal guardian, or designated person if the student is a minor. Simulation hours must not be substituted for the behind-the-wheel supervised practice. Behind-the-wheel supervised practice is limited to two hours per day.

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

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car instruction, simulation, and multicar range must include the educational objectives established by the department in the POI-DE and the requirements of this subchapter.

(D) Driver education providers that desire to instruct students age 14 and over in an in-person classroom program must provide the same beginning date for each student in the same class of 36 or less. No student must be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has begun.

(E) Students must receive classroom instruction from an instructor who is licensed by the department. An instructor must be in the classroom and available to students during the entire 24 hours of instruction, including self-study assignments. Instructors must not have other teaching assignments or administrative duties during the 24 hours of classroom instruction.

(F) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE may be used as part of the required 24 hours of in-person classroom instruction. Such supplemental instruction must not exceed 720 minutes of total in-person classroom hours.

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

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

(I) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the classroom phase of the driver education course.

(J) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than thirty-six (36) students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(K) When a student changes providers, the provider must follow the current transfer policy developed by the department.

(2) Driver Education Behind-the-Wheel and In-Car Instruction

(A) All behind-the-wheel instruction must include actual driving operation by the student. A provider must not permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Providers that allow one-on-one instruction must notify the parents in the contract.

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

(C) All behind-the-wheel instruction and supervised practice extended by the provider must begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

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

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

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

(d) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(e) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.501. Driver Education Course Alternative Method of Instruction.

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

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

(A) the AMI includes testing and security measures that the department determines are adequately secure to ensure course content and personal validation;

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

(C) a student and instructor are in different locations;

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

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

(2) Application. The provider must submit a completed AMI application along with the appropriate fee. The application for AMI approval must be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the curriculum as aligned with the POI-DE.

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

(b) Course content. The AMI must deliver the same topics, instruction requirements, and course content as required by the department in the POI-DE.

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

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

(3) Student breaks. The AMI is allowed five minutes of break per instructional hour for all phases, for a total of 120 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(4) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 24 hours (1,440 minutes) to complete the course. A course that demonstrates that it contains 1,320 minutes of instructional content shall mandate that students take 120 minutes of break time or provide additional educational content for a total of 1,440 minutes (24 hours). In order to demonstrate that the AMI contains sufficient content, the AMI must use the following methods.

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

(B) Multimedia presentations. There shall be a minimum of 90 minutes of multimedia presentation. The provider owner must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 720 minutes.

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

(D) Time Allotment for Questions. The provider owner may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time allotted for all charts, graphs, questions, and breaks equals or exceeds the minimum 1,440 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 24-hour requirement.

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

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

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

(C) content and assignments that are sufficient to teach the standards being addressed; and

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

(6) Instructional design. Instructional design of AMI for classroom driver education must:

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

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

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

(D) include assessment and assignment answers.

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

(1) Provider-initiated method. The AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

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

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

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

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

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

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

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

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

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

(3) Multifactor authentication method. The AMI may use a multifactor or two-factor authentication for personal validation.

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

(1) Timers. The AMI may include built-in timers to ensure that 1,440 minutes of instruction have been attended and completed by the student.

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

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

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

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

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

(3) Mastery of course content. The AMI must test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

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

(i) 20 questions each from Module One listed in the POI-DE; and

(ii) 10 questions each from the remaining modules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Additional requirements for video courses.

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

(2) Video requirement. The video course must include no more than 720 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remain-

der of the 1,440 minutes of required instruction must be video material that is relevant to required course instruction content.

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

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

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

(i) Modifications to the AMI. The licensed provider for the approved course on which the AMI is based must ensure that any modification to the AMI is consistent with applicable law, department rules and the POI-DE.

(j) Termination of the provider's operation. Upon termination, providers must deliver any missing student data to the department within five days of termination.

(k) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the classroom portion of the curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(l) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 and over must provide the same beginning date for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has been completed.

§84.502. In-Person Driver Education Course Exclusively for Adults.

(a) Driver education course exclusively for adults. Courses offered in an in-person classroom facility to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222 and §521.1601, must be offered in accordance with the following:

(1) In-person approval process. The department may approve an endorsement for a driver education course exclusively for adults to be offered in-person if the course meets the following requirements.

(A) Application. The driver education provider must submit a completed application along with the appropriate fee;

(B) Instructor license required. Students must receive classroom instruction from a licensed driver education instructor; and

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

(2) Course management. An approved adult driver education course must be presented in compliance with the following:

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

(B) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

(C) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course must not exceed 150 minutes of instruction.

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

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

(F) The total length of the course must consist of a minimum of 360 minutes.

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

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

(c) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.503. Online Driver Education Course Exclusively for Adults.

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

(1) Application. The applicant for an online driver education provider license must submit a completed application along with the appropriate fee.

(2) Online Provider license required. A person or entity offering an online driver education course exclusively for adults must hold an online driver education provider license.

(3) The online driver education provider must be responsible for the operation of the online course.

(4) Students must receive classroom instruction from a licensed driver education instructor.

(b) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code and as described in the POI-Adult Six-Hour.

(1) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(2) Required material. A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

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

(4) Irrelevant material. Advertisement of goods and services, and distracting material not related to driver education must not appear during the actual instructional times of the course.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Multifactor authentication method. The online course may use a multifactor or two-factor authentication for personal validation.

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

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

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

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

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

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

(D) Answer identification. The online course must not identify the correct answer to the multimedia question.

(3) Course participation questions. The online course must test the student's course participation by asking at least two questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six Hour.

(A) Test bank. The test bank for course participation questions must include at least ten questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six-Hour.

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

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

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

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

(B) Placement of questions. The mastery of course content questions must be asked at the end of the course (comprehensive final examination).

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

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

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

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

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

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

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

(f) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.167, and signing the ADE-1317 driver education completion certificate.

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

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

(i) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the adult driver education curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

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

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

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

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

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

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

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

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

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

§84.504. Driving Safety Courses of Instruction.

This section contains requirements for traditional classroom driving safety courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Courses of instruction must not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course must be submitted by the driving safety provider and approved prior to being offered.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act; the proper use of child passenger safety seat systems; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the driving safety provider must affirm that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to review by the department. Each driving safety course must include the following:

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

(ii) a statement of policies related to techniques of instruction, standards, and performance;

(iii) a statement of policies related to student progress, attendance, makeup, and conduct. The policies must be used by each driving safety provider and include the following requirements:

(I) appropriate standards to ascertain the attendance and identity of students. All driving safety providers must use appropriate standards for documenting attendance;

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

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction in a manner determined by the driving safety provider; and

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

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

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

(vi) written or printed materials to be provided for use by each student as a guide to the course;

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

(viii) techniques for evaluating the comprehension level of the students; and

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

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

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

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

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

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

(v) Courses conducted in a single day in an in-person classroom must allow a minimum of 30 minutes for lunch.

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

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

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

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

(x) The driving safety provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

(D) Minimum course content. Driving Safety course content, including video and multimedia, must include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety, to assure student mastery of the subject matter.

(E) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Provider-designated persons who offer or provide instruction must not assist students in answering the final examination questions but may facilitate alternative testing. Students must not be given credit for the driving safety course unless they score 70 percent or more on the final test. The provider must identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to

enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

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

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

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

(2) The department may revoke approval of any course given to a provider under any of the following circumstances:

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

(B) The school has failed to maintain the courses of study on which previous approval was issued;

(C) The provider has been found to be in violation of the Code, and/or this chapter; or

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

§84.505. Driving Safety Course Alternative Delivery Method.

(a) The driving safety provider may offer a course by alternative delivery method (ADM) that meets the following requirements:

(1) Standards for acceptance. The department may accept an ADM offered by a driving safety provider for an approved driving safety course if the ADM delivers a course in a manner that is at least as secure as an in-person classroom. ADMs that meet the requirements outlined in subsections (b) - (h), shall receive ADM acceptance.

(2) The ADM must deliver the driving safety provider's curriculum as delineated in the course content guide required by §84.504 (relating to Driving Safety Courses of Instruction), and the COI-Driving Safety.

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

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

(1) Course topics. The time requirements for each unit and the course described in §84.504(a)(1)(C) and (D) must be met.

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

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

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

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

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

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

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

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

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

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

(c) Personal validation. The driving safety provider must ensure the ADM maintain a system to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(1) Provider-initiated method. The ADM may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

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

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

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

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

(2) Third party data method. The online course must ask a minimum of 10 personal validation questions randomly throughout the course drawn equally from at least two different databases.

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

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

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

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

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

(3) Multifactor authentication method. The AMD may use a multifactor or two-factor authentication for personal validation.

(d) Alternative methods. The driving safety provider may employ an ADM that uses alternate methods that are at least as secure as one of the methods listed above.

(e) Content validation. The driving safety provider must ensure the ADM incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

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

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

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

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

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

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

(3) Mastery of course content. The ADM must allow for testing of the student's mastery of the course content by asking at least two questions from each of the topics listed in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(A) Test bank. The test bank for course content mastery questions must include at least ten questions from each of the topics identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(B) Placement of questions. The mastery of course content questions must be asked either at the end of the major unit or section in which the topic identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, (unit examination) or at the end of the course (comprehensive final examination).

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

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

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

(B) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the ADM must retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student fails the course.

(f) Student records. The ADM must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record must include the date and time of the activity reported. The student records must contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

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

(5) If any answer to a question is changed by the driving safety provider for a student who inadvertently missed a question, the provider must provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

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

(8) The provider must also ensure that the student record is readily, securely, and reliably available for inspection by the department.

(g) Additional requirements for ADM courses. Courses delivered via the Internet must also comply with the following requirements.

(1) Course identification. All ADM courses must display the driving safety provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety provider offering a driving safety course through ADM may accept students redirected from another website if the student is redirected to the webpage that clearly identifies the names and license numbers of the provider offering the ADM. This information must be visible before and during the student registration and course payment processes.

(3) Domain names. Each provider offering a driving safety course through ADM must offer that ADM from a single domain.

(h) Additional requirements for video courses.

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

(2) Video requirement. In order to meet the video requirement of §84.504(a)(1)(B)(v), the video course must include between 60 and 150 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction must be video material that is relevant to the required topics and produced specifically for the ADM.

(A) A video ADM must ask at least one course validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM must devise and submit for approval a method for ensuring that a student correctly answers questions concerning multimedia clips consisting of more than 60 seconds in length presented during the ADM.

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

(j) Modifications to the ADM. A change to a previously approved ADM may be made without the prior approval of the department. The driving safety provider must notify the department of the modification not later than 30 days after its occurrence.

(k) Termination of the driving safety provider's operation. Upon termination, a driving safety provider must deliver any missing student data to the department within five days of termination.

(l) Access to the driving safety provider for technical assistance. The driving safety provider must establish hours that the student may obtain technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the provider and technical assistance during the specified hours.

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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General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

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

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

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan must include one or more of the following course programs.

(1) Core program. This program must consist of at least 24 [~~32~~] hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program must consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program must consist of at least 24 [~~32~~] hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 must be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 must be given when

all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction must not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students must proceed in a uniform sequence. Students must be enrolled and in class before the fifth [~~seventh~~] hour of classroom instruction in a 24 [~~32~~]-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

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

(7) The driver education course must be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This must not circumvent attendance or progress. Variances to the established timelines must be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public schools [~~Schools~~] are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) Driver education training offered by the public school must not exceed six hours per day. Public schools may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers). In-car instruction provided by the public school must not exceed four hours per day as follows:

(A) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(B) four hours or less of simulation instruction; or

(C) four hours or less of multicar range instruction; or

(D) any combination of the methods delineated in this subsection that does not exceed four hours per day.

[~~(9) A student must not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student is limited to a maximum of:~~]

[~~(A) two hours of classroom instruction;~~]

[~~(B) four hours of observation time;~~]

[~~(C) two hours of multicar range driving;~~]

[~~(D) three hours of simulation instruction; and~~]

[~~(E) one hour of behind-the-wheel instruction.~~]

(10) Driver education training certified [~~verified~~] by the parent is limited to two hours [~~one hour~~] per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing four [~~six~~] hours of instruction as specified in Module One of the POI-DE.

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

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

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons must consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., must not be counted for behind-the-wheel instruction. The instructor must be in the vehicle with the student during the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs must include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these must not exceed 720 [~~640~~] minutes of the total classroom phase.

(3) Each classroom student must be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" [~~published by DPS~~] or equivalent study material must be made available [~~furnished~~] to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction were [~~is~~] not provided. In each case when only one student is instructed:

(A) the school must obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver must specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver must be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults must submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§84.601. Additional Procedures for Student Certification and Transfers.

(a) Unused DE-964s must not be transferred to another school without written approval by the department.

(b) The DE-964 document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form as to the prerequisite set forth may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(c) The superintendent, college or university chief school official, ESC director, or their designee may request to receive serially numbered DE-964 certificates for exempt schools by submitting a completed order on the form provided by the department stating the number of certificates to be purchased and including payment of all appropriate fees. The department will accept purchase requisitions from school districts.

(d) All DE-964 certificates and records of certificates must be provided to the department or DPS upon request. The superintendent, college or university chief school official, ESC director, or their designee must maintain the school copies of the certificates. The chief school official, ESC or DPS director, or their designee must return unissued DE-964 certificates to the department within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(e) The public school may accept any part of the driver education instruction received by a student in another state; however, the student must complete all the course requirements for a Texas driver education program. Driver education instruction completed in another state must be certified in writing by the chief official or course instructor of the school where the instruction was given and include the hours and minutes of instruction and a complete description of each lesson provided. The certification document must be attached to the student's individual record at the Texas school and be maintained with the record for three [~~seven~~] years or as mandated by the school district.

(f) Students who are licensed in another state and have completed that state's driver education program should contact the DPS for information on the licensing reciprocal agreement between that state and Texas.

(g) All records of instruction must be included as part of the student's final history when it is necessary to compile multiple records to verify that a student successfully completed a driver education course.

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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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 10. GRANT PROGRAMS
SUBCHAPTER B. FAMILY PRACTICE RESIDENCY PROGRAM

19 TAC §§10.50 - 10.58

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter B, §§10.50 - 10.58, concerning the administration of the Family Practice Residency Program grant. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter A, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.50, Purpose, establishes the purpose for the subchapter is to administer the Family Practice Residency Program grant designed to improved organization and consistency for Coordi-

nating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Family Practice Residency grant program.

Rule 10.51, Authority, establishes authority for this subchapter is found in Texas Education Code, Sections 61.501 - 61.506, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.52, Definitions, defines terms related to administration of the grant program.

Rule 10.53, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.54, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.55, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.56, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.57, Reporting, establishes reporting requirements for grantees.

Rule 10.58, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Family Practice Residency grant program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 61.501 - 61.506, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter B.

§10.50. Purpose.

The purpose of this subchapter is to implement the Family Practice Residency Program to administer awards to Texas medical schools, licensed hospitals, or nonprofit corporations aimed to increase the number of physicians selecting family practice as their medical specialty and to fulfill the goal of increasing access to medical care in medically underserved communities in Texas.

§10.51. Authority.

The authority for this subchapter is found in Texas Education Code, §§61.501 - 61.506.

§10.52. Definitions.

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

(1) Advisory Committee--The Family Practice Residency Advisory Committee as created and described in Texas Education Code §61.505.

(2) Approved Family Practice Residency Program--A family practice residency program, as described in Texas Education Code, §61.501(2).

(3) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) Commissioner--The Texas Commissioner of Higher Education.

(5) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(6) Medical school--An eligible medical institution as identified in Texas Education Code §61.501(1).

(7) Medically Underserved--Areas or populations experiencing infant mortality, poverty, or an elderly population at a rate that exceeds the state average, or having a ratio of population to primary care physician that exceeds the state average for the given geographic designation.

(8) Operational Grant--An annual, renewable grant to support the educational activities of a fully-accredited family practice residency program.

(9) Resident Physician--A physician contractually obligated to a Texas medical school, Texas licensed hospital, or non-profit corporation operating in Texas to receive residency education and training for a specified period.

(10) Rural--A location in Texas that is eligible for Federal Office of Rural Health Policy grant programs.

(11) Support Grant Program--A Grant that includes an optional one-month rotation in a rural or public health setting in Texas

where the faculty support a grant that provides funds to support the leadership development of faculty of a family practice residency program. The advisory committee may recommend funding amounts for support grants.

(12) Urban--Any area in Texas that is not rural, as defined in this section.

§10.53. Eligibility.

To be eligible to apply for and receive grant funding, a Texas medical school, Texas licensed hospital, or nonprofit corporation operating in Texas shall:

(1) Provide evidence that the residency program is accredited by the Accreditation Council on Graduate Medical Education (ACGME);

(2) Provide evidence that the residency program has been operational for three or more academic years; and

(3) Demonstrate the training program's viability and efforts to recruit residents likely to practice in medically underserved urban or medically underserved rural areas of the state and the program's encouragement of residents to enter practice in medically underserved urban or medically underserved rural areas of the state.

§10.54. Application Process.

(a) Operational and Faculty Support Grants.

(1) An eligible program must submit an application to the Coordinating Board. Each application shall:

(A) be submitted electronically in a format specified by the Coordinating Board;

(B) be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified by the Coordinating Board.

(2) Each application must include:

(A) The projected number of family practice residents enrolled if grant funds are awarded;

(B) A budget that includes resident compensation, professional liability, and other direct resident costs; and

(C) Evidence of support for the residency program by the entity receiving the grant.

(b) Support Grants for Rotation Programs. An eligible program shall submit notification of a resident's intent to complete a rural or public health rotation two-months prior to the beginning of the rotation and shall:

(1) Provide evidence that the program sponsored a resident in a rural or public health rotation; and

(2) Submit evaluations and request for funds upon completion of the rotation.

§10.55. Evaluation of Applications.

(a) Applications for Family Practice Residency Program grants shall be reviewed and evaluated by the Family Practice Residency Advisory Committee.

(b) The Advisory Committee's review shall include the following:

(1) Evidenced-based determination that the proposed program will be able to efficiently and effectively provide indigent health care and training to family practice residency physicians;

(2) Existing and anticipated costs and funding for new and existing programs requesting funding; and

(3) The program's performance in:

(A) improving the distribution of family physicians throughout the state;

(B) providing care to medically underserved urban or medically underserved rural areas of Texas; and

(C) encouraging residents to practice in medically underserved urban or medically underserved rural areas of the state.

(c) The Advisory Committee shall submit a recommendation to the Board for approval and funding of operational and related support grant programs.

§10.56. Grant Awards.

(a) The amount of funding available for the Family Practice Residency Program is dependent on the legislative appropriation for the program for each biennial state budget. Award levels will be determined by a formula approved by the Board based upon the number of certified resident physicians in the training program.

(b) Grant awards shall be subject to approval pursuant to §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(c) The Board shall award all Family Practice Residency Grants after receiving the recommendations of the Family Practice Residency Advisory Committee. The Advisory Committee shall annually report all awards to the Board.

(d) A grantee may only expend grant funds on the salary of the resident physician, professional liability, and other direct costs that are necessary and reasonable to support the residency position as stated in grantee's budget, and in accordance with the applicable rules and statutes for the program.

§10.57. Reporting.

(a) Each grantee shall file program narrative, expenditure, and resident roster reports in a format on or before the day and time specified by the Coordinating Board.

(b) No later than ninety (90) days after the end of the Operational Grant or Support Grant Program, the grantee shall conduct a post award audit. The post award audit shall include a review of program goals and grant expenditures. To fulfill this requirement, a grantee shall submit the following reports to the Coordinating Board:

(1) A final narrative report on the grant program's efforts to recruit residents likely to practice in medically underserved urban or medically underserved rural areas of the state and the program's encouragement of residents to enter practice in medically underserved urban or medically underserved rural areas of the state addressing the needs of communities or regions; and

(2) A final expenditure report for all expended grant funds. The final expenditure report must include an attestation from Grantee that all expenditures were allowable expenses pursuant to law and regulation.

§10.58. Additional Requirements.

(a) Cancellation or Suspension of Grant Solicitations. The Commissioner has the right to reject all applications and cancel a grant solicitation at any point.

(b) Forfeiture and Return of Funds.

(1) A grantee shall return to the Coordinating Board any award funds remaining unspent at the end of the grant term as set forth

in the contract or agreement not later than sixty (60) calendar days after the close of the grant term.

(2) A grantee shall notify the Coordinating Board within thirty (30) calendar days of any funded residency position that is vacated.

(3) A grantee shall have sixty (60) calendar days from notification to the Coordinating Board of the vacated position to refill the funded residency position.

(4) If the grantee fails to refill the position in the required timeline, the grantee forfeits and shall return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Commissioner.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER H. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

19 TAC §§10.170 - 10.179

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter H, §§10.170 - 10.179, concerning the Texas Emergency and Trauma Care Education Partnership Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter E, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.170, Purpose, establishes the purpose for the subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program.

Rule 10.171, Authority, establishes authority for this subchapter is found in Texas Education Code, §§61.9801 - 61.9807, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.172, Definitions, defines terms related to administration of the grant program.

Rule 10.173, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.174, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.175, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.176, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.177, Reporting, establishes reporting requirements for grantees.

Rule 10.178, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Rule 10.179, Administrative Costs, provides direction on how funds can be appropriated for administrative costs of the grant program.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Texas Emergency and Trauma Care Education Partnership Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter HH, Sections 61.9801 - 61.9807, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The proposed new sections affect Texas Education Code, Sections 61.9801 - 61.9807.

§10.170. Purpose.

The purpose of this subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas for doctors and registered nurses.

§10.171. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 61, subchapter HH, §§61.9801 - 61.9807.

§10.172. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(4) Emergency and Trauma Care Education Partnership--A partnership that consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state and serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(5) Graduate Medical Education (GME) Program--The period of didactic and clinical education in a medical specialty, subspecialty, or sub-subspecialty that follows completion of undergraduate medical education (i.e., medical school) and that prepares physicians for the independent practice of medicine in that specialty, subspecialty, or sub-subspecialty.

