TEXAS REGISTER

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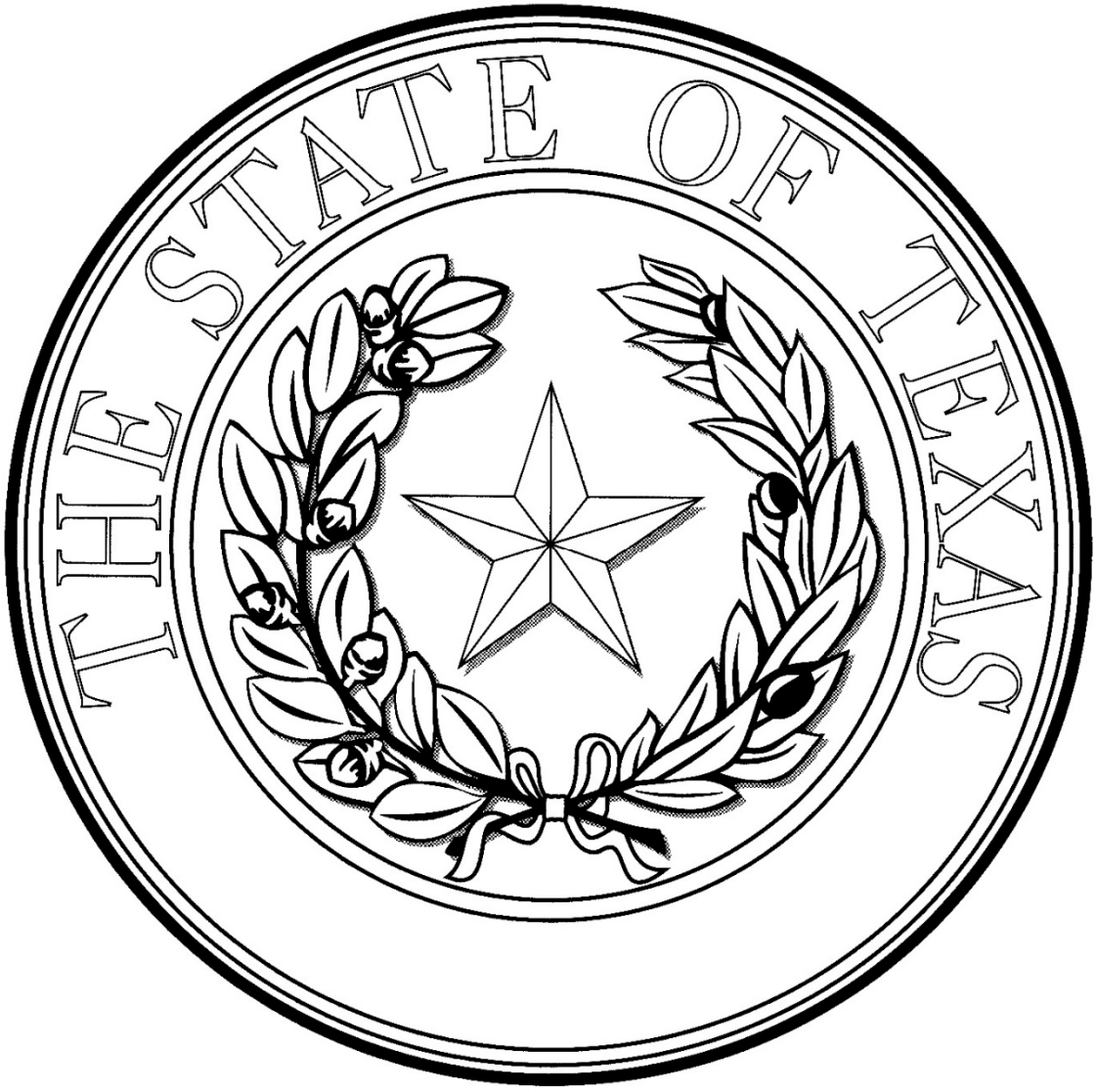