(6) Graduate Professional Nursing Program--An educational program of a public or private institution of higher education that prepares students for a master's or doctoral degree, as defined in Texas Education Code, §54.355.

(7) Hospital--A Texas general hospital or special hospital, as defined in Texas Health and Safety Code, §241.003, excluding a facility that is owned, maintained, or operated by the federal government or an agency of the federal government.

(8) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

§10.173. Eligibility.

(a) A grant under this subchapter may be spent only on costs related to the operation or to the development and operation of a Texas Emergency and Trauma Care Education Partnership.

(b) The following types of emergency and trauma education partnerships are eligible to receive a grant under this program:

(1) A Graduate Nursing Education Program Partnership that:

(A) Consists of one or more hospitals and one or more graduate nursing programs in this state; and

(B) Prepares students to complete a graduate professional nursing program with a specialty focus or post-master's certificate in emergency and trauma care; or

(2) A Graduate Medical Education Program Partnership that:

(A) Consists of one or more hospitals and one or more graduate medical education programs in this state; and

(B) Prepares the physician to earn a board certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialties.

(c) Each Emergency and Trauma Care Education Partnership shall:

(1) Meet the requirement to increase the number of additional students in each program as follows:

(A) Nursing - Certify an increase of a sufficient number of additional graduate nursing students in the participating graduate education programs, and enroll in the education program additional students as determined by the total number of students enrolled through the grant period minus the number of enrolled students at the time of application.

(B) Graduate Medical Education (GME) - Certify an increase of a sufficient number of additional residents/fellows in the participating graduate medical education program, and intend to increase or, at a minimum, maintain previously funded increases.

(2) Use existing facilities and expertise of the hospitals and graduate education programs participating in the partnership.

(3) Meet any other eligibility criteria set forth in the RFA.

§10.174. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit the following number of applications:

(1) Graduate Nursing Education Program Partnerships may submit a maximum of one application for each eligible nursing program.

(2) Graduate Medical Education Program Partnerships may submit a maximum of one application for each eligible medical fellowship or residency program.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board during the period specified in the RFA. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(c) Applications shall at a minimum:

(1) Provide a detailed explanation of the eligible partnership, including a description of the role and commitment of the hospital(s) and graduate nursing program or graduate medical education program;

(2) Document how the partnership will serve to increase training opportunities in emergency and trauma care for registered nurses or physician residents or fellows at participating partnerships;

(3) Identify the program director responsible for centralized decision making related to the partnership;

(4) Include a provision to maintain existing clinical training agreements relating to graduate nursing and graduate medical education programs not participating in the partnership and to provide for a specified number of additional registered nurses and/or physician residents or fellows to participate in clinical training;

(5) Include a provision for tracking employment of partnership participants during and after completion of participation;

(6) Describe availability of funds and/or in-kind contributions made available by the partnership to match a portion of the grant funds;

(7) Describe potential partnership program replication;

(8) Describe sustainability of the partnership beyond the grant period; and

(9) Meet other requirements as specified in the RFA.

§10.175. Evaluation.

The Commissioner shall select applicants for funding based on the following requirements and award priority criteria, as required by Texas Education Code, §61.9804. Priority criteria for applications shall include:

(1) Collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the Coordinating Board, including any standards the Coordinating Board may establish that:

(A) Provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) Provide for access to clinical training positions for students in graduate professional nursing and residents/fellows in graduate medical education programs that are not participating in the partnership; and

(C) Specify the details of any requirement relating to a student or a resident/fellow in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) A demonstrable education model to:

(A) Increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) Improve student or resident retention in each participating education program;

(3) The availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) Replicability by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) Plans for sustainability of the partnership.

§10.176. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length.

(1) A graduate Nursing Education Program Partnership is eligible to receive funding for up to three years within a grant period.

(2) A Graduate Medical Education Program Partnership is eligible to receive funding for up to two years within a grant period.

(3) Each program award shall be subject to approval pursuant to §1.16, of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(4) The Commissioner of Higher Education may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(5) The Coordinating Board may advance a portion of the grant award to a grantee.

(6) Determination of the allowability of administrative costs will be set forth in the RFA.

§10.177. Reporting.

(a) Each grantee shall file reports with the Coordinating Board as required and include the outcomes of the partnership program(s) according to a schedule and in the format required by the Coordinating Board by the deadlines set forth in the RFA.

(b) Each grantee shall provide the following:

(1) Status of the grant program activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.178. Additional Requirements.

(a) Forfeiture and Return of Funds.

(1) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after the end date of the period of performance or an earlier due date if specified by the RFA.

(2) Each grantee shall reimburse the Coordinating Board any award funds expended on items that are not necessary and reasonable or in accordance with the applicable law, rules, or NOGA within the time frame and subject to the requirements set forth in the RFA.

(b) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(4) Terminate the grant agreement.

(c) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(d) The Commissioner may reallocate returned funds to existing grantees in an equitable manner.

§10.179. Administrative Costs.

A reasonable amount, not to exceed three percent of funds appropriated for purposes of this subchapter, may be used to pay the costs of administering the Texas Emergency and Trauma Care Education Partnership 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 August 5, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 15, 2024

For further information, please call: (512) 427-6182

SUBCHAPTER J. MINORITY HEALTH RESEARCH AND EDUCATION GRANT PROGRAM.

19 TAC §§10.210 - 10.218

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter J, §§10.210 - 10.218, concerning administration of the Minority Health Research and Education Grant Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.74, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.210, Purpose, establishes the purpose for the subchapter is to administer the Minority Health Research and Education Grant Program.

Rule 10.211, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.301 - 63.302, which provide the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.212, Definitions, defines terms related to administration of the grant program.

Rule 10.213, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.214, Application Process, describes main criteria that must be included in the grant application.

Rule 10.215, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.216, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.217, Reporting, establishes reporting requirements for grantees.

Rule 10.218, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the rules is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Minority Health Research and Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 63.301 - 63.302, which provide the Coordinating Board with the authority to adopt rules to administer the Minority Health Research and Education Grant Program.

The proposed new sections affect Texas Administrative Code, Chapter 10, Subchapter J.

§10.210. Purpose.

The purpose of this subchapter is to administer the Minority Health Research and Education Grant Program to eligible entities to meet the needs of the state of Texas.

§10.211. Authority.

The authority for this subchapter is found in Texas Education Code, §§63.301 - 63.302, which provides the Coordinating Board with the authority to adopt rules to administer the Minority Health Research and Education Grant Program.

§10.212. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board including the staff who report to the Commissioner and Board.

(4) Eligible Institution--An institution of higher education as defined in §10.213 of this subchapter (relating to Eligibility).

(5) Minority (as it applies to minority health issues)--A group which may include an economic, geographic, or a racial or ethnic group that is under-represented in one or more areas of health research or health education.

(6) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

§10.213. Eligibility.

(a) To be eligible to apply for and receive funding under the program an institution of higher education shall:

(1) Meet the definition of Texas institution of higher education as defined by Texas Education Code, §61.003(8), or be a Center for Teacher Education at Jarvis Christian College, Paul Quinn College, Texas College, Huston Tillotson University, or Wiley College; and

(2) Conduct research or educational programs that address minority health issues; or

(3) Form partnerships with minority organizations, colleges or universities to conduct research and educational programs that address minority health issues.

(b) Each grant recipient shall:

(1) Conduct research and educational initiatives, including those that expand existing research and degree programs, and develop other new or existing activities and projects, which are not funded by state appropriations during the funding period;

(2) Propose programs that do not conflict with current judicial decisions and state interpretation on administering minority programs in higher education; and

(3) Meet any other eligibility criteria set forth in the RFA.

§10.214. Application Process.

(a) Unless otherwise specified in the RFA, an eligible institution may submit only one application for the Minority Health Research and Education Grant Program per grant cycle.

(b) An institution shall not submit the same application to the Nursing, Allied Health and Other Health-related Education Grant Program.

(c) To qualify for funding consideration, an eligible applicant must submit an application during the period specified in the RFA to the Coordinating Board. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(d) Applications shall at a minimum:

(1) Describe the significance and potential impact of research or educational program for minority health issues;

(2) List a goal and at least three benchmark targets/objectives and estimated dates to monitor adequate progress toward reaching the goal;

(3) Provide a proposed plan for the use of the grant funds reasonable and necessary to meet the program goal and objective; and

(e) Meet any other requirement as specified in the RFA.

§10.215. Evaluation.

The Commissioner shall select applicants for funding based on requirements and award criteria provided in the RFA, including:

(1) Significance and impact of research or educational program for minority health issues;

(2) Program design;

(3) Resources to perform the program;

(4) Cost effectiveness; and

(5) Evaluation and expected outcomes.

§10.216. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length: An eligible institution may receive funding for up to three years within a grant period.

(c) Program awards shall be subject to Coordinating Board approval pursuant to §1.16 of this title (relating to Contracts, Including Grants for Materials and/or Services).

(d) The Commissioner may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(e) The Coordinating Board may advance a portion of the grant award to a grantee with the remainder of the award distributed on a cost reimbursement basis.

(f) Determination of the allowability of administrative costs will be set forth in the RFA.

(g) Grant awards may only be used on necessary and reasonable costs as described in the RFA.

§10.217. Reporting.

(a) A grantee shall submit performance and financial reports in the format required by the Coordinating Board by the deadlines set forth in the RFA.

(b) Each grantee shall provide information that includes the following:

(1) Status of the grant project activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.218. Additional Requirements.

(a) Forfeiture and Return of Funds.

(1) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after written request or an earlier due date if specified by the RFA.

(2) Each grantee shall return or repay to the Coordinating Board any award funds that the State determines an eligible institution improperly expended on items not listed in the RFA or otherwise prohibited by law within the time frame and subject to the requirements set forth in the RFA.

(b) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(3) Terminate the grant agreement.

(c) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(d) The Coordinating Board may retain returned and reimbursed funds for award in a future year as authorized by the General Appropriations Act.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6182

SUBCHAPTER K. NURSING, ALLIED HEALTH AND OTHER HEALTH-RELATED EDUCATION GRANT PROGRAM

19 TAC §§10.230 - 10.238

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter K, §§10.230 - 10.238, concerning administration of the Nursing, Allied Health and Other Health-Related Education Grant Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.73, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.230, Purpose, establishes the purpose for the subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program.

Rule 10.231, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.232, Definitions, defines terms related to administration of the grant program.

Rule 10.233, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.234, Application Process, describes main criteria that must be included in the grant application.

Rule 10.235, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.236 Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.237, Reporting, establishes reporting requirements for grantees.

Rule 10.238, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Nursing, Allied Health and Other Health-Related Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

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

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

The proposed new sections affect Texas Administrative Code, Chapter 10, Subchapter J.

§10.230. Purpose.

The purpose of this subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas.

§10.231. Authority.

The authority for this subchapter is Texas Education Code, §§63.201 - 63.203, which provides the Coordinating Board with the authority to adopt rules to administer the Nursing, Allied Health and Other Health-Related Education Grant Program.

§10.232. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(4) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

(5) Upper-Level Academic Instruction and Training--A course beyond the core in the fields of nursing, allied health or other health-related education at an institution of higher education.

§10.233. Eligibility.

(a) General Eligibility.

(1) Eligible institutions include public institutions of higher education that offer upper-level academic instruction and training in the fields of nursing, allied health, or other health-related education.

(2) Institutions or components identified under Texas Education Code, §§63.002(c) and 63.101, are not eligible to receive funding through the grant program.

(3) Eligible programs include nursing, allied health or other health-related initiatives, including those that expand existing academic programs, develop new or existing activities and projects, and are not funded by state appropriation during the funding period.

(b) Additional eligibility criteria through September 1, 2027. Notwithstanding the limitations in subsection (a) of this section, for the fiscal biennium ending on August 31, 2025, and the fiscal biennium ending on August 31, 2027, the Coordinating Board shall prioritize institutions proposing to address the shortage of registered nurses by:

(1) Preparing students for initial licensure as registered nurses; or

(2) Preparing qualified faculty members with a master's or doctoral degree.

(c) Institutions and programs shall meet any other eligibility criteria set forth in the RFA.

§10.234. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit a maximum of one application for the Nursing, Allied Health and Other Health-Related Education Grant Program.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board during the period specified in the RFA. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(c) Applications shall at a minimum:

(1) Describe the significance and impact the grant award shall have on academic instruction and training in health-related education in the state as described in the RFA;

(2) List a goal and at least three benchmark targets/objectives and estimated dates to monitor adequate progress toward reaching the goal;

(3) Provide a budget that is reasonable and necessary that aligns with the goal and objectives; and

(4) Meet other requirements as specified in the RFA.

§10.235. Evaluation.

The Commissioner shall select applicants for funding on a competitive basis to provide the best overall value to the state. Selection criteria shall be based on:

(1) Program quality as determined by peer or staff reviewers;

(2) Impact the grant award shall have on academic instruction and training in public health-related education in the state;

(3) Cost of the proposed program;

(4) Other factors to be considered by the Coordinating Board, including financial ability to perform program, state and regional needs and priorities, ability to continue program after grant period, and past performance; and

(5) Other requirements and award criteria provided in the RFA.

§10.236. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length: A program is eligible to receive funding for up to three years within a grant period.

(c) Each program award shall be subject to approval pursuant to §1.16 of this title (relating to Contracts, Including Grants for Materials and/or Services).

(d) The Coordinating Board may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(e) The Coordinating Board may advance a portion of the grant award to a grantee if necessary for grantee to carry out the grant program with the remainder of the award distributed on a cost reimbursement basis.

(f) Determination of the allowability of administrative costs will be set forth in the RFA.

(g) Grant awards may only be used on necessary and reasonable costs as described in the RFA.

§10.237. Reporting.

Each grantee shall submit performance and financial reports in the format required by the Coordinating Board by the deadlines set forth in the RFA. A grantee shall provide the following:

(1) Status of the grant project activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.238. Additional Requirements.

(a) A grant award is automatically terminated if the grantee is placed on probation by the Texas Board of Nursing or loses its status as an approved professional nursing program. The grantee shall immediately return all unexpended grant funds.

(b) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after written demand or an earlier due date if specified by the RFA.

(c) Each grantee shall reimburse any award funds that are expended on items not consistent with §10.236(g) of this subchapter (relating to Grant Awards) to the Coordinating Board within the time frame and subject to the requirements set forth in the RFA.

(d) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(4) Terminate the grant agreement.

(e) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(f) The Coordinating Board may retain returned and reimbursed funds for the next RFA.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6182

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051, §61.1053

The Texas Education Agency (TEA) proposes the repeal of §61.1051 and §61.1053, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The proposed repeal would relocate the existing requirements relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking to proposed new 19 TAC Chapter 103, Subchapter EE. The proposed new rules would include updates to align with legislation from the 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools.

Section 61.1053 relates signage requirements for posting the offenses of human trafficking on public school premises.

In order to align the rules with other provisions on health and safety, the proposed repeal would relocate the requirements from §61.1051 and §61.1053 to proposed new 19 TAC Chapter 103, Health and Safety, Subchapter EE, Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child. The proposed new sections would incorporate legislative updates from the 88th Texas Legislature, Regular Session, 2023. A separate rule action for proposed new 19 TAC Chapter 103, Subchapter EE, provides a detailed description of the proposed changes from the existing rules.

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

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

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

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state

agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations in order to relocate the rules.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop 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 relocating the rules to align them with other requirements for health and safety. 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 August 16, 2024, and ends September 16, 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 August 16, 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 repeal is proposed under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§61.1051. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

§61.1053. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE TEXAS VIRTUAL SCHOOL NETWORK (TxVSN)

19 TAC §§70.1001, 70.1005, 70.1008, 70.1009, 70.1013, 70.1015, 70.1017, 70.1027, 70.1028

The Texas Education Agency (TEA) proposes amendments to §§70.1001, 70.1005, 70.1008, 70.1009, 70.1013, 70.1015, 70.1017, 70.1027, and 70.1028, concerning the Texas Virtual School Network (TxVSN). The proposed amendments would permit courses lower than Grade 9 to be offered to Texas public schools through the statewide course catalog, update the definition of central operations and student eligibility for full-time enrollment in the TxVSN, eliminate references to the International Association for K-12 Online Learning, and update references to statute and other administrative rule.

BACKGROUND INFORMATION AND JUSTIFICATION: In 2003, the 78th Texas Legislature, Regular Session, established the electronic course program, allowing school districts to offer electronic courses through a full-time online program. TEC, Chapter 30A, State Virtual School Network, added by the 80th Texas Legislature, 2007, provided for the establishment of a state virtual school network to provide supplemental online courses. In 2009, House Bill (HB) 3646, 81st Texas Legislature,

Regular Session, incorporated the electronic course program under the state virtual school network. Additional amendments to TEC, Chapter 30A, were adopted in 2011 and 2015. In 2017, Senate Bill (SB) 587, 85th Texas Legislature, Regular Session, amended eligibility requirements for students to enroll full time in the TxVSN. In 2019, HB 3, 86th Texas Legislature, updated references to statute.

The commissioner adopted 19 TAC Chapter 70 effective February 27, 2013. Additional revisions were adopted effective April 7, 2015. The proposed amendments would update portions of the rules to align with changes made to statute in 2017 and 2019. Additionally, the proposed amendments would permit courses lower than Grade 9 to be offered to Texas public schools through the statewide course catalog, update the definition of central operations, and eliminate references to the International Association for K-12 Online Learning.

The proposed amendment to §70.1001, Definitions, would revise the successful course completion definition, allowing for the expansion of courses to be offered in the statewide course catalog by removing high school-specific references. The proposed amendment would clarify the successful program completion definition and update who carries out the day-to-day operations of the TxVSN because TxVSN central operations was statutorily transitioned to TEA.

The proposed amendments to §70.1005, Texas Virtual School Network Course Requirements; §70.1027, Requirements for Educators of Electronic Courses; and §70.1028, Requirements for Texas Virtual School Network Educator Professional Development, would revise the name of the national standards that are used to establish quality online courses.

The proposed amendment to §70.1009, Texas Virtual School Network Online School Eligibility, would update a cross reference to the rule on financial accountability ratings.

The proposed amendment to §70.1013, Texas Virtual School Network Student Eligibility, would update a cross reference to reflect the renumbering of statute.

The proposed amendment to §70.1015, Texas Virtual School Network Enrollment, Advancement, and Withdrawal, would revise the requirements for a student's home district to include earned grades in the student's academic record and would clarify that a student enrolled full time in an online school program in Grades 3-8 must demonstrate academic proficiency sufficient to earn promotion to the next grade level.

The proposed amendment to §70.1017, Texas Virtual School Network Compulsory Attendance, would revise successful completion attendance requirements by removing grade level references to courses and programs.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, 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 existing regulations by allowing for online middle school courses to be offered to Texas public schools through the statewide course catalog and by providing conforming changes to current standards and statutes.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing local education agencies and students with additional course options and flexibility in offering and completing course requirements. 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 August 16, 2024, and ends September 16. 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 August 16, 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 amendments are proposed under Texas Education Code (TEC), §30A.051(b), which authorizes the commissioner of education to adopt rules necessary to implement the state virtual school network.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §30A.051(b).

§70.1001. Definitions.

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

(1) (No change.)

(2) Successful course completion--The term that applies when a student [~~taking a high school course~~] has demonstrated academic proficiency of course [~~the~~] content by earning [~~for a high school course and has earned~~] a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for a high school [~~the~~] course.

(3) Successful program completion--The term that applies when a student enrolled in a Texas Virtual School Network Online School program in Grades 3-8 has demonstrated academic proficiency and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s) for the educational program, sufficient for promotion to the next grade level.

(4) (No change.)

(5) TxVSN central operations--The TEA staff [~~regional education service center~~] that carries out the day-to-day operations of the TxVSN, including the centralized student registration system, statewide course catalog listings, and other administrative and reporting functions.

(6) - (9) (No change.)

(10) TxVSN statewide course catalog--A supplemental online [~~high school~~] instructional program available through approved course providers.

§70.1005. Texas Virtual School Network Course Requirements.

(a) All electronic courses to be made available through the Texas Virtual School Network (TxVSN) shall be reviewed and approved prior to being offered.

(1) Each electronic course approved for inclusion in the TxVSN shall:

(A) - (E) (No change.)

(F) be aligned with the current [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Courses;

(G) - (H) (No change.)

(2) - (6) (No change.)

(b) - (c) (No change.)

§70.1008. Texas Virtual School Network Statewide Course Catalog Receiver District Requirements.

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

(c) Each TxVSN receiver district shall:

(1) - (3) (No change.)

(4) in accordance with §74.26 of this title (relating to Award of Credit), award credit to a student enrolled in the district who has successfully completed all state and local requirements and received a grade that is the equivalent of 70 on a scale of 100, based upon the essential knowledge and skills for a high school course offered through the TxVSN statewide course catalog.

(d) - (e) (No change.)

§70.1009. Texas Virtual School Network Online School Eligibility.

(a) To be eligible to serve as a Texas Virtual School Network (TxVSN) online school, a school district or charter school shall:

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

(3) be rated at the Standard Achievement level or higher under the state financial accountability rating system as specified in §109.1001 [~~§109.1003~~] of this title (relating to [~~Types of~~] Financial Accountability Ratings);

(4) - (6) (No change.)

(b) (No change.)

§70.1013. Texas Virtual School Network Student Eligibility.

(a) A student is eligible to enroll in a course provided by the Texas Virtual School Network (TxVSN) only if:

(1) the student on September 1 of the school year:

(A) (No change.)

(B) is younger than 26 years of age and entitled to the benefits of the Foundation School Program under the Texas Education Code, §48.003 [~~§42.003~~] ;

(2) (No change.)

(3) the student:

(A) (No change.)

(B) [~~the student~~] is a dependent of a member of the United States military, was previously enrolled in high school in this state, and no longer resides in this state as a result of a military deployment or transfer.

(b) A student is eligible to enroll full time in courses provided through the TxVSN only if the student :

(1) [~~the student~~] was enrolled in a public school in this state in the preceding school year;

(2) is a dependent of a member of the United States military who has been deployed or transferred to this state and was enrolled in a publicly funded school outside of this state in the preceding school year; or

(3) [~~(2)~~] [~~the student~~] has been placed in substitute care in this state, regardless of whether the student was enrolled in a public school in this state in the preceding school year . [~~; or~~]

~~[(3) the student:]~~

~~[(A) is a dependent of a member of the United States military;]~~

~~[(B) was previously enrolled in high school in this state; and]~~

~~[(C) no longer resides in this state as a result of a military deployment or transfer.]~~

(c) - (d) (No change.)

§70.1015. Texas Virtual School Network Enrollment, Advancement, and Withdrawal.

(a) A student taking a course through the Texas Virtual School Network (TxVSN) statewide course catalog or a TxVSN Online School (OLS) program is considered to:

(1) (No change.)

(2) have successfully completed a course if the student demonstrates academic proficiency and, for a high school course, earns credit for the course, as determined by the TxVSN teacher; and

(3) (No change.)

(b) A student taking a course through the TxVSN statewide course catalog:

(1) - (3) (No change.)

(4) shall have the grade assigned by the TxVSN teacher added to the student's record [~~transcript~~] by the student's home district and, for a high school course, added to the student's transcript.

(c) A student enrolled full time in a TxVSN Online School program in Grades 3-8 must demonstrate academic proficiency sufficient to earn promotion to the next grade, as determined by the TxVSN teacher for the educational program.

(d) (No change.)

§70.1017. Texas Virtual School Network Compulsory Attendance.

(a) (No change.)

(b) Based upon successful completion of a TxVSN course [~~for students in Grades 9-12~~] or a TxVSN Online School (OLS) instructional program [~~for students in Grades 3-8~~], students are considered to have met attendance requirements for that course or program. A student who has successfully completed the grade level or course is eligible to receive any weighted funding for which the student is eligible.

(c) (No change.)

§70.1027. Requirements for Educators of Electronic Courses.

(a) Each instructor of an electronic course, including a dual credit course, offered through the Texas Virtual School Network (TxVSN) by a course provider must be certified under the Texas Education Code (TEC), Chapter 21, Subchapter B, to teach that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a course provider. In addition, each instructor:

(1) must:

(A) (No change.)

(B) have a graduate degree in online or distance learning and have demonstrated mastery of the [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Teaching; or

(C) have two or more years of documented experience teaching online courses for students in Grades 3-12 and have demonstrated mastery of the [~~iNACOL~~] National Standards for Quality Online Teaching; and

(2) (No change.)

(b) (No change.)

(c) TxVSN course providers shall affirm the preparedness of instructors of TxVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

(1) maintain records documenting:

(A) - (B) (No change.)

(C) instructor's demonstrated mastery of the [~~iNACOL~~] National Standards for Quality Online Teaching prior to teaching through the TxVSN;

(2) - (5) (No change.)

§70.1028. Requirements for Texas Virtual School Network Educator Professional Development.

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

(c) The Texas Education Agency shall use the most recent [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Teaching to evaluate professional development courses submitted by a TxVSN course provider for approval.

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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Director, Rulemaking
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CHAPTER 103. HEALTH AND SAFETY
SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §103.1401, §103.1403

The Texas Education Agency (TEA) proposes new §103.1401 and §103.1403, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The proposed new sections would relocate existing requirements from 19 TAC Chapter 61, Subchapter EE, relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking. Proposed new §103.1401 would include updates to school district policy requirements to align with Texas Family Code, §261.104, as amended by House Bill (HB) 63, 88th Texas Legislature, Regular Session, 2023. Proposed new §103.1403 would include updates to signage requirements to align with Senate Bill (SB) 2069, HB 3553, and HB 3554, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §103.1401 would include existing requirements from 19 TAC §61.1051, which relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools. The following updates would align the new section with HB 63, 88th Texas Legislature, Regular Session, 2023. Proposed new §103.1401(b)(2)(D) would require local policies for reporting to include notice that oral reports made to the Texas Department of Family and Protective Services are recorded. Proposed new §103.1401(b)(2)(E) would require local policies to include notice that an individual making a report must provide his or her name, telephone number, and address and include an explanation of the limited circumstances under which the identity of an individual making a report may be disclosed.

Proposed new §103.1403 would include existing requirements from 19 TAC §61.1053, which relates to signage requirements for posting the offenses of human trafficking on public school premises. To align with SB 2069, 88th Texas Legislature, Regular Session, 2023, proposed new §103.1403(a) would be updated to remove the definition of "premises" and modify the definition of "school." Proposed new §103.1403(b) would also align with SB 2069 by updating the required location of signage. Pro-

posed new §103.1403(c)(1)(A) would update the information related to penalties for trafficking of persons to align with changes to Texas Penal Code, §20A.02, made by HB 3553 and HB 3554, 88th Texas Legislature, Regular Session, 2023.

FISCAL IMPACT: Steve Lecholop, deputy commissioner for governance, 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 new regulations to update the requirements for school district policies related to reporting child abuse and neglect to align with statute and update the requirements related to signage pertaining to criminal offenses of human trafficking to align with statute.

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

DATA AND REPORTING IMPACT: The proposal would have no data 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 August 16, 2024, and ends September 16, 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 August 16, 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 sections are proposed under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§103.1401. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

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

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) oral reports made to the Texas Department of Family and Protective Services are recorded;

(E) confidentiality provisions relating to reports of suspected child abuse or neglect, including the following:

(i) the requirement for the individual making the report to provide his or her name and telephone number;

(ii) the requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

(iii) the limited circumstances under which the identity of the individual making a report may be disclosed;

(F) any disciplinary action that may result from noncompliance with the district's reporting policy; and

(G) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

§103.1403. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

(a) When used in this section, the term "school" means a public primary or secondary school.

(b) Each public school shall post warning signs in a conspicuous place reasonably likely to be viewed by all school employees and visitors.

(c) Each warning sign must:

(1) describe the offense of trafficking in persons as provided under Texas Penal Code, §20A.02(a). The sign must emphasize that an offense under Texas Penal Code, §20A.02, is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(A) on the premises of or within 1,000 feet of the premises of:

(i) a school;

(ii) a juvenile detention facility;

(iii) a post-adjudication secure correctional facility;

(iv) a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, people who are homeless, or persons subjected to human trafficking, domestic violence, or sexual assault;

(v) a community center offering youth services and programs;

(vi) a child-care facility, as defined by Human Resources Code, §42.002; or

(vii) an institution of higher education or private or independent institution of higher education, as defined by Texas Education Code, §61.003; or

(B) on premises or within 1,000 feet of premises where:

(i) an official school function was taking place; or

(ii) an event sponsored or sanctioned by the University Interscholastic League was taking place;

(2) be written in English and Spanish;

(3) be at least 8.5 by 11 inches in size; and

(4) be properly maintained to ensure readability and protection from the elements for outdoor signs.

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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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER A. AUTOMOBILE INSURANCE
DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.205

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.205, concerning the Motor Vehicle Crime Prevention Authority (MVCPA) pass-through fee. The amendments to §5.205 implement Senate Bill 224, 88th Legislature, 2023.

EXPLANATION. Amending §5.205 is necessary to implement SB 224, which amended Transportation Code §1006.153 to increase the MVCPA fee amount from $4 to $5 to help fund the detection and prevention of catalytic converter thefts. The proposed amendments replace the $4 fee amount and update the language in the notice that insurers must provide to policyholders when recouping the MVCPA fee.

To provide adequate time for insurers to update the notice, as required under subsection (b), TDI proposes an effective date of 90 days after the date the rule is adopted.

Descriptions of the section's proposed amendments follow.

Section 5.205. Subsection (a) is amended to remove the $4 fee amount. Instead of replacing the $4 fee amount with the updated $5 fee, the amended text states that the insurer must pay the MVCPA fee as set by Transportation Code §1006.153(b), which removes the need to update the fee amount if it is changed in the statute in the future.

Subsection (b) is amended to update the notice that an insurer must provide to a policyholder when the insurer seeks to recoup the MVCPA fee, adding that the detection and prevention of catalytic converter thefts is an activity that the MVCPA fee helps to fund.

Existing subsections (c) and (d) are removed because they contain instructions for updating and filing the notice and are based on a previous amendment. Insurers should have already made these updates to the notice required under subsection (b), making these subsections unnecessary.

A new subsection (c) is added to inform insurers that if the insurer recoups the fee from the policyholder, the insurer must file a new or revised notice with TDI. New subsection (c) also clarifies that an insurer does not need to include the actual fee amount in the filed notice. Rather, the insurer may use a variable field in the filed notice.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nicole Beall, manager, Property and Casualty Lines, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by the statute. Ms. Beall made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Beall does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Beall expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Transportation Code Chapter 1006. In addition, the proposed amendments will help policyholders understand why they are charged the MVCPA fee and what the fee funds.

Ms. Beall expects that the proposed amendments will not increase the cost of compliance with Transportation Code Chapter 1006 because the proposed amendments do not impose new requirements beyond those in the statute. The increased fee is required by the statute, not the rule. Transportation Code §1006.153 requires insurers to pay to the MVCPA a fee equal to $5 multiplied by the total number of years or portions of years during which a motor vehicle is covered by insurance. As a result, the costs associated with the increased fee and any filings needed to update the fee or the required notice do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The increased fee is required by the statute and is not a result of the rule. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendments do not impose a cost on regulated persons. Even if the amendments did impose a cost, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §5.205 are necessary to implement legislation. The proposed amendments implement Transportation Code §1006.153, as amended by SB 224.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §5.205 under Transportation Code §1006.153 and Insurance Code §36.001.

Transportation Code §1006.153 provides that an insurer pay to the MVCPA a fee equal to $5 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.205 implements Transportation Code §1006.153.

§5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee.

(a) Each insurer must pay a fee [~~of $4.00~~] per "motor vehicle year of insurance" to the Motor Vehicle Crime Prevention Authority, as set [~~as required~~] by Transportation Code §1006.153(b), concerning Fee

Imposed on Insurer [~~§1006.153~~]. The insurer is authorized to recoup some or all of this fee from the policyholder.

(b) If an insurer recoups the fee from the policyholder under subsection (a) of this section, the insurer must:

(1) provide the policyholder with a notice using the following or similar language, in at least 10-point type: "Your payment includes a $[_______] fee per vehicle each year. This fee helps fund (1) auto burglary, theft, and fraud prevention;[~~,~~] (2) criminal justice efforts;[~~, and~~] (3) trauma care and emergency medical services for victims of accidents due to traffic offenses; and (4) the detection and prevention of catalytic converter thefts. By law, this fee funds the Motor Vehicle Crime Prevention Authority.";

(2) include the notice on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations), that is delivered, issued for delivery, or renewed in this state, including those policies issued through the Texas Automobile Insurance Plan Association; and

(3) if the notice language required by paragraph (1) of this subsection is provided somewhere other than the declarations page, renewal certificate, or billing, also include the following or similar language on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime Prevention Authority Fee $[______] (See enclosed explanation)."

(c) An insurer that recoups the fee from policyholders must file with TDI a new or revised notice as required by subsection (b)(1) of this section. An insurer does not need to include the fee amount in the filed notice. Instead, the insurer can use a variable field for the fee amount, like this: "$[_______]."

[~~(c) An insurer may continue providing a notice used on or before the effective date of this section if the notice:~~]

[~~(1) contains the correct fee amount;~~]

[~~(2) includes "Motor Vehicle Crime Prevention Authority" in place of "Automobile Burglary and Theft Prevention Authority;" and~~]

[~~(3) has any statutory references removed or updated to change Tex. Rev. Civ. Stat. Ann. Art. 4413(37) to Transportation Code Chapter 1006.~~]

[~~(d) A notice that complies with subsection (c) of this section is considered similar to the notice language required by subsection (b) 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 August 2, 2024.

TRD-202403567
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4905

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.4905, concerning minimum retained premium. Amendments to §5.4905 implement House Bill 3208, 88th Legislature, 2023.

EXPLANATION. Amendments to §5.4905 are necessary to implement changes that HB 3208 made to Insurance Code §2210.204. HB 3208 limited the circumstances in which the Texas Windstorm Insurance Association (TWIA) must refund premium when an insured cancels an insurance policy.

Descriptions of the proposed amendments follow.

Section 5.4905. Amendments to subsection (a) clarify that the minimum retained premium provision is subject to Insurance Code §2210.204, and specify that--except as provided in the rule--the minimum retained premium on a TWIA policy is equal to the premium for the full annual policy term.

Existing subsection (b) is replaced by a new subsection (b). New subsection (b) still provides that a TWIA policy is subject to a $100 minimum retained premium if it is canceled for specific reasons, but it now refers to the reasons specified in Insurance Code §2210.204(d). It also specifies that reasons include a change in the majority ownership of the insured property, including foreclosure or the death of the policyholder.

A new subsection (c) is added that maintains the requirement from current subsection (b) that if any unearned premium remains after applying the minimum retained premium, then it must be refunded pro rata. Existing subsections (c) and (d) are redesignated as (d) and (e) to reflect the insertion of new subsection (c).

In addition, the proposed amendments include nonsubstantive changes to conform the section to the agency's current drafting style and plain language preferences, and to improve the rule's clarity. Examples include replacing "Association" with "TWIA" and the phrase "shall not" with "may not" and "shall be" with "is."

Amendments also delete obsolete language specifying the applicable minimum retained premium for policies effective before and after November 27, 2011. To clarify the section, existing text is restructured and language that is effectively duplicative is eliminated.

TDI invited public comment on an informal draft posted on TDI's website on May 13, 2024, through May 27, 2024. No comments were received.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than those imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr.

Muckerheide expects that administering them will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2210.204.

Mr. Muckerheide expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2210.204 because they do not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if the proposal did impose costs, no additional rule amendments would be required under Government Code §2001.0045 because the amendments to §5.4905 are necessary to implement legislation. The proposed rule implements Insurance Code §2210.204, as amended by HB 3208.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §5.4905 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) provides that the commissioner may adopt rules that are reasonable and necessary to implement Insurance Code Chapter 2210.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4905 implements Insurance Code §2210.204.

§5.4905 Minimum Retained Premium.

(a) Except as provided in this section and subject to Insurance Code §2210.204, concerning Cancellation of Certain Coverage, for cancellation of insurance coverage, the minimum retained premium on a TWIA [~~an Association~~] policy issued on an annual basis is equal to the premium for the full annual policy term. [~~shall be:~~]

[~~(1) equal to the greater of:~~]

[~~(A) 90 days of the annual policy term or $100, for policies that become effective on and after November 27, 2011; or~~]

[~~(B) 180 days of the annual policy term or $100, for policies that become effective before November 27, 2011; and~~]

[~~(2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.~~]

(b) A TWIA policy is subject to a $100 minimum retained premium if it is canceled because of:

(1) any of the reasons specified in Insurance Code §2210.204(d); or

[~~(b) An Association policy canceled due to the reasons specified in paragraphs (1) - (4) of this subsection is subject to the $100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.~~]

(2) [~~(1)~~] a [A] change in majority ownership of the insured property, including [~~sale of the insured property to an unrelated party, or~~] foreclosure of the insured property; or

[~~(2) the replacement of the Association policy with other similar coverage in the voluntary market;~~]

[~~(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or~~]

(3) [~~(4)~~] the death of the policyholder.

(c) Any unearned premium after the application of the minimum retained premium in this section must be refunded pro rata.

(d) [~~(c)~~] TWIA may [~~The Association shall~~] not issue a new or renewal policy to an applicant who owes premium on a prior TWIA [~~Association~~] policy.

(e) [~~(d)~~] The minimum retained premium may [~~shall~~] not create or extend coverage beyond the policy's effective cancellation date.

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 August 2, 2024.

TRD-202403568
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9001 - 5.9004, 5.9006 - 5.9014

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.9001 - 5.9004 and 5.9006 - 5.9014, concerning inspection of amusement rides. Proposed amendments implement House Bill 1553, 88th Legislature, 2023, which revised the definition of "amusement ride" in Occupations Code §2151.002. The proposed amendments also make nonsubstantive updates to the sections.

EXPLANATION. HB 1553 revised the definition of "amusement ride" in Occupations Code §2151.002 to exclude from the definition water slides in which passengers are carried along a course that is less than 200 feet in length, are substantially constructed from vinyl or vinyl-coated polyester, and are not mechanically inflated using a continuous airflow device. The current definition of "amusement ride" in §5.9002 uses the language of the previous statutory definition, so the rule text needs to be updated to reflect the change made to the statute.

To reduce the need for additional rule amendments if the definition of "amusement ride" in Occupations Code §2151.002 is revised in the future, the definition of "amusement ride" is changed to state that it is "as defined in Occupations Code §2151.002," rather than restating the statute's definition in rule text. Similar amendments are made to the definitions of other terms that are already defined in Occupations Code §2151.002.

Proposed amendments also make revisions to the rule text to address changes since the rules were last adopted or amended, including revising text for consistent use of form names and to update form revision dates where necessary, and updating the program area name and mailing address for form submissions.

In addition, amendments make nonsubstantive changes for consistency with current TDI rule text drafting preferences. These include revising use of the word "shall" for consistency with TDI's current plain language preferences; and removing the unnecessary designation of "TDI" as an acronym in separate sections, since "TDI" is a defined term applicable throughout the subchapter. These amendments are not noted in the following descriptions of the sections unless it is necessary or appropriate to provide additional context or explanation.

Details of the sections' proposed amendments follow.

Section 5.9001. Amendments to §5.9001 update citations to the Occupations Code in the section's initial sentences and in paragraph (1), update citations to the Insurance Code in paragraphs (4) and (6), and revise punctuation in paragraph (7).

Section 5.9002. Amendments to §5.9002 revise the definitions of "Amusement ride," "Class A amusement ride," "Class B amusement ride," and "Mobile amusement ride" to remove text that repeats statutory language. Amendments instead define the terms by pointing to the definitions in Occupations Code §2151.002. Amendments also update citations to the Occupations Code and other codes throughout the section, replace the word "five" with the numeral "5" in paragraph (6)(B), lowercase "commissioner of insurance" in paragraph (7), remove a duplicate acronym designation for "ASTM" in paragraph (8), and replace "his or its" with "that person or entity's" in paragraph (13).

Section 5.9003. An amendment to §5.9003 updates the internet address where an amusement ride owner or operator may pay the annual fee required by the Amusement Ride Safety Inspection and Insurance Act. Additional changes revise punctuation, replace the phrase "over the Internet" with the word "online," and remove an unnecessary use of the word "online."

Section 5.9004. Amendments throughout §5.9004 update citations to the Occupations Code and make minor nonsubstantive wording and grammar changes for clarity. References to forms in subsections (b)(5), (b)(8), (c), (c)(11), (c)(12), (e)(3), and (f) are also revised, as are program area names in subsections (c)(11), (c)(12), (e)(3), and (f). Amendments in subsection (b)(6), (c)(7), and (d) change the words "prior to" to "before." Amendments also replace TDI's old mailing address with its new mailing address and provide TDI's website where referenced forms may be obtained in subsections (c)(11), (e)(3), and (f), and an amendment in subsection (f) provides the TDI mailing address where the referenced form may be obtained. Another amendment replaces the word "line" with "lines" and "prior to" with "before."

Section 5.9006. Amendments to §5.9006 clarify and improve the readability of signage requirements in paragraph (1) and replace the words "at which" with "where" in paragraph (3).

Section 5.9007. Amendments to §5.9007 update references to forms in subsections (a)(1) and (b)(1). Amendments also update the applicable program area name and replace TDI's old mailing address with its new mailing address in subsections (a)(1) and (b)(1), and amendments in subsections (a)(1) and (b)(1) provide TDI's website where the referenced forms may be obtained. Plain language changes make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity.

Section 5.9008. An amendment to the introductory sentence of §5.9008 updates a citation to the Occupations Code. Additional amendments change the words "prior to" to "before" in paragraph (1) and revise a reference to a form in paragraph (2).

Section 5.9009. Amendments to §5.9009 make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity and update a citation to the Occupations Code.

Section 5.9010. Amendments to §5.9010 replace the words "at which" with "where" in subsection (a) and revise references to forms in subsections (a) and (b).

Section 5.9011. An amendment to §5.9011 removes the unnecessary designation of the acronym "ASTM." "ASTM" is a defined term applicable throughout the subchapter, so it is not necessary to establish it as an acronym in the section.

Section 5.9012. Amendments to §5.9012 remove or replace the word "such" in subsections (a) and (d) and remove the phrase "set forth" in subsection (d). Citations to the Occupations Code in subsections (e) and (f) are also revised. Amendments also

make minor nonsubstantive wording and punctuation changes throughout the section for clarity.

Section 5.9013. Amendments to §5.9013 update a statutory reference to use the defined term "the Act," add the word "with," change "his/her agent's" to "the state attorney general's agents," and insert a comma.

Section 5.9014. Amendments to §5.9014(a) change "he/she" to "the owner/operator," insert the word "it," and add the words "of this title" to a reference to an Administrative Code section. An amendment to subsection (b) revises text for better consistency with statutory language concerning compliance with the rules and statutes. Amendments in subsections (b) and (c) update citations to the Occupations Code.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jacob Martinez, manager in the Inspections Office, Property and Casualty Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Mr. Martinez made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Martinez does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Martinez expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §2151.002 as amended by HB 1553.

Mr. Martinez expects that the proposed amendments will not increase the cost of compliance with Occupations Code §2151.002 because they do not impose requirements beyond those in the statute. The amendments merely update a definition for consistency with a statutory amendment and make additional nonsubstantive updates. As a result, any cost associated with the proposal results from the enforcement or administration of Occupations Code §2151.002.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities because the amendments merely update a definition for consistency with a statutory change and make additional nonsubstantive revisions. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.9001 - 5.9004 and 5.9006 - 5.9014 under Occupations Code §§2151.051, 2151.1021, and 2151.105 and Insurance Code §36.001.

Occupations Code §2151.051 provides that the commissioner administer and enforce Occupations Code Chapter 2151, which addresses the regulation of amusement rides.

Occupations Code §2151.1021 provides that the commissioner adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints.