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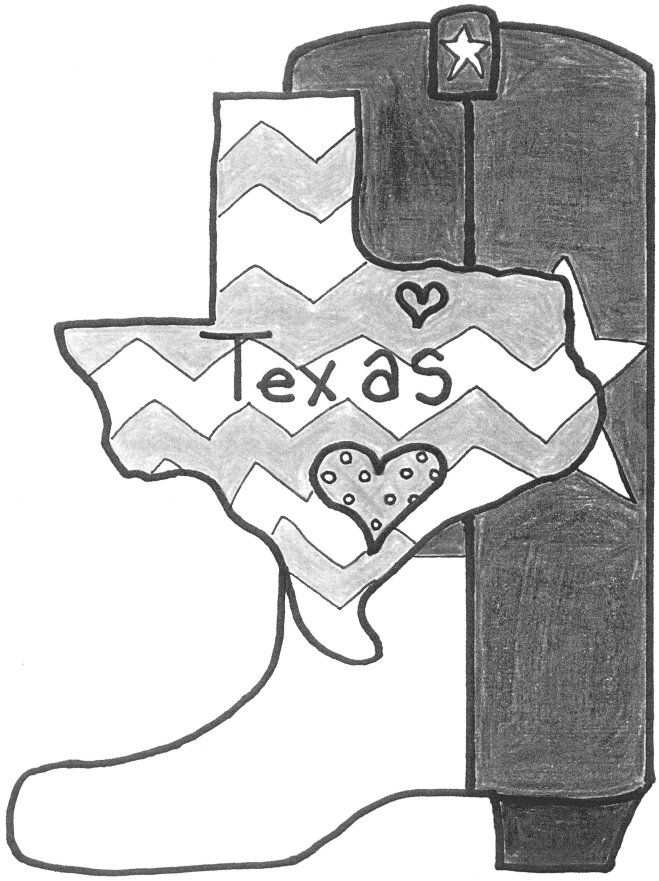

Texas

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 18, 2024

Appointed to the Texas State Affordable Housing Corporation Board of Directors for a term to expire February 1, 2027, Ernest Richards of Dallas, Texas (replacing Courtney Johnson Rose of Missouri City, who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2027, Jerry K. "Kenny" Weldon, II of Stephenville, Texas (replacing John Henry Luton of Granbury, who resigned).

Appointments for September 19, 2024

Appointed to the Southern Regional Education Board for a term to expire June 30, 2028, Brad Buckley, D.V.M. of Salado, Texas (Representative Buckley is being reappointed).

Appointments for September 20, 2024

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2028, Penelope Duke Miggins, M.D. of The Woodlands, Texas (replacing Zachary S. "Zach" Jones, M.D. of Frisco, who resigned).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2030, Kristen L. Cox of College Station, Texas (Ms. Cox is being reappointed).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2030, Tejas V. Ozarkar, M.D. of Plano, Texas (replacing Carrie L. de Moor, M.D. of Frisco, whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2030, Robert B. Simonson, D.O. of Duncanville, Texas (Dr. Simonson is being reappointed).

Appointments for September 23, 2024

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2029, Terri Breeden of Wimberley, Texas (Ms. Breeden is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2029, Rosalba A. Calleros Ramirez of Buda, Texas (replacing Laura J. Warren of Blanco, whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2029, David H. Goff, M.D. of Strawn, Texas (replacing Christina R. Sherrod, M.D. of Southlake, whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2029, Audrey K. Jackson of San Marcos, Texas (replacing Stephanie Shine, M.D. of Lubbock, whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2029, Guillermo Lopez of Austin, Texas (Mr. Lopez is being reappointed).

Appointments for September 24, 2024

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2029, Jeb A. Hogan of Tilden, Texas (replacing Annelise V. Gonzalez of San Antonio, whose term expired).