Occupations Code §2151.105 provides that the commissioner adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. The rules must require the sign to be posted at the principal entrance to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The amendments to §§5.9001 - 5.9004 and 5.9006 - 5.9014 implement Occupations Code §§2151.002, 2151.051, 2151.1021, 2151.105, and 2151.152.

§5.9001. Purpose and Scope.

It is the purpose of this subchapter to aid in implementing the Amusement Ride Safety Inspection and Insurance Act (Occupations Code, Chapter 2151, concerning Regulation of Amusement Rides) [~~(hereinafter referred to as the Act)~~]. The provisions of this subchapter are in addition to, and not in lieu of, the provisions of Occupations Code Chapter 2151 [~~the Act (Title 13, Occupations Code, Chapter 2151)~~]. This subchapter applies to:

(1) any amusement ride as defined in Occupations Code [~~the Act,~~] §2151.002, concerning Definitions;

(2) the owner and operator of any amusement ride;

(3) any agent or representative of the owner or operator of any amusement ride;

(4) any insurer, including any surplus lines insurer, as defined in [~~the~~] Insurance Code Chapter 981, concerning Surplus Lines Insurance, and any other nonadmitted company;

(5) any agent or representative of any insurer, including surplus lines agents, as defined in [~~the~~] Insurance Code Chapter 981 and agents of any nonadmitted company;

(6) any independently procured policy subject to [~~the~~] Insurance Code Chapter 101, concerning Unauthorized Insurance, §101.001 et seq., providing bodily injury liability insurance for amusement rides; and

(7) any inspector working as an independent contractor or as an employee of an insurance carrier performing amusement ride inspections on behalf of[~~,~~] or under contract with[~~,~~] an insurance carrier.

§5.9002. Definitions.

The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings.

(1) Act--The Amusement Ride Safety Inspection and Insurance Act, (Occupations Code Chapter 2151, concerning Regulation of Amusement Rides) [~~(Title 13, Occupations Code, Chapter 2151)~~].

(2) Amusement ride--As defined in Occupations Code §2151.002, concerning Definitions. [~~Any mechanical, gravity, or water device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include:~~]

[~~(A) any coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator;~~]

[~~(B) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, playground slides, trampolines, and physical fitness devices; or~~]

[~~(C) a challenge course or any part of a challenge course, as defined in §2151.107 of the Act to mean a challenge, ropes, team building, or obstacle course that is constructed and used for educational, team and confidence building, or physical fitness purposes, if the person who operates the challenge course has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course, in an amount not less than:~~]

[~~(i) for facilities with a fixed location:~~]

[~~(I) $100,000 bodily injury and $50,000 property damage per occurrence, with a $300,000 annual aggregate; or~~]

[~~(II) $150,000 per occurrence combined single limit, with a $300,000 annual aggregate; and~~]

[~~(ii) for facilities other than those with a fixed location:~~]

[~~(I) $1,000,000 bodily injury and $500,000 property damage per occurrence; or~~]

[~~(II) $1,500,000 per occurrence combined single limit.~~]

(3) ASTM--The American Society for Testing and Materials.

(4) Class A amusement ride--As defined in Occupations Code §2151.002. [~~An amusement ride with a fixed location and designed primarily for use by children 12 years of age or younger.~~]

(5) Class B amusement ride--As defined in Occupations Code §2151.002. [~~Any amusement ride not defined as a Class A amusement ride.~~]

(6) Class B motorized train amusement ride--A Class B amusement ride that:

(A) consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train but without regard to whether the vehicle and cars operate on a fixed track or course;

(B) does not travel under its own power in excess of 5 [~~five~~] miles per hour;

(C) has safety belts for all passengers;

(D) does not run on an elevated track;

(E) has passenger seating areas enclosed by guardrails or doors; and

(F) does not have passenger cars that rotate independently from the motorized vehicle.

(7) Commissioner--The commissioner of insurance [~~Commissioner of Insurance~~].

(8) Inspector--A person qualified by training, education, or experience to conduct safety inspections of amusement rides or devices on behalf of an insurance company and in accordance with the ASTM [~~American Society for Testing and Materials (ASTM)~~], the manufacturer's standards and criteria, or standards established by the insurance company.

(9) Inspection--A procedure to be conducted by an inspector to determine whether an amusement ride or device is being assembled, maintained, tested, operated, and inspected in accordance with the current ASTM standards, the manufacturer's, or insurer's standards, whichever is the most stringent, and that determines the current operational safety of the ride or device.

(10) Interlocal agreement--An interlocal contract as defined in Government Code §791.003(2), concerning Definitions.

(11) Local government--A county, municipality, or special district; a junior college district, or other political subdivision of this state or another state; a local government corporation created under Transportation Code, Chapter 431, Subchapter D, concerning Local

Government Corporations [Chapter 431]; a political subdivision corporation created under Local Government Code Chapter 304, concerning Energy Aggregation Measures for Local Governments; a local workforce development board created under Government Code §2308.253, concerning Creation of Local Workforce Development Boards; or a combination of two or more of such entities.

(12) Mobile amusement ride--As defined in Occupations Code §2151.002. [An amusement ride that is designed or adapted to be moved from one location to another and is not fixed at a single location.]

(13) Owner/operator--The person or entity responsible for an amusement ride and that person or entity's [his or its] agents or representatives. A separate reference to owner or operator is [shall be] deemed to include owner/operator.

(14) TDI--The Texas Department of Insurance.

§5.9003. Administration and Enforcement.

TDI [The Texas Department of Insurance] is required by the Act to administer and enforce the Act. Owners/operators operating amusement rides must pay a fee of $40 per year for each amusement ride subject to the Act. The fees must be paid by check or money order made payable to TDI [the Texas Department of Insurance]; or, if paying online [over the Internet], the fee must be submitted through the following website: https://feepay.txapps.texas.gov/tdi/amusement-ride-sticker-payments [Texas OnLine Project, as directed by the Texas OnLine Authority], which may add a surcharge for the [online] transaction. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and nontransferable.

§5.9004. Amusement Ride Operation Requirements.

(a) Operational Requirements. An owner/operator may not operate an amusement ride unless the owner/operator has satisfied and is continuing to satisfy the requirements in subsections (a) - (f) of this section.

(b) Insurance. The owner/operator must file with TDI [the Texas Department of Insurance (TDI)] the insurance policy or a photocopy of the insurance policy certifying that the policy is a true copy of the insurance policy provided to the insured as required by Occupations Code [the Act,] Chapter 2151, concerning Regulation of Amusement Rides.

(1) Occupations Code [The Act,] §2151.101, concerning Requirements for Operation, requires that any person who operates an amusement ride must have currently in force a combined single limit or split limit insurance policy written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by [the] Insurance Code[,] Chapter 981, concerning Surplus Lines Insurance, or have an independently procured policy subject to [the] Insurance Code[,] Chapter 101, concerning Unauthorized Insurance, insuring the owner or operator against liability for injury to persons arising out of use of the amusement ride in an amount of not less than:

(A) for Class A amusement rides:

(i) $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate; or

(ii) $150,000 per occurrence combined single limit with a $300,000 annual aggregate;

(B) for Class B amusement rides, except for Class B motorized train amusement rides:

(i) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(ii) $1,500,000 per occurrence combined single limit.

(2) Occupations Code [The Act,] §2151.1011, concerning Liability Insurance for Certain Amusement Rides, requires that any person who operates a Class B motorized train amusement ride must have an insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines [line] insurer, as defined by Insurance Code Chapter 981, or have an independently procured policy subject to Insurance Code Chapter 101, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than $1 million in aggregate for all liability claims occurring in a policy year.

(3) A local government may satisfy the insurance requirements prescribed by paragraphs (1) and (2) of this subsection by obtaining liability coverage through an interlocal agreement.

(4) The policy or certified photocopy of the policy must be complete, including all applicable coverage forms and endorsements. Certificates of insurance will not be acceptable for this purpose.

(5) The policy must contain a schedule listing by name and serial number if applicable to [of] each amusement ride insured by the policy. In the event of additions or deletions of amusement rides during the policy term, such changes must [shall] be shown on a change endorsement, a copy of which must be submitted to TDI. Additions will also require an inspection certificate (TDI Form AR-100[,] (Amusement Ride Certificate of Inspection/Reinspection) [Inspection/Re-Inspection], revised effective February 2022 [Revised Effective October, 2005]) and a $40 fee for each amusement ride to be submitted to TDI before [prior to] any operation of the added amusement ride. Additions or deletions must [shall] be filed not [no] later than 10 days after the change.

(6) In the event of policy cancellation by either the insured owner/operator or the insurance company, the company must [shall] furnish notice of [such] cancellation to TDI as soon as possible, but not later than 10 days before the [prior to] cancellation.

(7) The owner/operator will provide to any sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public[,] a photocopy of the inspection certificate and the insurance policy required by this section.

(8) If the owner/operator obtains an additional amusement ride device, the ride must [shall] be added to the insurance policy and a copy of the endorsement submitted to TDI along with the required inspection certificate (TDI Form AR-100[, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005]) and the $40 fee before [prior to] operation in Texas.

(c) Inspection/Reinspection Certificate. The owner/operator must also file the original amusement ride inspection certificate (TDI Form AR-100) [(TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005)] certifying with respect to each amusement ride the matters required by the Act. A separate inspection certificate is required for each amusement ride that shows the ride's [showing the] name, serial number, and manufacturer [of the ride], as well as the inspector's name, the owner/operator, a picture of the ride in an operable state taken at the time of the inspection, and other information as requested. The serial number, name, and description [and name/description] of the amusement ride must [shall] coincide with the same information identified on the insurance policy. If major components of the ride (for example, the crane used in a bungee operation) [, i.e., the crane used in a bungee operation,] are interchangeable, then the name, serial number, and man-

ufacturer of the inspected component must [~~shall~~] be included on the inspection certificate. The inspection certificate is valid for a period of one year, and for expedience in processing, it should, if possible, coincide with the effective date of the insurance policy. The inspection must [~~shall~~] be conducted by the insurer or a person with whom the insurer has contracted. The inspector must [~~shall~~] provide both the insurer and owner/operator with a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage.

(1) The inspection certificate may [~~shall~~] not be submitted to TDI until all discrepancies have been resolved and all necessary repair(s) or replacement(s) required for the amusement ride to meet the standards for coverage have been made.

(2) The inspection required by Occupations Code §2151.101(a) [~~of the Act~~] must include a method to test the stress- and wear-related damage of critical parts of a ride that the manufacturer of the amusement ride determines are reasonably subject to failure as the result of stress and wear and could cause injury to a member of the [~~general~~] public as a result of a failure. The inspection must [~~shall~~] include a review of the owner/operator's daily inspection records and inspection and maintenance program in accordance with ASTM practice or the manufacturer's guidelines/inspection criteria. The inspection must [~~shall~~] be conducted with the amusement ride or device in an operable state and include an evaluation of the device for a minimum of one complete operating cycle.

(3) If the amusement ride or device consists of interchangeable major components, such as cranes used in bungee jumping operations, the crane or major component used during the inspection is [~~shall be~~] considered an integral part of the amusement ride and the inspection certificate must [~~shall~~] include the manufacturer and serial number of the crane or major component inspected with the amusement ride. If the inspected crane or major component is replaced by another unit, a new inspection is required to include the new identification and serial number of the replacement unit.

(4) Any bungee jumping amusement device must [~~shall~~] include a safety net or air bag as an integral part of the ride. The safety net or air bag must [~~shall~~] be of sufficient size to cover the jump zone. The safety net or air bag must [~~shall~~] be rated for the maximum free-fall [~~free fall~~] height possible from the jump platform used. If the jump area is over water, the water must be of sufficient depth to provide an adequate safety cushion. The safety net or air bag must [~~shall~~] be inspected as an integral part of the amusement ride.

(5) The inspection certificate must [~~shall~~] be signed by a representative of the insurer.

(6) If the amusement ride or device does not meet the inspection standards, the amusement ride may [~~shall~~] not be operated until all necessary repair(s) and/or replacement(s) have been made and the ride reinspected and an inspection/reinspection [~~inspection/re-inspection~~] certificate issued.

(7) It is [~~shall be~~] the responsibility of the amusement ride owner/operator to complete the following before [~~prior to~~] any operation of the ride:

(A) to request the insurer to certify that the insurance policy and the inspection certificate are true copies by an official of the insurer;

(B) to receive the completed policy and inspection certificate from the insurer if they elect to provide coverage; and

(C) to submit a certified copy of the insurance policy, the original inspection certificate, and the fee to TDI for review. A planning factor of 10 days should be allowed for TDI review and approval before [~~prior to~~] any operation of the ride. Errors of omission or commission on either the policy or inspection certificate may delay TDI approval.

(8) Immediately after any injury or death involving equipment failure, structural failure, or operator error, the amusement ride/device must [~~shall~~] be closed for public use until a new inspection is performed and an inspection/reinspection [~~inspection/re-inspection~~] certificate is submitted to TDI.

(9) In addition to the requirements of paragraphs (7) and (8) of this subsection, a mobile amusement ride on which a death occurs may not be operated until the requirements of Occupations Code §2151.1526, concerning Prohibition of Mobile Amusement Ride Operation, [~~of the Act~~] are met.

(10) In addition to the requirements of this subsection, an amusement ride whose operation has been prohibited by a municipal, county, or state law enforcement official under Occupations Code [~~pursuant to~~] §2151.152, concerning Other Enforcement Actions, or §2151.1525, concerning Prohibition of Amusement Ride Operation, [~~of the Act~~] may not be operated until the requirements of that section are met. Any on-site corrections that are made under [~~pursuant to~~] the requirements of Occupations Code §2151.1525 [~~of the Act~~] must be presented to the appropriate municipal, county, or state law enforcement official.

(11) TDI Form AR-100[~~,~~] (Amusement Ride Certificate of Inspection/Reinspection), revised effective February 2022 [~~Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005~~], is adopted by reference and must [~~shall~~] be used for each filing of an amusement ride inspection certificate required by this section. This form [~~(the Amusement Ride Certificate of Inspection/Re-Inspection)~~] is published by TDI [~~the Texas Department of Insurance~~] and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [~~Loss Control Regulation Division, Mail Code 103-9A,~~] Texas Department of Insurance, P.O. Box 12030, [~~149104,~~] Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [~~78714-9104.~~]

(12) The inspection/reinspection [~~inspection/re-inspection~~] certificate, insurance policy, and fee must [~~shall~~] be submitted to the Inspections Office [~~TDI, Loss Control Regulation Division,~~] for review. If the inspection/reinspection [~~inspection/re-inspection~~] certificate and insurance policy meet the requirements of this subchapter, the [~~inspection/re-inspection~~] certificate will be date-stamped and forwarded to the owner/operator with TDI Form AR-101 (Texas Amusement Ride Compliance Sticker), effective [~~Effective~~] May[~~,~~] 2000, and adopted [~~herein~~] by reference. TDI Form AR-101 will indicate the expiration date of the inspection certificate and must [~~shall~~] be affixed to a major component of the amusement ride in a location visible to the ride participants.

(13) The records of the inspections required by this section will [~~shall~~] be made available for inspection by any municipal, county, or state law enforcement official at the location where [~~at which~~] the amusement ride is operated.

(d) Insurance Policy and Inspection Certificate Renewal. Renewal of the policy or inspection certificate must [~~shall~~] be completed with sufficient lead time to provide these documents to TDI with a minimum of 10 working days to review and approve the documents before [~~prior to~~] the expiration of either the policy or the inspection certificate.

(1) In the event of policy cancellation or expiration, the policy must [~~shall~~] promptly be replaced or renewed without any lapse in coverage while the amusement ride is offered for use by the public. Any operation without a valid and current insurance policy

and current inspection certificate constitutes an illegal operation and is subject to the enforcement provisions and penalties under [pursuant to] Occupations Code §§2151.151, concerning Injunction; 2151.152; [,] 2151.1525; [,] 2151.1526; [,] and 2151.153, concerning Criminal Penalties [of the Act]. The sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public must [shall] be notified by the owner/operator of the coverage discontinuance.

(2) A renewal certificate of insurance will be acceptable for the purpose of this subsection, if the renewal certificate shows:

(A) insurance coverage insuring the owner or operator against liability arising out of the use of the amusement ride/device in an amount of not less than:

(i) for Class A amusement rides:

(I) $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate; or

(II) $150,000 per occurrence combined single limit with a $300,000 annual aggregate;

(ii) for Class B amusement rides, except for Class B motorized train amusement rides:

(I) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(II) $1,500,000 per occurrence combined single limit;

(iii) for Class B motorized train amusement rides, $1,000,000 in aggregate for all liability claims occurring in a policy year; and

(B) a policy term that includes the period of time during which the amusement ride will be offered for public use.

(e) Daily Inspections. In addition to the inspection required under this section, the owner/operator who operates a mobile amusement ride must perform and record daily inspections of the mobile amusement ride including safety restraints on each mobile amusement ride.

(1) Records of the daily inspections must be available for inspection by any municipal, county, or state law enforcement official at the location where [at which] the amusement ride is operated, and the records must be maintained with the amusement ride for a period of one year.

(2) The daily inspection record must include an inspection of the following:

(A) safety belts, bars, locks, and other passenger restraints;

(B) all automatic and manual safety devices;

(C) signal systems, brakes, and control devices;

(D) safety pins and keys;

(E) fencing, guards, barricades, stairways, and ramps;

(F) ride structure and moving parts;

(G) tightness of bolts and nuts;

(H) blocking, support braces, and jackstands;

(I) electrical equipment;

(J) lubrication as per manufacturer's instructions;

(K) hydraulic and/or pneumatic equipment;

(L) communication equipment necessary for operation (if applicable);

(M) operation of ride prior to opening through one complete cycle of proper functioning; and

(N) any other component that is included in the manufacturer's specific ride maintenance and safety checks or current ASTM standards, or that the operator or person performing the daily inspection deems necessary for inspection.

(3) TDI [The Texas Department of Insurance (TDI)] adopts and incorporates [herein] by reference TDI Form AR-300 (Texas Amusement Ride Safety Inspection and Insurance Act Daily Inspection Record), revised effective May 2022 [Effective May, 2000]. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [Loss Control Regulation Division, Mail Code 103-9A,] Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [78714-9104.] This form sets forth the inspection requirements of this subsection and also includes the name of the device, location (city, state), date of the inspection, manufacturer and serial number, and owner/operator. The form must be signed by the person performing the daily inspection and the inspector's [his] supervisor.

(4) Daily inspection record forms used by industry associations, individual operators, or individual manufacturers may be used to fulfill the requirements of this subsection if the forms contain all of the inspection items and elements set forth in this subsection and the TDI Form AR-300 [(Daily Inspection Record)].

(5) In addition to the requirements of this subsection, the owner/operator who operates a mobile amusement ride must also follow the manufacturer's specific checklist for specific ride maintenance and safety checks.

(f) Schedule of Operations. In addition to the inspection requirements of this section, TDI Form AR-102 (Amusement Ride Schedule of Operations in Texas), revised effective May 2022, which [, Amusement Ride Schedule of Operations in Texas, Effective May, 2000,] is adopted [herein] by reference, must be used to provide [and shall include] a schedule of operating locations and dates for each six-month period for mobile operations. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. This information must [shall] be provided by the owner/operator to the Inspections Office, MC: PC-INSP [TDI, Loss Control Regulation Division, Mail Code 103-9A], Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030 [78714-9104], a minimum of 10 days before [in advance of] each six-month period. Any changes in the schedule must be submitted on an amended TDI Form AR-102 to TDI by the owner/operator within 10 days of the [such] change.

§5.9006. Public Information Sign.

An owner/operator who operates an amusement ride in this state must [shall] post a sign to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law.

(1) The sign must be at least 20 inches in width and 30 inches in length and must be in at least 50-point[, all capital] block letters, bold-faced red-on-white-background type and must be readable from a distance of 25 feet.

(2) The sign must be printed in both English and Spanish.

(3) The sign must be posted at the principal entrance(s) to the site at which an amusement ride is located or at any location on that site where [at which] tickets for an amusement ride are available.

(4) The sign must state the following:
Figure: 28 TAC §5.9006(4) (No change.)

§5.9007. Quarterly Reports.

(a) An owner/operator who operates an amusement ride (the operator) must [shall] maintain accurate records of each injury caused by the ride in any state in which the injury results in death or requires medical treatment. An injury is caused by the ride if the injury occurs on the ride or is in any way associated with the ride.

(1) TDI [The Texas Department of Insurance (TDI)] adopts and incorporates by reference TDI Form AR-800 (Quarterly Injury Report Amusement Ride Safety Inspection and Insurance Act), revised effective May 2022 [(Quarterly Injury Report) Revised Effective October, 2005]. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP [Loss Control Regulation Division, Mail Code 103-9A], Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [78714-9104.] The operator must [shall] file an injury report on TDI Form AR-800 with TDI on a quarterly basis and must [shall] include in the report a description of each verifiable injury caused by a ride that results in death or an injury that requires medical treatment.

(2) For purposes of this section, the term "medical treatment" includes treatment (other than first aid) administered by a physician or by registered professional personnel under the standing orders of a physician.

(3) For purposes of this section, the term "medical treatment" does not include first-aid treatment (one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and any other minor injuries that do not ordinarily require medical care) even though treatment is provided by a physician or by registered professional personnel.

(4) The quarterly injury report is not required of the operator for any quarter in which no reportable injury occurs in any state.

(b) An owner/operator who operates an amusement ride must [(the operator) shall] maintain accurate records of any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(1) TDI adopts and incorporates [herein] by reference TDI Form AR-801 (Quarterly Governmental Action Report Amusement Ride Safety Inspection and Insurance Act), revised effective May 2022. [(Quarterly Governmental Action Report) Effective May, 2000.] This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [Loss Control Regulation Division, Mail Code 103-9A,] Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/form13amusement.html. [78714-9104.] The owner/operator must [operator shall] file a governmental action report on TDI Form AR-801 with TDI on a quarterly basis and must [shall] include in the report a description of each governmental action taken in any state during the quarter covered by the report relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(2) For purposes of this section, the term "governmental action" includes an action in the exercise of police power or in the exercise of constitutional, legislative, administrative, or judicial powers conferred on federal, state, or local government, and that [which] results in any notification to the owner/operator relating to the amusement ride, including notifications of any perceived deficiencies regarding the safety of the amusement ride or the possibility of actual or imminent noncompliance [non-compliance] with applicable laws,[;] or any action taken in an administrative law forum or court of law, including private civil lawsuits.

(3) The quarterly governmental action report is not required of the owner/operator [operator] for any quarter in which no reportable governmental action was taken in any state.

(c) An owner/operator who operates an amusement ride [(the operator)] must [shall] maintain for not less than two years at the location where the ride is operated, for inspection by a municipal, county, or state law enforcement official, a photocopy of any quarterly report required under subsection (a) or (b) of this section to be filed with the commissioner.

§5.9008. Filing Affidavit.

In addition to the requirements of Occupations Code [the Act,] §2151.101(b), concerning Requirements for Operation, the following requirements apply.

(1) In the event a contract for use of an amusement ride provides that the amusement ride will not be operated until after July 1 but before [prior to] December 31 of any year, then timely filing of the insurance policy and inspection certificate must [shall] be made with [Texas Department of Insurance (]TDI[)] prior to the operation of the amusement ride. In no event may an amusement ride be operated before the inspection certificate, insurance policy, and fee are submitted to TDI as required by §5.9004 of this title (relating to Amusement Ride Operation Requirements).

(2) If the amusement ride is inspected more than once a year due to the requirements of this subchapter, a supplemental inspection certificate (TDI Form AR-100[,] (Amusement Ride Certificate of Inspection/Reinspection), revised effective February 2022 [Amusement Ride Certificate of Inspection/ Re-Inspection, Revised Effective October, 2005]) must be submitted to TDI not later than 15 days after each subsequent inspection. An additional annual $40 fee is not required for supplemental inspection certificates.

§5.9009. Information Request.

TDI [The Texas Department of Insurance (TDI)] may request[,] from the owner/operator, sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public[,] information concerning whether [or not] insurance in the amount required by [Title 13,] Occupations Code[,] Chapter 2151, concerning Regulation of Amusement Rides, or this subchapter is in effect for [on] the amusement ride. The owner/operator, sponsor, lessor, landowner, or other person to whom the information request is made must [shall] respond to TDI within 15 days after the request is made. The response must be by written verification. For the purpose of verification, the written response must [shall] include a copy of the declarations page of the policy insuring the amusement ride owner/operator [owner or operator].

§5.9010. Confirmation of Required Insurance and Inspection Certificate; Rule Construction.

(a) After the required insurance policy and inspection certificate, including certified check or money order for the total amount of annual fee have been received by TDI [the Texas Department of Insurance (TDI)] and found to be in compliance with the Act and this subchapter, the original amusement ride inspection certificate (TDI Form AR-100[,] (Amusement Ride Certificate of Inspection/Reinspection),

revised effective February 2022, [~~Inspection/ Re-Inspection, Revised Effective October, 2005~~]) will be stamped "Texas Department of Insurance Amusement Ride Program," will include the date of approval, and will be returned to the insured owner or operator as evidence of compliance with filing requirements. The returned inspection certificate must be kept on the premises where [~~at which~~] the amusement ride is offered for public use and made available to any person granted authority under the Act to investigate compliance with the Act. A TDI Form AR-101[~~,~~] (Texas Amusement Ride Compliance Sticker), effective [~~Effective~~] May[~~,~~] 2000, will be returned with each inspection certificate. This weatherproof form must [~~shall~~] be affixed to the appropriate ride or device in a place easily visible to all ride participants.

(b) If the required insurance policy, inspection certificate, and/or annual fee is found not to be in compliance with the Act, this subchapter, or other applicable law, notice will be provided to the insured owner or operator or their insurer by TDI indicating the necessary action(s) for compliance. If noncompliance is due to mechanical problems or failure to meet insurance standards, another TDI Form AR-100 must [~~, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 shall~~] be submitted to TDI for approval after the necessary corrective action(s) or repair(s) have been completed by the owner or operator. After the necessary actions have been completed by the owner/operator to the satisfaction of TDI, the TDI Form AR-100[~~, Revised Effective October, 2005~~] will be stamped and mailed to the insured owner or operator as described in subsection (a) of this section.

(c) Nothing in this subchapter may be construed to authorize the operation of an amusement ride until all applicable requirements of law are met.

§5.9011. Standards and Compliance.

An amusement ride covered by the Act that is sold, maintained, or operated in this state must [~~shall~~] comply with current standards established by the ASTM [~~American Society for Testing and Materials (ASTM)~~]. Those standards are minimum standards. To the extent that the standards of the ASTM [~~American Society for Testing and Materials~~] conflict with the requirements of the Act, the more stringent requirement or standard applies.

§5.9012. Denial of Entry to Amusement Rides; Prohibiting Operation of Amusement Rides.

(a) The owner/operator of an amusement ride or device must [~~shall~~] have the ability to view patrons so that no one is permitted on a [~~such~~] ride or device who appears to be in an intoxicated, drugged, or other condition of health that could be detrimental to the safety of the patron, [~~themselves,~~] other patrons, the operator, or spectators.

(b) The owner/operator must [~~shall~~] exercise reasonable control to prohibit the wearing of improper attire or lack of attire as deemed appropriate for the ride or device.

(c) The owner/operator must [~~will~~] prohibit the carrying of any article that [~~which~~] might be dropped or thrown from the ride or device.

(d) The restrictions [~~set forth~~] in this section and others that will preclude participation on an amusement ride or device must [~~shall~~] be posted in plain view at the entrance to the ride. No operator may waive these [~~such~~] restrictions.

(e) A municipal, county, or state law enforcement official may enter and inspect without notice any amusement ride or device at any time to ensure public safety, and the owner/operator of an amusement ride must comply with the requirements of Occupations Code §2151.152 [~~of the Act~~], concerning Other Enforcement Actions, including providing copies of the inspection certificate and insurance policy and cooperating in the prohibiting of the operation of the amusement ride, if applicable.

(f) A municipal, county, or state law enforcement official may immediately prohibit operation of an amusement or device ride as set forth in Occupations Code §§2151.152 [~~§2151.152~~]; 2151.1525, concerning Prohibition of Amusement Ride Operation; [~~,§2151.1525~~] or 2151.1526, concerning Prohibition of Mobile Amusement Ride Operation [~~§2151.1526 of the Act~~], and a person may not operate the amusement ride until the requirements of Occupations Code §§2151.152, 2151.1525, and 2151.1526 [~~of the Act~~] are met.

§5.9013. Injunctions.

Any person who operates an amusement ride, amusement attraction, or amusement device, and offers such for the public, must meet the requirements of the [~~Texas Amusement Ride Safety Inspection and Insurance~~] Act. Failure to comply with or violations of the Act constitute a Class B misdemeanor. Each day of public operation constitutes [~~shall constitute~~] a separate and distinct offense. The district attorney of each county in which an amusement ride or device is operated or, on request of the commissioner of insurance, the state attorney general, or one of the state attorney general's [~~his/her~~] agents, may seek an injunction against any person operating an amusement ride or device in violation of the Act or in violation of this subchapter.

§5.9014. Penalties; Enforcement.

(a) An amusement ride owner/operator commits an offense if the owner/operator [~~he/she~~] fails to comply with any requirement under §5.9004 of this title (relating to Amusement Ride Operation Requirements), §5.9006 of this title (relating to Public Information Sign), §5.9007 of this title (relating to Quarterly Reports), or §5.9008 of this title (relating to Filing Affidavit). An owner/operator, sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public commits an offense if the owner/operator [~~he/she~~] fails to provide information required by this subchapter or provides false information under §5.9004(a)(2)(G) of this title. Any offense under this subchapter is considered a Class B misdemeanor. Each time a violation of this subchapter is committed it constitutes a separate offense.

(b) In addition to action by the state attorney general, local municipal, county, or state law enforcement officials may be solicited to determine compliance with this subchapter or with Occupations Code Chapter 2151, Subchapter C, concerning Operation of Amusement Rides, other than Occupations Code §2151.104, concerning Access to Rides, [~~§§2151.101 - 2151.103 of the Act~~] in conjunction with TDI [~~Texas Department of Insurance~~], and may institute an action in a court of competent jurisdiction to enforce the Act [~~Title 13, Occupations Code, Chapter 2151,~~] and this subchapter.

(c) The prosecuting attorney in a case in which a person is convicted of an offense under Occupations Code §2151.153, concerning Criminal Penalties, must [~~of the Act shall~~] report the offense to TDI not later than the 90th day after the date of the conviction.

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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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

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CHAPTER 21. TRADE PRACTICES

SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401, 21.5403 - 21.5406

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §21.5401 and §§21.5403 - 21.5406, concerning the all-payor claims database. An amendment to §21.5401 implements House Bill 4611, 88th Legislature, 2023. Amendments to §21.5406 implement House Bill 3414, 88th Legislature, 2023. Other amendments to the sections implement HB 2090, 87th Legislature, 2021, which amended the Texas Insurance Code by adding Chapter 38, Subchapter I, concerning Texas All Payor Claims Database (APCD). TDI also proposes nonsubstantive amendments in each section.

EXPLANATION. The proposed amendments make changes in accordance with HB 3414, which made amendments to Insurance Code Chapter 38, including revisions to the definition of "payor" in Insurance Code §38.402, the membership of the stakeholder advisory group in §38.403, and permissible data collection in Insurance Code §38.404. A nonsubstantive change to §21.5401 is made to conform with HB 4611, which changed the location in the Government Code of statutes concerning Medicaid managed care programs. Other amendments are made in accordance with HB 2090. The proposed amendments include a new version of the Texas APCD Common Data Layout (CDL) to conform with changes to the national CDL and other changes to support the purpose and mission of the APCD.

The CDL is a technical and natural language description of the file format that payors are required to use to submit data to the APCD. The CDL details the data structure and organization necessary for successful file submissions. Clear technical instructions--including definitions of data fields, required headers, and descriptions--in the CDL are necessary to ensure the integrity and validity of the APCD data. Periodic updates to the technical instructions ensure the CDL's long-term usability and relevance by allowing clarifications that improve payor understanding of the CDL requirements and accommodating technological improvements or changes in claim standards.

In addition, the proposed amendments enhance clarity, streamline the sections, and make the text consistent with current agency drafting style and plain language preferences. These nonsubstantive changes include adding rule cross-references; deleting unnecessary statutory citations; and otherwise improving wording, such as by replacing "such" with "this" and "said" with "the." These amendments are not noted in the following descriptions of the amendments unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the sections' proposed amendments follow.

Section 21.5401. The amendments to §21.5401 revise subsection (b) to clarify that the listing of payors required to submit data files is not exclusive but includes any payor subject to Chapter 38. Self-insurance funds established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units, are added to the listing to clarify applicability to those payors, and subsequent paragraphs are renumbered to reflect this addition. In paragraph (19), the citation to the Government Code for Medicaid managed care plans is changed to Title 4, Subtitle I, instead of Chapter 533, because of a change in the citation to these programs in Insurance Code §38.402(7) made in Section 2.117 of HB 4611.

Section 21.5403. An amendment to §21.5403(a) updates the CDL version that a payor is required to follow to version 3.0.1. The Texas APCD CDL has been updated to align with the national CDL. It identifies the types of data a payor is required to report by listing the standardized data elements for each data file identified in §21.5404(c) and identifying whether the data element is required. For each data element, it also identifies data quality standards and provides technical guidance describing the information payors must submit, including the source of the information and coding standards.

Amendments to subsection (b) permit the Center for Health Care Data at the University of Texas Health Science Center at Houston (Center) to adopt future versions of the Texas APCD CDL, as long as no additional data elements are required beyond those required in version 3.0.1 and no data elements are required that fall outside the scope of Chapter 38, Subchapter I. This will streamline the Center's ability to update technical guidance and will reduce confusion by payors, clarifying that such guidance can be incorporated in the Texas APCD CDL, rather than in a separate document. It will also allow the Center to monitor changes taking place across the country to maximize uniformity with other states' APCDs, which is more cost-effective for the payors subject to reporting. Any addition of required data elements would occur only through TDI rulemaking. If the Center publishes an updated version of the Texas APCD CDL, it will communicate an implementation deadline and provide at least 90 days for payors to transition to the new version of the Texas APCD CDL.

Section 21.5404. An amendment to subsection (a)(1) updates the cross-reference to §21.5401 to conform with changes to numbering in that section. An amendment in subsection (b) clarifies that the requirement to register applies to payors or their designees that are subject to the subchapter where §21.5404 is located. An amendment removes paragraph (1) from subsection (d) to eliminate the option to use a USB drive because it is less efficient to administer, and no payors have chosen to use this option. Subsequent paragraphs are renumbered to reflect this change. The prohibition against using data with a unique coding system is eliminated from subsection (k) because it duplicates language in subsection (m).

Section 21.5405. The amendments to subsection (a) modify the due date of payor reporting, reducing the time to submit the data from 90 days post-adjudication to 30 days. This change will provide more timely data to researchers and will allow the APCD to better and more timely support infectious disease monitoring efforts in coordination with the Texas Epidemic Public Health Institute (TEPHI). The updated submission timeframe will also allow the APCD, at the aggregate-geographic-region level, to support other state agency epidemiological monitoring of acute health conditions or events like pandemics or natural disasters.

Current subsection (b) is deleted because its provisions relating to the original commencement of APCD reporting are no longer necessary. A new subsection (b) is added to clarify the circumstances in which payors must submit test data files.

Current subsections (c) and (e) are deleted, and their exception and extension provisions have been incorporated into current subsection (d), which is redesignated as subsection (c). The text of redesignated subsection (c) is also revised to allow payors to submit requests for exceptions and extensions 15 days in

advance rather than 30 days, and to clarify that the deadline for data submissions is tolled while the Center considers a request for exception or extension. Redesignated subsection (c) authorizes payors to request temporary exceptions or extensions for up to 12 months if they demonstrate that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. To ensure APCD reporting is not a barrier to new payors entering the market, the subsection allows an extension for a payor's first required reporting if the payor registers with the Center and demonstrates it has fewer than 10,000 covered lives across all plans subject to reporting. This approach ensures that the Center can make reasonable accommodations to help payors comply with APCD reporting obligations. To assist with the oversight and enforcement required by Insurance Code §38.409(a)(3), redesignated subsection (c) is also amended to add an annual reporting requirement for the Center to share information with TDI about payor compliance, exceptions, and extensions.

Existing subsections (f) and (g) are redesignated as subsections (d) and (e).

A new subsection (f) is added. It states that payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

Existing subsections (h) and (i) are redesignated as subsections (g) and (h).

A new subsection (i) is added. It provides the starting date for the new data submission time frames found in subsection (a). Depending on the timing of the rule adoption, TDI may adjust the starting date of the new data submissions to provide payors at least 90 days from the date the rule amendments are adopted to transition to the new data submission dates.

Section 21.5406. New subsection (d) is added, establishing a one-year term of office for the new advisory member representing an institution of higher education, as required by HB 3414. New subsection (e) is added, limiting terms of office to no more than six consecutive years, except as provided by current subsection (d), which is redesignated as subsection (f). An amendment to redesignated subsection (f) changes the required designation of a replacement member to serve the remainder of a term to a permissive designation.

TDI received comments on an informal draft of this proposal posted on the department's website on April 16, 2024. TDI considered those comments when drafting this proposal. In response to those comments, two data elements that were included in the informal draft of the Texas APCD CDL (related to drug strength and therapeutic classification) are changed from required to optional fields.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because, other than possibly the clarification of the applicability of the rule, the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Regarding the applicability of the rule, the proposal clarifies that the definition of payor includes a self-insurance fund established under Government Code Chapter 2259. However, this is done to be consistent with the definition of payor in Insurance Code §38.402(7), which includes "a health benefit plan offered or administered by or on behalf of this state or a political subdivision of this state or an agency or instrumentality of the state or a political subdivision of this state. . . ." Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering them will have the public benefits of ensuring that TDI rules conform to Insurance Code Chapter 38, Subchapter I, and making them clearer and more consistent. Clarifying the applicability of the payors that must submit data to the APCD to be consistent with the definition of payor in Subchapter I may result in more data being submitted to the APCD, furthering the stated purpose in Insurance Code §38.401, concerning Purpose of Subchapter, of increasing public transparency of health care information. Updating the Texas APCD CDL to incorporate changes to the national CDL will provide administrative efficiency for payors subject to reporting. Updating the CDL to obtain more useful information and requiring that it be filed more quickly after adjudication is complete will further the second goal of Subchapter I of improving the quality of health care in this state by further enabling and improving health care research. Obtaining more recent claims data will allow the APCD to make timely contributions to the Texas Epidemic Public Health Institute, created in 2021 by the passage of SB 1780 (87R), which added Chapter 75, Subchapter D, to the Education Code.

Ms. Bowden notes that TDI posted an informal draft substantially similar to this proposal on the department's website on April 16, 2024. TDI particularly requested that carriers provide "estimates on the cost to implement these changes." No carrier indicated any cost of implementation. Even so, TDI anticipates that the proposed amendments may impose minor economic costs on persons required to comply with the amendments. The costs will vary based on each payor's data systems and staffing strategies. Costs may result from amendments to the CDL and amending the due date for submitting data to 30 days post-adjudication from 90 days, resulting in required changes to data submissions and programming.

Cost of personnel associated with programming information systems for data collection. The United States Department of Labor, Bureau of Labor Statistics State Occupational Employment and Wage Estimates for Texas, indicates that the hourly mean wage for computer programmers is $49.35 (www.bls.gov/oes/current/oes_tx.htm#15-0000). TDI recognizes that costs will vary depending on each payor's data systems and staffing strategies, but the proposed changes are minimal. Ms. Bowden estimates a one-time requirement of between eight and 24 hours to amend the existing programming. Ms. Bowden expects there will be no cost added by proposed amendments to §21.5406, which outlines appointment standards for the stakeholder advisory committee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TDI has determined that the proposed new sections will not have an adverse economic effect on rural communities, but they may have an adverse economic effect on small or micro businesses, to the extent that they are subject to reporting data to the APCD. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses.

TDI estimates that between three and 15 payors that are small or micro businesses may be required to report data to the APCD. They will have to amend their reporting if the CDL is amended and submit data within 30 days of adjudication, rather than the current 90 days. The primary objective of this proposal is to continue to support an APCD that increases transparency of health care costs, utilization, and access across all payors in Texas and includes information useful for purposes of improving health care quality and outcomes, improving population health, and controlling health care costs. TDI considered the following options to minimize any adverse effect on small and micro businesses while accomplishing the proposal's objectives:

(1) exempting payors from reporting if they are small or micro businesses or based on a minimum threshold of covered lives;

(2) requiring payors that are small or micro businesses to report fewer data elements; and

(3) providing additional time to comply with the rules for payors that are small or micro businesses or based on a minimum threshold of covered lives.

In considering Option 1, TDI declined to provide an exemption for payors that are small or micro businesses because such an exemption is not supported by the statute. As stated in the cost note, the statute specifies a particular set of information that must be collected at a minimum. TDI does not have authority to exempt small or micro businesses from the collection of some of the data, and without the guidance provided by these rules, small or micro businesses would have a more difficult time complying with the requirements of the statute and might not provide usable data.

In regard to Option 2, TDI believes an incomplete dataset would provide little value to researchers and would not satisfy the purpose of the statute. However, the proposal does continue to authorize the Center to grant temporary exceptions for issuers that are unable to comply with certain reporting requirements. Such exceptions may be granted if compliance would impose an unreasonable cost relative to the public value that would be gained from full compliance.

After considering Option 3, TDI opted to continue to provide additional implementation time based on the number of lives covered by the payor in plans subject to reporting. This will mitigate the costs required to implement the rule by allowing eligible payors to spread those costs over a longer timeframe. This may further reduce costs by enabling payors to implement the requirements without hiring additional staff. This flexibility will be available to all payors with fewer than 10,000 covered lives in plans that are subject to reporting, including small and micro businesses. This is a metric that can be validated by TDI and ensures that high-value datasets are not delayed.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because (1) the proposed new sections are necessary to implement legislation, and (2) the amendments are necessary to protect the health, safety, and welfare of the residents of this state. The proposed rules implement Insurance Code Chapter 38, Subchapter I, as added by HB 2090 and amended by HB 3414. The amendments to the CDL and the timing of data submissions support the mission of the APCD to improve the quality of health care in this state, such as by providing more timely data to the Texas Epidemic Public Health Institute.

The Legislature intended that changes would be made to APCD data collection over time in order to maximize the public health benefit. In Insurance Code §38.403, the Legislature required the creation of the stakeholder advisory group, in part to assist with "establishing and updating the standards, requirements, policies, and procedures relating to the collection and use of data. . . ." In §38.404, the Legislature tasked the Center with "determining the information a payor is required to submit" and required it to "establish" and "update" its data collection procedures. Section 38.409 requires TDI to adopt rules "in consultation with the center . . . specifying the types of data a payor is required to provide" and "specifying the schedule" in which a payor must provide the data. The Center has recommended the data-related changes in this rule proposal.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand and limit an existing regulation;

- will increase the number of individuals subject to the rule's applicability by more closely following the statutory definition of payor; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §21.5401 and §§21.5403 - 5406 under Insurance Code §38.409 and §36.001.

Insurance Code §38.409 provides that the commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center. It also requires the commissioner to adopt rules establishing oversight and enforcement mechanisms to ensure the submission of data.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.5401 implements Insurance Code §38.402. Sections 21.5403 - 21.5405 implement Insurance Code §38.404 and §38.409. Section 21.5406 implements Insurance Code §38.403.

§21.5401. Applicability.

(a) This subchapter applies to a payor that issues, sponsors, or administers a plan subject to reporting under subsection (b) of this section.

(b) Payors must submit data files as required by this subchapter with respect to [each of the following types of] health benefit plans or dental benefit plans issued in Texas that are subject to Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database, including:

(1) a health benefit plan as defined by Insurance Code §1501.002, concerning Definitions;

(2) an individual health care plan that is subject to Insurance Code §1271.004, concerning Individual Health Care Plan;

(3) an individual health insurance policy providing major medical expense coverage that is subject to Insurance Code Chapter 1201, concerning Accident and Health Insurance;

(4) a health benefit plan as defined by §21.2702 of this title (relating to Definitions);

(5) a student health plan that provides major medical coverage, consistent with the definition of student health insurance coverage in 45 CFR §147.145, concerning Student Health Insurance Coverage;

(6) short-term limited-duration insurance as defined by Insurance Code §1509.001, concerning Definition;

(7) individual or group dental insurance coverage that is subject to Insurance Code Chapter 1201 or Insurance Code Chapter 1251, concerning Group and Blanket Health Insurance;

(8) dental coverage provided through a single service HMO that is subject to Chapter 11, Subchapter W, of this title (relating to Single Service HMOs);

(9) a Medicare supplement benefit plan under Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, if the payor elects to submit such data;

(10) a health benefit plan as defined by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements;

(11) basic coverage under Insurance Code Chapter 1551, concerning Texas Employees Group Benefits Act;

(12) a basic plan under Insurance Code Chapter 1575, concerning Texas Public School Employees Group Benefits Program;

(13) a health coverage plan under Insurance Code Chapter 1579, concerning Texas School Employees Uniform Group Health Coverage;

(14) basic coverage under Insurance Code Chapter 1601, concerning Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System;

(15) a county employee health benefit plan established under Local Government Code Chapter 157, concerning Assistance, Benefits, and Working Conditions of County Officers and Employees;

(16) group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172, concerning Texas Political Subdivisions Uniform Group Benefits Program;

(17) coverage for medical expenses provided under a self-insurance fund established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units;

(18) [(17)] the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program;

(19) [(18)] a Medicaid managed care plan operated under Government Code Title 4, Subtitle I, concerning Health and Human Services [Chapter 533, concerning Medicaid Managed Care Program];

(20) [(19)] the child health plan program operated under Health and Safety Code Chapter 62, concerning Child Health Plan for Certain Low-Income Children;

(21) [(20)] the health benefits plan for children operated under Health and Safety Code Chapter 63, concerning Health Benefits Plan for Certain Children;

(22) [(21)] a Medicare Advantage Plan providing health benefits under Medicare Part C as defined in 42 USC §1395w-21, *et seq*., concerning Medicare+Choice Program;

(23) [(22)] a Medicare Part D voluntary prescription drug benefit plan providing benefits as defined in 42 USC §1395w-101, *et seq*., concerning Voluntary Prescription Drug Benefit Program; and

(24) [(23)] a health benefit plan or dental plan subject to the Employee Retirement Income Security Act of 1974 (29 USC §1001 *et seq*.) if the plan sponsor or administrator elects to submit this [such] data.

(c) Data files required by this subchapter must include information with respect to all Texas resident members, as defined in §21.5402(16) of this title (relating to Definitions). Information on persons who are not Texas resident members is not required.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the data elements and technical requirements found in the Texas APCD CDL v3.0.1 [v1.09, released May 20, 2022]. The Texas APCD CDL v3.0.1 is available on the Center's website. [and:]

[(1) is modeled on the "All-Payer Claims Database Common Data Layout" published by the National Association of Health Data Organizations and used with permission;]

[(2) identifies which data elements payors are required to submit in each data file and which data elements are optional, consistent with Insurance Code §38.404(c), concerning Establishment and Administration of Database; and]

[(3) identifies the record specifications, definitions, code tables, and threshold levels for each required data element.]

(b) If the Center adopts subsequent versions of the Texas APCD CDL, payors must submit data consistent with the requirements of each subsequent version, but this subchapter does not require the submission by payors of additional data elements that are not required in the Texas APCD CDL v3.0.1 or that do not fall within the scope of Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database. The Center will communicate to payors an implementation deadline for use of an updated version of the Texas APCD CDL that is not less than 90 days after the updated version has been published by the Center in its final form. [~~The Center may issue technical guidance that provides flexibility regarding the existing requirements contained in the Texas APCD CDL, such as removing required data elements, clarifying specifications, increasing the maximum length, or decreasing the minimum threshold. However, such guidance may not modify statutory requirements, impose more stringent requirements, or increase the scope of the data being collected.~~]

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5404. Data Submission Requirements.

(a) Payors must submit the data files required by subsection (c) of this section to the Center according to the schedule provided in §21.5405 of this title (relating to Timing and Frequency of Data Submissions). Payors are responsible for submitting or arranging to submit all applicable data under this subchapter, including data with respect to benefits that are administered or adjudicated by another contracted or delegated entity, such as carved-out behavioral health benefits or pharmacy benefits administered by a pharmacy benefit manager. Payors may arrange for a third-party administrator or delegated or contracted entity to submit data on behalf of the payor[~~,~~] but may not submit data that duplicates data submitted by a third party.

(1) The Texas Health and Human Services Commission may submit data on behalf of all applicable payors participating in a plan or program identified in §21.5401(b)(18) - (b)(21) [~~§21.5401(b)(17) - (b)(20)~~] of this title (relating to Applicability).

(2) A payor that acts as an administrator on behalf of a health benefit plan or dental plan for which reporting is optional per Insurance Code §38.407, concerning Certain Entities Not Required to Submit Data, may ask the plan sponsor whether it elects or declines to participate in or submit data to the Center and may include data for such plans within the payor's data submission. Both the inquiry to and response from the plan sponsor should be in writing.

(3) A payor providing Medicare Supplement benefit plans may elect to submit Medicare Supplement benefit plan data to the Center.

(b) Payors or their designees that are subject to this subchapter must register with the Center each year [~~to submit data~~], consistent with the instructions and procedures contained in the submission guide. Payors must communicate any changes to registration information by contacting the Center within 30 days using the contact information provided in the submission guide. Upon registration, the Center will assign a unique payor code and submitter code to be used in naming the data files and provide the credentials and information required to submit data files.

(c) Payors must submit the following files, consistent with the requirements of the Texas APCD CDL:

(1) enrollment and eligibility data files;

(2) medical claims data files;

(3) pharmacy claims data files;

(4) dental claims data files; and

(5) provider files.

(d) Payors must package all files being submitted into zip files that are encrypted according to the standard provided in the submission guide. Payors must submit the encrypted zip files to the Center using one of the following file submission methods:

[~~(1) save the files on a Universal Serial Bus (USB) flash drive and use a secure courier to deliver the USB drive to the database according to delivery instructions provided in the submission guide;~~]

(1) [~~(2)~~] transmit the files to the Center's Managed File Transfer servers using the Secure File Transport Protocol (SFTP) and the credentials and transmittal information provided upon registration;

(2) [~~(3)~~] upload files from an internet browser using the Hypertext Transfer Protocol Secure (HTTPS) protocol and the credentials and transmittal information provided upon registration; or

(3) [~~(4)~~] transmit the files using a subsequent electronic method as provided in the data submission guide.

(e) Payors must name data files and zip files consistent with the file naming conventions specified by the Center in the submission guide.

(f) Payors must format all data files as standard 8-bit UCS Transformation Format (UTF-8) encoded text files with a ".txt" file extension and adhere to the following standards:

(1) use a single line per record and do not include carriage returns or line feed characters within the record;

(2) records must be delimited by the carriage return and line feed character combination;

(3) all data fields are variable field length, subject to the constraints identified in the Texas APCD CDL, and must be delimited using the pipe (|) character (ASCII=124), which must not appear in the data itself;

(4) text fields must not be demarcated or enclosed in single or double quotes;

(5) the first row of each data file must contain the names of data columns as specified by the Texas APCD CDL;

(6) numerical fields (e.g., ID numbers, account numbers, etc.) must not contain spaces, hyphens, or other punctuation marks, or be padded with leading or trailing zeroes;

(7) currency and unit fields must contain decimal points when appropriate;

(8) if a data field is not to be populated, a null value must be used, consisting of an empty set of consecutive pipe delimiters (||) with no content between them.

(g) Data files must include information consistent with the Texas APCD CDL that enables the data to be analyzed based on the market category, product category, coverage type, and other factors relevant for distinguishing types of plans.

(h) Payors must include data in medical, pharmacy, and dental claims data files for a given reporting period based on the date the claim is adjudicated, not the date of service associated with the claim. For example, a service provided in March[~~,~~] but adjudicated in April[~~,~~] would be included in the April data report. Likewise, any claim adjustments

must be included in the appropriate data file based on the date the adjustment was made and include a reference that links the original claim to all subsequent actions associated with that claim. Payors must report medical, pharmacy, and dental claims data at the visit, service, or prescription level. Payors must also include claims for capitated services with all medical, pharmacy, and dental claims data file submissions.

(i) Payors must include all payment fields specified as required in the Texas APCD CDL. With respect to medical, pharmacy, and dental claims data file submissions, payors must also:

(1) include coinsurance and copayment data in two separate fields;

(2) clearly identify claims where multiple parties have financial responsibility by including a Coordination of Benefits, or COB, notation; and

(3) include specified types of denied claims and identify a denied claim either by a denied notation or assigning eligible, allowed, and payment amounts of zero. The data submission guide will specify the types of denied claims that must be included on the basis of the claim adjustment reason code associated with the denial. In general, denied claims are not required when the reason for the denial was incomplete claim coding or duplicative claims. Denied claims are required when they accurately reflect care that was delivered to an eligible member but not covered by a plan due to contractual terms, such as benefit maximums, place of service, provider type, or care deemed not medically necessary or experimental or investigational. Payors are not required to include data for rejected claims or claims that are denied because the patient was not an eligible member.

(j) Every data file submission must include a control report that specifies the count of records and, as applicable, the total allowed amount and total paid amount.

(k) Unless otherwise specified, payors must use the code sources listed and described in the Texas APCD CDL within the member eligibility and enrollment data file and medical, pharmacy, and dental claims data file and provider file submissions. [When standardized values for data fields are available and stated within the Texas APCD CDL, a payor may not submit data that uses a unique coding system.]

(l) Payors must use the member's social security number as a unique member identifier (ID) or assign an alternative unique member ID as provided in this subsection.

(1) If a payor collects the social security number for the subscriber only, the payor must assign a discrete two-digit suffix for each member under the subscriber's contract.

(2) If a payor does not collect the subscriber's social security number, the payor must assign a unique member ID to the subscriber and the member in its place. The payor must also use a discrete two-digit suffix with the unique member ID to associate members under the same contract with the subscriber.

(3) A payor must use the same unique member ID for the member's entire period of coverage under a particular plan. If a change in the unique member ID or the use of two different unique member IDs for the same individual is unavoidable, the payor must provide documentation, if available, linking the member IDs in the form and method provided by the Center.

(m) When standardized values for data variables are available and stated within the Texas APCD CDL, no specific or unique coding systems will be permitted as part of the health care claims data set submission.

(n) Within the enrollment and eligibility data files, payors must report member enrollment and eligibility information at the individual member level. If a member is covered as both a subscriber and a dependent on two different policies during the same month, the payor must submit two member enrollment and eligibility records. If a member has two different policies for two different coverage types, the payor must submit two member enrollment and eligibility records.

(o) Payors must include a header and trailer record in each data file submission according to the formats described in the Texas APCD CDL. The header record is the first record of each separate file submission, and the trailer record is the last.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than March [May] 7 of that year;

(2) February data must be submitted no later than April [June] 7 of that year;

(3) March data must be submitted no later than May [July] 7 of that year;

(4) April data must be submitted no later than June [August] 7 of that year;

(5) May data must be submitted no later than July [September] 7 of that year;

(6) June data must be submitted no later than August [October] 7 of that year;

(7) July data must be submitted no later than September [November] 7 of that year;

(8) August data must be submitted no later than October [December] 7 of that year;

(9) September data must be submitted no later than November 7 of that [January 7 of the following] year;

(10) October data must be submitted no later than December 7 of that [February 7 of the following] year;

(11) November data must be submitted no later than January [March] 7 of the following year; and

(12) December data must be submitted no later than February [April] 7 of the following year.[;]

(b) Payors must submit test data files as provided in the submission guide:

(1) after registering for the first time with the Center as a payor that is subject to reporting under this subchapter;

(2) after a merger, acquisition, divestiture, or other change of ownership that requires an update to a payor's registration; and

(3) before the effective date of a new version of the TX APCD CDL, consistent with §21.5403 of this title (relating to Texas APCD Common Data Layout and Submission Guide) that contains additional data elements.

[(b) Except as provided in subsections (c) and (d) of this section, payors must submit test data files, historical data files, and monthly data files according to the dates specified by the Center, subject to the following requirements:]

[(1) the Center will provide notice of the timeline for payors to submit registration and test data no later than 90 days before the data is due, and test data will be due no sooner than October 1, 2022;]

[(2) the Center will provide notice of the timeline for submitting historical data, which must include data for reporting periods spanning from January 1, 2019, to the most recent monthly reporting period, no later than 120 days before the data is due, and historical data will be due no sooner than January 1, 2023; and]

[(3) the Center will provide notice of the timeline for submitting monthly data no later than 180 days before the commencement of the monthly data submission, and the first monthly data submission date will be no sooner than March 1, 2023.]

[(c) A payor with fewer than 10,000 covered lives in plans that are subject to reporting under this subchapter as of December 31 of the previous year must begin reporting no later than 12 months after the dates otherwise required, as specified by the Center, consistent with subsection (a) of this section. The payor must register with the Center to document the payor's eligibility for this extension.]

(c) [(d)] A payor may request a temporary exception or extension of time from complying with one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center, as provided in the submission guide posted on https://go.uth.edu/DSG, no less than 15 [30] calendar days before the date the payor is otherwise required to comply with the requirement.

(1) The [Except as provided in paragraph (2) of this subsection, the] Center may grant an exception or extension for good cause for not more than 12 consecutive months, if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database.

[(1) An exception may not last more than 12 consecutive months.]

(2) A payor that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to this subchapter qualifies for an extension under this subsection for the payor's first required reporting. The Center may grant an extension for new payors for not more than 12 consecutive months.

[(2) An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I.]

(3) The Center may request additional information from a payor in order to make a determination on an exception or extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received. The deadline for data submission is tolled while the Center makes a determination on an exception or extension request.

(4) A request for an exception or extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (3) of this subsection, the 14-day timeline begins the day after the payor submits the [such] information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an exception or extension may be deemed withdrawn by the Center at the end of the 14-day period.

(5) In order to assist TDI's oversight and enforcement required by Insurance Code §38.409, the Center will provide TDI on or before July 1st of each year for the prior year:

(A) the names of payors that timely reported data;

(B) information about payors that did not report data and either requested an exception or extension that the Center did not grant or otherwise failed to demonstrate an exemption from reporting under this subchapter;

(C) information about payors that obtained exceptions and extensions, including the nature of the exceptions and amount of extensions granted;

(D) information about payors that failed to report timely without obtaining an exception or extension, including the filing due dates and the dates of actual filing; and

(E) information about payors that otherwise failed to materially comply with the requirements of Insurance Code Chapter 38, Subchapter I, or this subchapter.

[(e) A payor that is unable to meet the reporting schedule provided by this section may submit a request for an extension to the Center before the reporting due date. The Center may grant a request for good cause at its discretion.]

[(1) The Center may request additional information from a payor in order to make a determination on an extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received.]

[(2) A request for an extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (1) of this subsection, the 14-day timeline begins the day after the payor submits such information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an extension may be deemed withdrawn by the Center at the end of the 14-day period.]

(d) [(f)] The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(e) [(g)] The Center will communicate receipt of data within 14 calendar days, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(f) Payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

(g) [(h)] Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(h) [(i)] If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of the [said] written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

(i) The reporting schedule under subsection (a) of this section applies to monthly data submissions due on or after March 7, 2025, containing data for months beginning January 1, 2025. Payors must

submit data for November and December 2024 at the same time as January 2025 data.

§21.5406. Stakeholder Advisory Group Terms.

(a) Except as otherwise provided in [by subsections (b) and (c) of] this section, the term of office for seats on the [members of the] stakeholder advisory group, as specified by [designated under] Insurance Code §38.403 [§38.403(b)(2) - (4)], concerning Stakeholder Advisory Group, is [serve fixed terms of] three years.

(b) Initial terms of office for the members of the stakeholder advisory group will end December 31, 2024.

(c) Subsequent terms of office for the members [designations] of the stakeholder advisory group will begin January 1, 2025, and will be staggered as follows:

(1) the terms of office for the seats of the two members representing the business community [, as provided by Insurance Code §38.403(b)(4)(A),] and the two members representing consumers will [, as provided by Insurance Code §38.403(b)(4)(B), with terms to] expire December 31, 2026;

(2) the terms of office for the seats of the member designated by the Teacher Retirement System of Texas, the[;] two members representing hospitals, [as provided by Insurance Code §38.403(b)(4)(C);] and the two members representing health benefit plan issuers will [, as provided by Insurance Code §38.403(b)(4)(D), with terms to] expire December 31, 2027; and

(3) the terms of office for the seats of the member designated by the Employees Retirement System; the two members representing physicians[, as provided by Insurance Code §38.403(b)(4)(E)]; and the two members not professionally involved in the purchase, provision, administration, or review of health care services, supplies, or devices, or health benefit plans will [, as provided by Insurance Code §38.403(b)(4)(F), with terms to] expire December 31, 2028.

(d) The term of office for the seat of a member representing an institution of higher education is one year.

(e) Except as provided by subsection (f) of this section, members may not serve for more than six consecutive years.

(f) [(d)] If a member does not complete the member's three-year term, a replacement member may [must] be designated to complete the remainder of the term. [A member designated by the Center to serve a partial term of less than two years will not be prevented from serving for an additional two consecutive terms.]

[(e) Except as provided by subsection (d) of this section, members designated by the Center under Insurance Code §38.403(b)(4) may not serve more than two consecutive terms.]

(g) [(f)] Members and prospective members of the stakeholder advisory group are subject to the conflicts of interest and standards of conduct provisions in paragraphs (1) - (4) of this subsection.

(1) A prospective member of the stakeholder advisory group must disclose to the designating entity any conflict of interest before being designated to the group.

(2) A member of the stakeholder advisory group must immediately disclose to the Center and the member's designating entity any conflict of interest that arises or is discovered while serving on the group.

(3) A conflict of interest means a personal or financial interest that would lead a reasonable person to question the member's objectivity or impartiality. An example of a conflict of interest is employment by or financial interest in an organization with a financial interest in work before the stakeholder advisory group, such as evaluating data requests from qualified research entities under Insurance Code §38.404(e)(2), concerning Establishment and Administration of Database.

(4) A member of the stakeholder advisory group must comply with Government Code §572.051(a), concerning Standards of Conduct; State Agency Ethics Policy, to the same extent as a state officer or employee.

(h) [(g)] A member may be removed from the stakeholder advisory group for good cause by the member's designating entity.

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 August 2, 2024.

TRD-202403558
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.45, 290.46

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§290.38, 290.45 and 290.46.

Background and Summary of the Factual Basis for the Proposed Rules

During the 88th Texas Legislature (2023), House Bill (HB) 3810, HB 4559, and Senate Bill (SB) 594 passed and require amendments to 30 Texas Administrative Code (TAC) Chapter 290 to implement the enacted legislation.

This rulemaking reflects changes to Texas Health and Safety Code (THSC), §341.033 enacted in HB 3810, requiring nonindustrial water systems to report to the commission an unplanned condition that has caused the system to issue drinking water advisories or a boil water notice. The proposed rules provide a definition of "nonindustrial water system" and "unplanned condition" and address notification requirements.

This rulemaking reflects changes to Texas Water Code (TWC), §13.1395 enacted in HB 4559, which amended the definition of "affected utility" by changing county population. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

This rulemaking reflects changes to THSC, §341.0315 enacted in SB 594, which requires the commission to establish equivalency values for each meter size used to serve a 'recreational vehicle park', as defined by TWC, §13.087, to determine connection count. The proposed rules establish the equivalency value and establish how public water systems calculate alternatives to connection count for recreational vehicle parks that are metered customers of a public water system and have actual water usage more than 10% below the equivalency value.

Section by Section Discussion

§290.38, Definitions

The commission proposes to amend §290.38(3)(B) defining "affected utility," by changing the population from "550,000" to "800,000" in accordance with TWC, §13.1395 as amended by HB 4559. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394. Specifically, the amendment maintains TWC, §13.1395 applicability to Fort Bend and Harris counties.

The commission proposes to amend §290.38(18), defining "connection," by adding a connection equivalency value as well as the alternative recreational vehicle park connection equivalency for recreational vehicle parks that are retail customers of public water systems. The proposed definition establishes that the number of connections for these recreational vehicle parks is calculated as the number of recreational vehicle or cabin sites divided by eight in accordance with THSC, §341.0315 as amended by SB 594.

§290.45, Minimum Water System Capacity Requirements

The commission proposes new §290.45(j) to establish the process by which a public water system can calculate an alternative recreational vehicle park connection equivalency for recreational vehicle parks that are retail customers of a public water system, to coincide with the amended definition of "connection" in §290.38(18)(B) in accordance with THSC, §341.0315 as amended by SB 594. A table is provided with the Alternative Recreational Vehicle Park Connection Equivalency utilizing significant figures; the calculations are based on source capacity per connection in accordance with TAC §290.45(b) and (c) as well as the definition of maximum daily demand in §290.38.

§290.46, Minimum Acceptable Operating Practices for Public Water Systems

In accordance with THSC, §341.033 as amended by HB 3810, the commission proposes to amend §290.46(w) and add new §290.46(w)(6) to require nonindustrial public water systems to provide the executive director with immediate notification of unplanned conditions resulting in water system outages that result in drinking water advisories or boil water notices and to define "nonindustrial water system" and "unplanned condition" within §290.46(w)(6) to clarify public water system types and situations, respectively.

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 significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

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 will be compliance and consistency with state law, specifically, HB 3810, HB 4559, and SB 594 from the 88th Texas Legislative Session (2023). The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

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 material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban 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 rules 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 rules do 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 will 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, nor 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 rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking

is to address unplanned conditions at a nonindustrial public water system that cause an outage or issuance of drinking water advisories or boil water notices; to revise the county population in the definition of affected utility in accordance with TWC, §13.1395(a)(1), which applies to those affected utilities which need to submit emergency preparedness plans to the commission for review and approval; and to meet the legislative requirement for the commission to establish connection equivalency values for each meter size used to serve recreational vehicle parks for use in determining the number of connections served by a public water system.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code §2001.0225(a). Section §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems; does not exceed any express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but under THSC, §341.031 and §341.0315, which allows the commission to adopt and enforce rules related to public drinking water, as well under the general powers of the commission.

The commission invites public comment regarding the draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter §2007.

The commission proposes these rules to implement House Bills 3810, 4559 and Senate Bill 594, 88th Texas Legislative Session (2023). HB 3810 amended THSC, §341.033 by requiring nonindustrial public water systems to notify the commission when an unplanned condition caused a public water supply outage or issuance of drinking water advisories or a boil water notice. HB 4559 amended TWC, §13.1394(a)(1) by changing the county population in the definition of "affected utility." An affected utility is required to file an emergency preparedness plan with the executive director for review and approval. SB 594 amended THSC, §341.0315, which requires the commission to adopt rules establishing connection equivalency values for each retail meter size used to serve a recreational vehicle park in calculating connection counts.

The commission's analysis indicates that Texas Government Code, Chapter §2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b). The rulemaking is an action that is taken to fulfill obligations mandated under state law for all of the proposed rules. The rulemaking related to emergency preparedness plans is also an action taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the public health and safety purpose, and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(4) and (13).

First, the rulemaking is an action taken to fulfill obligations under state law. The law requires actions by the commission and the regulated community when unplanned conditions at a nonindustrial public water system result in a system outage or issuance of drinking water advisories or boil water notices under THSC, §341.033; the change to the county population in the definition of "affected utility" maintains those affected utilities requirements to submit emergency preparedness plans to the commission under TWC, §13.1395a)(1) in the counties where the population has increased passed 500,000; and state law now requires the commission to promulgate rules to establish connection equivalency values for each meter size used to serve a recreational vehicle park for purposes of public water system connection counts under THSC, §341.0315. Texas Government Code, §2007.003(b)(4).

Second, The proposed rules would ensure the emergency preparedness plans are submitted by affected utilities in appropriate counties designated by the legislature. The proposed rules would significantly advance the public health and safety purpose; and do not impose a greater burden than is necessary to achieve the public health and safety purpose. These rules advance the public health and safety by ensuring appropriate governmental regulation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13).

Further, the commission has determined that promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require compliance with the actions required by nonindustrial public water systems when unplanned conditions result in a system outage or issuance of drinking water advisories or boil water notices; compliance regarding submission by an affected utility to the commission of its emergency preparedness plan, which is meant to ensure public health and safety; and state law requires that connection equivalency values be established for each retail meter size used to serve a recreational vehicle park. Therefore, the rules would not constitute a taking under Texas Government Code, Chapter §2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for amendments are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or

authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

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.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 12, 2024 at 10:00 a.m. in building F; room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written 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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 10, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 11, 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, you may do so at no cost at:

https://events.teams.microsoft.com/event/1edc845c-d424-4035-9209-3f5b3eaa3880@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Rico, 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 2024-015-290-OW. The comment period closes at 11:59 p.m. on September 17, 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 Rheaa Miller, Emergency Preparedness and Response Section, at (512) 239-5728 or by email at rheaa.miller@tceq.texas.gov.

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103 and TWC §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC) §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: THSC, §341.033 in House Bill (HB) 3810; TWC, §13.1395(a)(1) in HB 4559; and THSC, §341.0315 in Senate Bill 594.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Water Dictionary: A Comprehensive Reference of Water Terminology,* prepared by the American Water Works Association.

(1) Accredited laboratory - A laboratory accredited by the executive director to analyze drinking water samples to determine compliance with maximum contaminant levels, action levels, and microbial contaminants in accordance with §290.119 of this title (relating to Analytical Procedures).

(2) Adverse Weather Conditions - Any significant temperature, wind velocity, accumulation of precipitation including drought, or other weather pattern that may trigger the issuance of a national weather service watch, advisory, or warning.

(3) Affected utility -

(A) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC §13.1394; or

(B) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility, as defined in TWC §13.1395, in a county with a population of:

(i) 3.3 million or more; or

(ii) 800,000 [~~550,000~~] or more adjacent to a county with a population of 3.3 million or more.

(4) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(5) American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(6) American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(7) American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(8) Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with treatment technique requirements and maximum or minimum allowable constituent levels in accordance with §290.119 of this title (relating to Analytical Procedures).

(9) ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

(10) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(11) Bag filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(12) Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

(13) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(14) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(15) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(16) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(17) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(18) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition: [~~definition,~~]

(A) a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(i) [~~(A)~~] the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(ii) [~~(B)~~] the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(iii) [~~(C)~~] the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(B) For a recreational vehicle park, as defined by Texas Water Code, §13.087(a)(3), that is a retail customer of a public water system, the number of connections shall be calculated as:

(i) the number of recreational vehicle sites or cabin sites, whether occupied or not, divided by eight; or

(ii) the number of recreational vehicle sites or cabin sites, whether occupied or not, divided by the alternative recreational vehicle park connection equivalency specified in §290.45(j) of this title (relating to Minimum Water System Capacity Requirements).

(19) Contamination--The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(20) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(21) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(22) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(23) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(24) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(25) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(26) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating

to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(27) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(28) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 20 pounds per square inch (psi) or a pressure approved by the executive director as required under TWC §13.1394 and 35 psi as required under TWC §13.1395.

(29) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(30) Extended power outage--A power outage lasting for more than 24 hours.

(31) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(32) Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(33) Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(34) Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(35) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(36) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium;*

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions; or

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

(37) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(38) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(39) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(40) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

(41) Interconnection--A physical connection between two public water supply systems.

(42) International Fire Code (IFC)--The standards of the International Code Council.

(43) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(44) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(45) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(46) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as log10 (i.e., log10 (feed concentration) - log10 (filtrate concentration)).

(47) Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(48) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(49) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(50) Membrane LRVC-Test --The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

(51) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(52) Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

(53) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the

rest of the system for the purpose of integrity testing or other maintenance.

(54) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(55) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(56) National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(57) NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

(58) Noncommunity water system--Any public water system which is not a community system.

(59) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(60) Nontransient, noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(61) Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

(62) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(63) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(64) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(65) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(66) Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(67) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(68) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(69) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(70) psi--Pounds per square inch.

(71) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(72) Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

(73) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(74) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value demonstrated during challenge testing.

(75) Reactor Validation Testing--A process by which a full-scale ultraviolet (UV) reactor's disinfection performance is determined relative to operating parameters that can be monitored. These param-

eters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(76) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(77) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(78) Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

(79) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(80) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(81) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(82) Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(83) Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(84) System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

(85) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(86) Transient, noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient, noncommunity water system.

(87) Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

(88) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(89) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(90) Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions.

(1) The requirements contained in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes which serve portions of the system that are hydraulically separated from, or incapable of being served by, other pump stations or pressure planes. The capacities specified in this section are minimum requirements only and do not include emergency fire flow capacities for systems required to meet requirements contained in §290.46(x) and (y) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(2) The executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional capacities for a system that is unable to maintain a minimum pressure of 20 psi during firefighting, line flushing, other unusual conditions, and systems that are required to provide fire flow as specified in §290.46(x) and (y) of this title.

(3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.

(4) Throughout this section, total storage capacity does not include pressure tank capacity.

(5) The executive director may exclude the capacity of facilities that have been inoperative for the past 120 days and will not be returned to an operative condition within the next 30 days when determining compliance with the requirements of this section.

(6) The capacity of the treatment facilities shall not be less than the required raw water or groundwater production rate or the anticipated maximum daily demand of the system. The production capacity of a reverse osmosis or nanofiltration membrane system shall be the quantity of permeate water after post-treatment that can be delivered to the distribution system. The amount available for customer use must consider:

(A) the quantity of feed water discharged to waste;

(B) the quantity of bypass water used for blending;

(C) the quantity of permeate water used for cleaning and maintenance; and

(D) any other loss of raw water or groundwater available for use due to other processes at the reverse osmosis or nanofiltration facility.

(7) If a public water system that is an affected utility fails to provide a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395 respectively, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan or justification regarding pressure drop shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

(8) A public water system that is an affected utility is required to review its emergency preparedness plan once every three years. An affected utility shall submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after any of the following conditions occur:

(A) An affected utility chooses to implement a different option or options other than those in the most recent approved emergency preparedness plan;

(B) A previously non-affected utility meets the definition of an affected utility;

(C) An affected utility makes a significant change as described in §290.39(j) of this title that affects emergency operations; or

(D) An affected utility makes changes to utility contact or emergency communications information. For these changes, the affected utility must submit only the updated applicable pages of the emergency preparedness plan to the executive director.

(b) Community water systems.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 50 connections without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.5 gallons per minute (gpm) per connection; and

(ii) a pressure tank capacity of 50 gallons per connection.

(B) If fewer than 50 connections with ground storage, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more service pumps having a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(C) For 50 to 250 connections, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection.

(D) For more than 250 connections, the system must meet the following requirements:

(i) two or more wells having a total capacity of 0.6 gpm per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In this case, the systems' capacities will be rated as though a single system existed;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required;

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(v) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet the following requirements:

(i) a well capacity of 1.0 gpm per connection; and

(ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.

(F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;

(ii) a total storage of 200 gallons per connection;

(iii) at least two service pumps with a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(2) Surface water supplies must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per connection under normal rated design flow;

(C) transfer pumps (where applicable) with a capacity of 0.6 gpm per connection with the largest pump out of service;

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;

(E) a total storage capacity of 200 gallons per connection;

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane;

(G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(H) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(3) Any community public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in subsection (h) or (i) of this section. This includes any affected utility that provides 100 gallons of elevated storage capacity per connection.

(c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 100 accommodation units without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.0 gpm per unit; and

(ii) a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per unit;

(ii) a ground storage capacity of 35 gallons per unit;

(iii) two or more service pumps which have a total capacity of 1.0 gpm per unit; and

(iv) a pressure tank capacity of ten gallons per unit.

(2) Surface water supplies, regardless of size, must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gpm per unit with the largest pump out of service;

(D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;

(E) two or more service pumps with a total capacity of 1.0 gpm per unit; and

(F) a pressure tank capacity of ten gallons per unit with a minimum requirement of 220 gallons.

(3) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall meet the requirements of subsection (h) or (i) of this section.

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.
Figure: 30 TAC §290.45(d)(1) (No change.)

(2) Groundwater supplies must meet the following requirements.

(A) Subject to the requirements of subparagraph (B) of this paragraph, if fewer than 300 persons per day are served, the system must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(B) Systems which serve 300 or more persons per day or serve fewer than 300 persons per day and provide ground storage must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand;

(ii) a ground storage capacity which is equal to 50% of the maximum daily demand;

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand;

(iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand; and

(v) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, must meet the following requirements:

(A) a raw water pump capacity which meets or exceeds the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which meets or exceeds the system's maximum daily demand;

(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;

(D) a clearwell capacity which is equal to 50% of the maximum daily demand;

(E) two or more service pumps with a total capacity of three times the maximum daily demand; and

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(4) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, shall meet the requirements of subsection (h) or (i) of this section.

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations. If a contract prohibits a purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

(2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, fire flow capacities, if required by §290.46(x) and (y) of this title and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

(3) Emergency power is required for each portion of the system which supplies more than 250 connections under direct pressure and does not provide an elevated storage capacity of at least 100 gallons per connection. If emergency power is required, it must be sufficient to deliver 20% of the minimum required service pump capacity and meet minimum pressure requirements in the event of the loss of normal power supply. When the wholesaler provides water through an air gap into the purchaser's storage facilities it will be the purchaser's responsibility to meet all minimum water system capacity requirements including emergency power. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(4) A wholesaler that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.

(2) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.

(3) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.

(4) The maximum authorized daily purchase rate specified in the contract, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must be at least 0.6 gpm per connection.

(5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.

(6) The purchaser is responsible for meeting all capacity requirements. If additional capacity to meet increased demands cannot be attained from the wholesaler through a new or amended contract, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting applicable capacity requirements. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(7) All other minimum capacity requirements specified in this section and §290.46(x) and (y) of this title shall apply.

(g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality and comply with the requirements found in §290.46(x) and (y) of this title. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.

(1) Alternative capacity requirements for public water systems may be granted upon request to and approval by the executive director. The request to use an alternative capacity requirement must include:

(A) a detailed inventory of the major production, pressurization, and storage facilities utilized by the system;

(B) records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand;

(C) data acquired during the last drought period in the region, if required by the executive director;

(D) the actual number of active connections for each month during the three years of production data;

(E) description of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period;

(F) any other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during firefighting when it cannot be less than 20 psi; and

(G) a copy of all data relied upon for making the proposed determination.

(2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

(A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.

(B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.

(C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.

(3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.

(A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.

(B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.

(4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.

(A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.

(B) If the executive director denies the request:

(i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;

(ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and

(iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.

(5) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum

pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the executive director for review.

(iii) For existing systems, the system's licensed professional engineer must provide continuous pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed shall not be less than three years.

(iv) A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must conduct the modeling requirements contained in clauses (i) - (iii) of this subparagraph using the requirements specified in subsection (h) or (i) of this section.

(B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption. A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(i) The facilities must be serviced and maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers' recommendations if the affected utility serves 1,000 connections or greater, or in accordance with manufacturer's recommendations and as prescribed in §290.46(m)(8) of this title if the affected utility serves fewer than 1,000 connections.

(ii) The switching gear must be capable of bringing the emergency power generating equipment on-line during a power interruption such that the pressure in the distribution network does not fall below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively.

(iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the emergency power facilities during emergency operations for a period of at least 48 hours must always be maintained on site or made readily available.

(iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.

(C) Battery-powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load testing and maintenance.

(6) Any alternative capacity requirement granted under this subsection is subject to review and revocation or revision by the executive director. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

(A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:

(i) documented pressure below 35 psi at any time not related to line repair, except during firefighting when it cannot be less than 20 psi;

(ii) water outages due to high water usage;

(iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;

(iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;

(v) changes in water supply conditions or usage patterns which create a potential threat to public health; or

(vi) any other condition where the executive director finds that the alternative capacity requirement has compromised public health or resulted in a degradation of service or water quality.

(B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or other threat to public health and safety is imminent under subparagraph (C) of this paragraph.

(i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.

(ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.

(iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.

(iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

(C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

(h) Affected utilities as defined in TWC §13.1394. This subsection applies to all affected utilities, as defined in TWC §13.1394, and is in addition to any other requirements pertaining to emergency power found in this chapter.

(1) Affected utilities must provide one or more of the following options to ensure the emergency operation of its water system during an extended power outage at a minimum of 20 psi, or a pressure approved by the executive director, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyers of potable water or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distribution generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives;

(H) designation of the water system as a critical load facility or redundant, isolated or dedicated electrical feeds;

(I) water storage capabilities with sufficient storage to provide water to customers during an extended power outage;

(J) water supplies can be delivered from outside the service area of the affected utility by opening an emergency interconnect or using a water hauler;

(K) affected utility has ability to provide water through artesian flows;

(L) affected utility has ability to open valves between pressure zones to provide redundant interconnectivity between pressure zones;

(M) affected utility will implement emergency water demand rules to maintain emergency operations; or

(N) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan, under paragraph (1) of this subsection, provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide raw water service to its wholesale customers during emergencies. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in 290.46(m)(8) of this title.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1394 including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title (related to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the production, treatment, total storage, and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement its emergency preparedness plan upon approval by the executive director.

(i) Affected utilities as defined by TWC §13.1395. This subsection applies to all affected utilities as defined by TWC §13.1395 and is in addition to any other requirements pertaining to emergency power found in this subchapter.

(1) Affected utilities must provide one of the following options of sufficient power to meet the capacity requirements of paragraph (1) or (2) of this subsection, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distributed generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives; or

(H) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall install and maintain automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be maintained, tested, and operated in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers specifications if the affected utility serves 1,000 connections or greater, or the manufacturer's specifications and as outlined in §290.46(m)(8) of this title for affected utilities serving fewer than 1,000 connections.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1395, including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements

of §290.46(r) of this title and the production, treatment, total storage and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement their emergency preparedness plan upon approval by the executive director.

(j) Alternative recreational vehicle park connection equivalency. If the actual water usage of a recreational vehicle park that is a retail customer of a public water system is less than 90 percent of the average daily demand of 45.0 gallons per day per recreational vehicle site, the public water system may use an alternative recreational vehicle park connection equivalency calculated using the following figure. The alternative recreational vehicle park connection equivalency will be reviewed during on-site compliance inspections.
Figure: 30 TAC §290.45(j)

(1) To determine the alternative recreational vehicle park connection equivalency, the public water system must calculate the recreational vehicle park's actual average daily demand.

(2) For the purposes of this paragraph, the actual average daily demand is determined based upon at least 12 consecutive months of meter readings for the recreational vehicle park, divided by the total number of days in those months. The actual average daily demand is then divided by the number of recreational vehicle sites and cabin sites within the recreational vehicle park, whether occupied or not.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state including the required elements of a sanitary survey as defined in §290.38 of this title (relating to Definitions). Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited laboratory. (A list of the accredited laboratories can be obtained by contacting the executive director.) The samples shall be submitted to the executive director in a manner prescribed by the executive director.

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that distribute chloraminated water.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.

(1) Transient, noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration or the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(D) Effective September 1, 2016, reverse osmosis or nanofiltration membrane systems must have operators that have successfully completed at least one executive director-approved training course or event specific to the operations and maintenance of reverse osmosis or nanofiltration membrane treatment.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must use an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must use an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must use an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must use an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must use an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must use at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must use an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must use at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must use at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(B) Surface water systems that serve more than 1,000 connections must use at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated and distributed:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water distributed each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water distributed each week.

(IV) Systems that serve 250 or more connections or serve 750 or more people and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each day.

(V) Systems that serve fewer than 250 connections, serve fewer than 750 people, use only groundwater or purchase treated water, and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities. For systems using reverse osmosis or nanofiltration, maintain records of each clean-in-place process including the date, duration, and procedure used for each event;

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section; and

(viii) the owner or manager of a public water system that is operated by a volunteer to meet the requirements of subsection (e) of this section, shall maintain a record of each volunteer operator indicating the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the public water system. These requirements apply to full-time and part-time licensed volunteer operators. Part-time licensed volunteer operators are excluded from the requirements of clause (vii) of this subparagraph.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(v) the records of backflow prevention device programs;

(vi) the raw surface water monitoring results and source water monitoring plans required by §290.111 of this title (relating to Surface Water Treatment) must be retained for three years after bin classification required by §290.111 of this title;

(vii) notification to the executive director that a system will provide 5.5-log Cryptosporidium treatment in lieu of raw surface water monitoring;

(viii) except for those specified in subparagraphs (C)(iv) and (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal;

(ix) free and total chlorine, monochloramine, ammonia, nitrite, and nitrate monitoring results if chloramines are used in the water system; and

(x) the records of treatment effectiveness monitoring for systems using reverse osmosis or nanofiltration membranes. Treatment effectiveness monitoring includes the parameters for determining when maintenance is required. Examples of parameters to be monitored include conductivity (or total dissolved solids) on each membrane unit, pressure differential across a membrane vessel, flow, flux, and water temperature. At a minimum, systems using reverse osmosis or nanofiltration membranes must monitor the conductivity (or total dissolved solids) of the feed and permeate water once per day.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants;

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections (as required by subsection (m)(2) of this section) for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample and documentation of a total coliform-positive sample collected at a location with conditions that could cause such positive samples in a distribution system;

(vi) notification to wholesale system(s) of a distribution coliform-positive sample for consecutive systems using groundwater;

(vii) Consumer Confidence Report compliance documentation;

(viii) records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the executive director-approved minimum specified disinfectant residual for a period of more than four hours for groundwater systems providing 4-log treatment;

(ix) records of executive director-specified compliance requirements for membrane filtration, records of parameters specified by the executive director for approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for groundwater systems. Membrane filtration can only be used if it is approved by the executive director and if it can be properly validated;

(x) assessment forms, regardless of who conducts the assessment, and documentation of corrective actions completed or documentation of corrective actions required but not yet completed as a result of those assessments and any other available summary documentation of the sanitary defects and corrective actions taken in accordance with §290.109 of this title (relating to Microbial Contaminants) for executive director review;

(xi) seasonal public water systems shall maintain executive director-approved start-up procedures and certification documentation in accordance with §290.109 of this title for executive director review; and

(xii) records of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(ix) any Sample Siting Plans required by §290.109(d)(6) of this title and monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans); and

(x) records of the executive director-approved minimum specified disinfectant residual and executive director-approved membrane system integrity monitoring results for groundwater systems providing 4-log treatment, including wholesale, and consecutive systems, regulated under §290.116(c) of this title.

(F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at each tap sample site; and designation of any substitute site not used in previous monitoring periods.

(G) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Public water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed water works operator.

(5) All public water systems that are affected utilities under TWC §13.1394 or §13.1395 must maintain the following records for as long as they are applicable to the system:

(A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.

(B) All required operating, inspection, testing, and maintenance records for auxiliary power equipment, and associated components required to be maintained, or actions performed as prescribed in §290.46(m)(8) of this title.

(C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to an accredited laboratory. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(f) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(7) Reverse osmosis or nanofiltration membrane systems shall be cleaned, or replaced, in accordance with the allowable operating conditions of the manufacturer and shall be based on one or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(8) Emergency generators must be appropriately tested and maintained monthly under at least 30% load based on the manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations.

(A) Emergency generators operated at water systems serving 1,000 connections or greater must be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendation. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(B) Emergency generators operated at water systems serving fewer than 1,000 connections must be maintained according to clauses (i) - (x) of this subparagraph, supplemented with any additional requirements not listed below as prescribed in the manufacturer's specifications, or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(i) Prior to monthly generator start-up, inspect and perform any needed maintenance on the generator fuel system.

(I) Document tank levels and inspect fuel tanks for fuel contamination and condensation in the portion of the tank occupied by air. If contamination is suspected, replace or polish the contaminated fuel before use.

(II) Inspect fuel lines and fittings for breaks and degradation. Replace fuel lines if needed.

(III) Inspect fuel filters and water separators for water accumulation, clogging and sediment buildup. Replace fuel filters and separators at the frequency recommended by the manufacturer, or as needed.

(IV) Inspect fuel transfer pumps, float switches and valves, where provided, between holding tanks and the generator to verify that they are operating properly.

(V) Where provided, inspect fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective.

(ii) While the generator is operating under load, inspect the fuel pump to verify that it is operating properly.

(iii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator lubrication system.

(I) Inspect oil lines and oil reservoirs for adequate oil levels, leaks, breaks and degradation. Change oil at the frequency recommended by the manufacturer.

(II) Grease all bearing components and grease fittings at the frequency recommended by the manufacturer.

(iv) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator coolant system.

(I) Inspect the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks and degradation; replace as needed.

(II) Inspect coolant filters for clogging and sediment buildup. Replace coolant filters at the frequency recommended by the manufacturer, or as needed.

(III) Inspect the radiator, fan system, belts and air intake and filters for obstruction, cracks, breaks, and leaks; replace as needed.

(v) While the generator is operating under load, inspect the exhaust manifold and muffler to verify that they are not obstructed or leaking, are in good working condition and that fumes are directed away from enclosed areas.

(vi) Where a generator is located inside an enclosed structure, a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational.

(vii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator electrical system.

(I) Confirm that all batteries are mounted and properly secured. Inspect battery chargers, wiring and cables for damage, corrosion, connection continuity, and that all contacts are securely tightened onto battery terminals.

(II) Inspect each battery unit for adequate electrolyte levels, charge retention and appropriate discharge voltage.

(viii) While the generator is operating under load, inspect engine starters and alternators to verify that they are operating properly.

(ix) At least once per month, inspect Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight and not subject to floods, are properly ventilated, and that backup power supplies have adequate charge.

(x) At least once per month, inspect switch gears to ensure they are water-tight and in good, working condition.

(9) All critical components as described in the table in §290.47(c) associated to the source, treatment, storage, or other facilities necessary for the continued operations and distribution of water to customers must be protected from adverse weather conditions. Weatherization methods must be maintained in good condition and replaced as needed to ensure adequate protection.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data as defined in §290.41(c)(3)(A) of this title (relating to Water Sources) shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on public water system ownership and management. The agency shall be provided with information regarding public water system ownership and management.

(1) When a public water system changes ownership, a written notice of the transaction must be provided to the executive director. The grantee shall notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership by providing the name of the grantor, the effective date of the change in ownership, the physical and mailing address and phone number of the grantee, the public water system's drinking water supply identification number, and any other information necessary to identify the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a list of all the operators and operating companies that the public water system uses. The notice shall contain the name, contact information, work status, license number, and license class of each operator and the name and registration number of each operating company. Public water systems may report the list of operators and operating companies to the executive director by utilizing the Texas Commission on Environmental Quality (TCEQ) online "Operator Notice" form. If reporting cannot be accomplished utilizing the TCEQ online "Operator Notice" form, then a public water system may report the list of operators and operating companies on the written "Operator Notice" form to the executive director by mail, email or facsimile. (See §290.47(d) of this title).

(q) Special precautions, protective measures, and boil water notices. Special precautions, protective measures, and boil water notices shall be instituted by the public water system as specified in this subsection in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain Escherichia coli (E. coli) (or other approved fecal indicator), failure to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised. Special precautions, protective measures, and boil water notices are corrective or protective actions which shall be instituted by the public water system to comply with the requirements of this subsection.

(1) A public water system shall issue a boil water notice, special precaution, or protective measure to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours after the public water system has met any of the criteria described in subparagraph (A) and (B) of this paragraph.

(A) Situations requiring boil water notices:

(i) The flowchart found in §290.47(e) of this title shall be used to determine if a boil water notice shall be issued by the public water system to customers in the event of a loss of distribution system pressure.

(ii) A public water system shall issue a boil water notice to customers for a violation of the MCL for E. coli (or other approved fecal indicator) as described in §290.109(b)(1) of this title.

(iii) A public water system shall issue a boil water notice to customers if the combined filter effluent turbidity of the finished water, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, is above the turbidity level requirements as described in §290.122(a)(1)(B) of this title.

(iv) A public water system shall issue a boil water notice to customers if the public water system has failed to maintain adequate disinfectant residuals as described in subsection (d) of this section and as described in §290.110 of this title (relating to Disinfectant Residuals) for more than 24 hours.

(v) A public water system shall issue a boil water notice to customers if a waterborne disease outbreak occurs as defined in 40 Code for Federal Regulations §141.2.

(B) Situations requiring special precautions or protective measures may be determined by the public water system or at the discretion of the executive director, as described in paragraph (5) of this subsection.

(2) Boil water notices, special precautions, or protective measures shall be issued to customers by using one or more of the Tier 1 delivery methods as described in §290.122(a)(2) of this title (relating to Public Notification) and shall be issued using the applicable language and format specified by the executive director.

(3) A copy of boil water notice, special precaution, or protective measure issued shall be provided to the executive director electronically, within 24 hours or no later than the next business day after the issuance by the public water system, and a signed Certificate of Delivery shall be provided to the executive director within ten days after issuance by the public water system in accordance with §290.122(f) of this title.

(4) Boil water notices, special precautions, or protective measures shall be multilingual where appropriate, based upon local demographics.

(5) Special precautions, protective measures, and boil water notices may be required at the discretion of the executive director and shall be instituted by the public water system, upon written notification to the public water system, and shall remain in effect until the public water system meets the requirements of subparagraph (C) of this paragraph and paragraph (6) of this subsection.

(A) Circumstances warranting the exercise of such discretion may include:

(i) the public water system has failed to provide any of the required compliance information to the executive director as described in §290.111(h)(2) of this title (relating to Surface Water Treatment) and the failure results in the inability of the executive director to determine compliance as described in §290.111(i) of this title or the existence of a potential or actual health hazard, as described in §290.38 of this title (relating to Definitions); or

(ii) waterborne emergencies for situations that do not meet the definition of waterborne disease outbreak as defined in 40 Code of Federal Regulations §141.2, but that still have the potential to have serious adverse health effects as a result of short-term exposure. These can include, but are not limited to, outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

(B) The executive director will provide written notification to the public water system in the event a public water system is required to institute special precautions, protective measures, or issue boil water notices to customers at the discretion of the executive director. Upon written notification from the executive director, the public

water system shall implement special precautions, protective measures, or issue boil water notices to customers within 24 hours or within the time period specified by the executive director. The executive director may specify, in writing, additional required actions to the requirements described in paragraph (6) of this subsection for a public water system to rescind the notice.

(C) The public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.

(6) Once the boil water notice, special precaution, or protective measure is no longer in effect, the public water system shall notify customers that the notice has been rescinded. A public water system shall not rescind a notice or notify customers that a notice has been rescinded until the public water system has met all the applicable requirements, as described in subparagraph (A) of this paragraph.

(A) Required actions prior to rescinding a boil water notice include:

(i) water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system in accordance with the flowchart found in §290.47(e) of this title (relating to Appendices);

(ii) a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present and is consistently being maintained in each finished water storage tank and throughout the distribution system as described in subsection (d) of this section;

(iii) finished water entering the distribution system, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, has a turbidity level that is consistently below 1.0 NTU and the affected areas of the distribution system have been thoroughly flushed;

(iv) additional actions may be required by the executive director, in writing, and these additional actions shall be completed and documentation provided to the executive director for approval prior to the public water system rescinding the notice, and

(v) water samples for microbiological analysis, marked as "special" on the laboratory sample submission form, were collected from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements of this paragraph and the water samples collected for microbiological analysis are found negative for coliform organisms. The water samples described in this subparagraph shall be analyzed at laboratories in accordance with §290.119 of this title (relating to Analytical Procedures).

(B) A public water system shall notify customers that the notice has been rescinded within 24 hours or no later than the next business day, using language and format specified by the executive director once the public water system has met the requirements of this paragraph. The method of delivery of the rescind notice must be in a manner similar to the original notice.

(C) The public water system shall provide a copy of the rescind notice, a copy of the associated microbiological laboratory analysis results, as required by subparagraph (A) of this paragraph, and a signed Certificate of Delivery to the executive director within ten days after the public water system has issued the rescind notice to customers in accordance with §290.122(f) of this title.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as firefighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility, as defined in TWC §13.1394 or §13.1395, shall maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system during an extended power outage.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow-measuring devices and rate-of-flow controllers that are required by §290.42(b) and (d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturer specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturer specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 90 days using chlorine solutions of known concentrations.

(ii) The accuracy of continuous disinfectant residual analyzers shall be checked at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with §290.119 of this title.

(iii) If a disinfectant residual analyzer produces a result which is not within 15% of the expected value, the cause of the discrepancy must be determined and corrected and, if necessary, the instrument must be recalibrated.

(D) Analyzers used to determine the effectiveness of chloramination in §290.110(c)(5) of this title shall be properly verified in accordance with the manufacturer's recommendations every 90 days. These analyzers include monochloramine, ammonia, nitrite, and nitrate equipment used by the public water system.

(E) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the UV Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(F) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(G) Conductivity (or total dissolved solids) monitors and pressure instruments used for reverse osmosis and nanofiltration membrane systems shall be calibrated at least once every 12 months.

(H) Any temperature monitoring devices used for reverse osmosis and nanofiltration shall be verified and calibrated in accordance with the manufacturer's specifications.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by methods provided by the executive director [~~a toll-free reporting phone number~~] immediately upon determining that one of the following events has occurred, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system;

(5) a natural disaster, accident, or act that results in damage to the public water system; or

(6) a nonindustrial water system that experiences an unplanned condition that has caused the system to issue a special precaution under §290.47(e) of this title or issue a special precaution, protective measure, or boil water notice under subsection (q) of this section.

(A) For the purposes of this paragraph, a nonindustrial water system is defined as a public water system which does not exclusively serve industrial connections.

(B) For the purposes of this paragraph unplanned condition is defined as any condition where advance notice to water system customers has not been performed.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits; a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million; a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction (ETJ), with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; or a municipality, including any industrial district within the municipality or its ETJ, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(D) "Industrial district" has the meaning assigned by Texas Local Government Code, §42.044, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of §290.44(e)(6) of this title.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.

(4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as firefighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

(5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.

(6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

(y) Fire hydrant flow standards.

(1) In this subsection:

(A) "Municipal utility" means a retail public utility, as defined by Texas Water Code (TWC), §13.002, that is owned by a municipality.

(B) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(C) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by TWC §13.002.

(2) The governing body of a municipality by ordinance may adopt standards set by the executive director requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's ETJ. The municipality must submit a signed copy of the ordinance to the executive director within 60 days of the adoption of an ordinance by its governing body.

(3) In addition to a utility's maximum daily demand, the utility must provide, for purposes of emergency fire suppression:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 psi.

(4) If a municipality adopts standards for a minimum sufficient water flow and pressure to fire hydrants, the municipality must require a utility to maintain at least the minimum sufficient water flow and pressure described by paragraph (3) of this subsection in fire hydrants in a residential area located within the municipality or the municipality's ETJ. If the municipality adopts a fire flow standard exceeding the minimum standards set in paragraph (3) of this subsection, the standard adopted by the municipality must be based on:

(A) the density of connections;

(B) service demands; and

(C) other relevant factors.

(5) If the municipality owns a municipal utility, it may not require another utility located in the municipality or the municipality's ETJ to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the executive director.

(6) If the municipality does not own a municipal utility, it may not require a utility located in the municipality or the municipality's ETJ to provide a minimum sufficient water flow and pressure greater than the standard established by paragraph (3) of this subsection.

(7) An ordinance under paragraph (2) of this subsection may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(8) A municipality with a population of less than 1.9 million that adopts standards under paragraph (2) of this subsection or that seeks to use a utility's water for emergency fire suppression shall enter into a written memorandum of understanding with the utility.

(A) The memorandum of understanding must provide for:

(i) the necessary testing of fire hydrants; and

(ii) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this subsection.

(B) The municipality must submit a signed copy of the memorandum of understanding to the executive director within 60 days of the execution of the memorandum of understanding between its governing body and the utility.

(9) A municipality may notify the executive director of a utility's failure to comply with a standard adopted under paragraph (3) of this subsection.

(10) On receiving the notice described by paragraph (9) of this subsection, the executive director shall require a utility in violation of a standard adopted under this subsection to comply within a reasonable time established by the executive director.

(z) Nitrification Action Plan (NAP). Any water system distributing chloraminated water must create a NAP. The system must create a written NAP that:

(1) contains the system-specific plan for monitoring free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels;

(2) contains system-specific action levels of the above monitored chemicals where action must be taken;

(3) contains specific corrective actions to be taken if the action levels are exceeded; and

(4) is maintained as part of the system's monitoring plan in §290.121 of this title.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §291.143 and §291.161.

Background and Summary of the Factual Basis for the Proposed Rules

During the 88th Texas Legislative Session (2023), House Bill (HB) 1500 and HB 4559 passed, and require amendments to 30 Texas Administrative Code (TAC) Chapter 291 to implement the enacted legislation.

Texas Water Code (TWC), §13.4132, enacted in HB 1500, establishes the duration of an emergency order appointing a temporary manager to operate a utility that discontinues operation or is referred for appointment of a receiver.

This rulemaking reflects changes to TWC, §13.1395 enacted in HB 4559, which amended the definition of "affected utility" by changing county population. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

Section by Section Discussion

§291.143 Operation of a Utility by a Temporary Manager.

The commission proposes to amend §291.143 to revise the term limit of a temporary manager from 180 to 360 days, based on the duration of an emergency order, and provide for renewal of the emergency order in accordance with TWC, §13.4132 as amended by HB 1500.

§291.161 Definitions.

The commission proposes to amend the definition of "affected utility" in §291.161(1)(B)(ii) to change the population from "550,000" to "800,000" in accordance with TWC, §13.1395 as amended by HB 4559. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

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 significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

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 will be compliance and consistency with state law, specifically HB 4559 and HB 1500 from the 88th Texas Legislative Session (2023). The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

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 material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban 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 rules do 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 will 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, nor 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 rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks

to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to provide a duration for an emergency order issued under TWC, §13.4132 and to revise the county population in the definition of affected utility in TWC, §13.1395(a)(1), which applies to those affected utilities which are required to submit emergency preparedness plans to the commission for review and approval.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Section §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems; does not exceed any express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but under THSC, §341.031 and §341.0315, which allows the commission to adopt and enforce rules related to public drinking water, as well as under the general powers of the commission.

The commission invites public comment regarding the draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules to implement HB 1500 and 4559, 88th Texas Legislative session (2023). HB 1500 amended TWC, §13.4132 by establishing a duration of 360 days, with the possibility of renewal, for an emergency order issued to appoint a temporary manager of a water system that ceases operation or is referred for appointment of a receiver. HB 4559 amended TWC, §13.1394(a)(1) by changing the county population in the definition of "affected utility." An affected utility is required to file an emergency preparedness plan with the executive director for review and approval.

The Commission's analysis indicates that Texas Government Code, Chapter §2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b). The rulemaking is an action that is taken to fulfill obligations mandated under state law for all of the proposed rules. The rulemaking related to emergency orders and emergency preparedness plans is also an action taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the public health and safety purpose, and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(4) and (13).

First, the rulemaking is an action taken to fulfill obligations under state law. The duration of an emergency order appointing a temporary manager is now established under TWC, §13.4132(b-1), and the change to the county population in the definition of "affected utility" maintains those affected utilities requirements to submit emergency preparedness plans to the commission under TWC, §13.1395a)(1) in the counties where the population has increased passed 500,000.

Second, the rulemaking is related to the duration of emergency orders and to the submission of emergency preparedness plans by affected utilities, which are actions that are taken in response to a real and substantial threat to public health and safety. The proposed rules would ensure the continuity of operation of public water systems by temporary managers appointed pursuant to emergency orders with a duration established by the legislature and by ensuring that emergency preparedness plans are submitted by affected utilities in appropriate counties designated by the legislature. The proposed rules would significantly advance the public health and safety purpose; and does not impose a greater burden than is necessary to achieve the public health and safety purpose. These rules advance the public health and safety by ensuring appropriate governmental regulation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13).

Further, the commission has determined that promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require compliance regarding the duration of an emergency order appointing a temporary manager as now established under state law, and compliance regarding submission by an affected utility to the commission of its emergency preparedness plan, which is meant to ensure public health and safety. Therefore, the rules would not constitute a taking under Texas Government Code, Chapter §2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for amendments are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

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.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 12, 2024 at 10:00 a.m. in building F; room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written 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 starting at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 10, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 11, 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://events.teams.microsoft.com/event/1edc845c-d424-4035-9209-3f5b3eaa3880@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

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 2024-015-290-OW. The comment period closes at 11:59 p.m. on September 17, 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 Rheaa Miller, Emergency Preparedness and Response Section, at 512-239-5728 or by email at rheaa.miller@tceq.texas.gov.

SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §291.143

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and TWC, §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC, §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: TWC, §13.4132 in House Bill (HB) 1500 and TWC, §13.1395(a)(1) in HB 4559.

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The term of an emergency order issued to appoint a temporary manager may not exceed 360 days. The emergency order may be renewed:

(1) once for a period not to exceed 360 days, or

(2) if the utility is undergoing a sale, transfer, merger, consolidation, or acquisition required to be reported to the Public Utility Commission under Tex. Water Code §13.301, until the sale, transfer, merger, consolidation, or acquisition process is complete.

(e) [~~(d)~~] The temporary manager shall serve a term not to exceed 360 [~~of 180~~] days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission under subsection (d) of this section;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.

(f) [(e)] Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(g) [(f)] Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(h) [(g)] The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(i) [(h)] The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(j) [(i)] During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

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

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Charmaine Backens
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER L. STANDARDS OF EMERGENCY OPERATIONS

30 TAC §291.161

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103 and TWC §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC) §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: TWC §13.4132 in House Bill (HB) 1500 and TWC §13.1395(a)(1) in HB 4559.

§291.161. Definitions.

For the purposes of this subchapter, the following definitions apply.

(1) Affected utility -

(A) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC, §13.1394; or

(B) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC, §13.1395 in a county with a population of:

(i) 3.3 million or more; or

(ii) 800,000 [550,000] or more adjacent to a county with a population of 3.3 million or more.

(2) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 20 pounds per square inch (psi), or a water pressure approved by the executive director as required under TWC, §13.1394 or 35 psi as required under TWC, §13.1395.

(3) Extended power outage--A power outage lasting for more than 24 hours.

(4) Population--The population shown by the most recent federal decennial census.

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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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 4. TREASURY ADMINISTRATION

SUBCHAPTER A. POOLED COLLATERAL PROGRAM

34 TAC §4.121

The Comptroller of Public Accounts proposes the repeal of §4.121, concerning notification. The proposal removes §4.121 from Subchapter A because it is unnecessary for the implementation of Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the clarity and organization of the chapter. There would be no significant anticipated economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Macy Douglas, Director, Treasury Operations Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: Macy.Douglas@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Government Code, §2257.102(a), which requires the comptroller to adopt rules to administer Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds..

The repeal implements Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

§4.121. Notification.

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

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4001

The Comptroller of Public Accounts proposes amendments to §9.4001, concerning valuation of open-space and agricultural lands. These amendments are to reflect updates and revisions to the manual for the appraisal of agricultural land. The proposed updated manual may be viewed at

https://comptroller.texas.gov/taxes/property-tax/docs/96-300p.pdf.

The amendments update and revise the February 2022 manual for the appraisal of agricultural land. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D.

Generally, the substantive changes to the manual reflect statutory changes and changes dictated by case law. The manual is updated throughout, as well as adding a subsection for 1-d-1, to address that ownership of land is not considered to have changed if ownership of the land is transferred from the former owner to the surviving spouse of the former owner, based on changes made in House Bill 2354, 88th Legislature, R.S., 2023. In addition, the updated manual removes the requirement that agricultural advisory board members be residents of the district in response to House Bill 3207, 88th Legislature, R.S., 2023.

The proposed manual adds a subsection for 1-d-1 to address the requirement that a chief appraiser shall take into consideration the effect (if any) that the presence of any applicable disease or pest or the designation of the area may have on the net income, based on changes made in House Bill 260, 88th Legislature, R.S., 2023. In addition, in response to SB 1191, 88th Legislature, R.S., 2023, the proposed manual adds a paragraph to explain situations where the chief appraiser shall accept and approve or deny an application for appraisal after the deadline for filing the applications. The footnotes, years, values and figures were updated to be more recent.

Pursuant to Tax Code, §23.52(d), these rules have been approved by the comptroller with the review and counsel of the Department of Agriculture.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.41 (Appraisal); and 23.52 (Appraisal of Qualified Agricultural Land), which provide the comptroller with the authority to prepare and issue publica-

tions relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising qualified agricultural and open-space land for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters C and D.

§9.4001. Valuation of Open-Space and Agricultural Lands.

Adoption of the "Manual for the Appraisal of Agricultural Land." This manual specifies the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D. Appraisal districts are required to use this manual in qualifying and appraising open-space land. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Agricultural Land dated January 2024 [~~February 2022~~]. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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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34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning valuation of timberland. These amendments are to reflect updates and revisions to the manual for the appraisal of timberland. The proposed updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/docs/96-357p.pdf.

The amendments update and revise the March 2022 manual for the appraisal of timberland. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising timberland and restricted-use timberland under Tax Code, Chapter 23, Subchapters E and H.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated to reflect the changes to the qualification criteria of the agricultural advisory board members in response to House Bill 3207, 88th Legislature, R.S., 2023 by eliminating the requirement that a member must have been a resident of the district for at least five years. Changes are made to reference more current prices, expenses and values throughout the manual.

Pursuant to Tax Code, §23.73(b), these rules have been approved by the comptroller with the review and counsel of the Texas A&M Forest Service.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.73 (Appraisal of Qualified Timber Land); and 23.9803 (Appraisal of Qualified Restricted-Use Timber Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters E and H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland dated January 2024 [~~March 2022~~]. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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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