Appointments for September 25, 2024

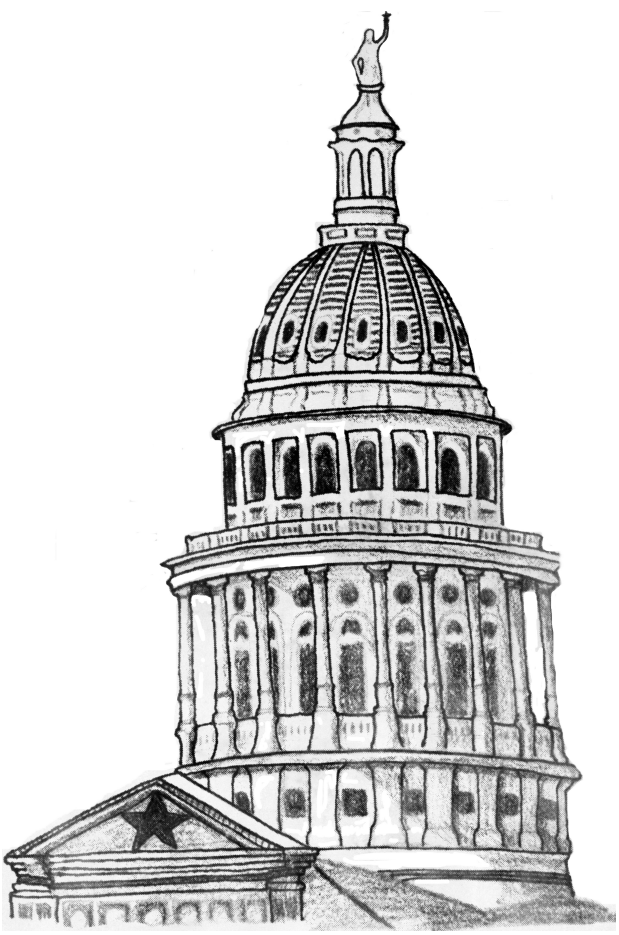
Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, Hussein B. Musa, M.D. of Fair Oaks, Texas (replacing Richard L. Gibney, M.D. of Waco, who resigned).

Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, Roberta L. "Bobbi" Wagner of Boerne, Texas (replacing Rita L. Littlefield of Austin).

Greg Abbott, Governor

TRD-202404614

♦ ♦ ♦



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0562-KP

Requestor:

The Honorable Jerry D. Rochelle

Bowie County Criminal District Attorney

601 Main Street

Texarkana, Texas 75501

Re: Proper magistrate to conduct hearing required by article 15.17 of the Code of Criminal

Procedure (RQ-0562-KP)

Briefs requested by October 16, 2024

RQ-0563-KP

Requestor:

Mr. Steven C. McCraw

Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

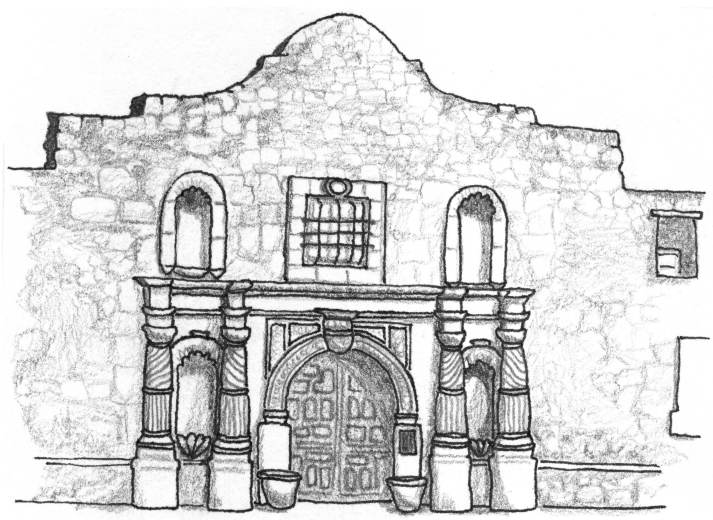
Re: Validity of district court orders directing state agencies to amend a person's biological "sex" designation on state identification documents (RQ-0563-KP)

Briefs requested by October 17, 2024

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

TRD-202404594
Justin Gordon
General Counsel
Office of the Attorney General
Filed: September 24, 2024

♦ ♦ ♦



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 8. TEXAS JUDICIAL COUNCIL

CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

1 TAC §174.28

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter C, Division 2, §174.28, concerning On-Site Monitoring Process.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendment to §174.28(c)(4) requires the policy monitor to make a finding if the monitor finds the court did not explain the procedures for requesting counsel or identifies cases in which a defendant entered an uncounseled plea while having a pending counsel request.

The proposed amendments to §174.28(c)(5) provide that in counties with a public defender's office, the monitor will determine if appointments to the office are made in accordance with Article 26.04(f), Code of Criminal Procedure, the priority appointment of public defender's statute.

The proposed amendments to §174.28(c)(5) add requirements related to attorney appointments in capital felony cases. In a county with a public defender's office that accepts capital appointments, the monitor will verify that the office is appointed in each capital case. If the office was not appointed in each case, the policy monitor shall determine whether the court or its designee made a finding of good cause on the record for appointing other counsel in accordance with Article 26.04(f)(1).

The proposed amendments to §174.28(c)(5) also require that in capital felony cases where a public defender's office was not appointed, the policy monitor shall determine if two attorneys were appointed and whether at least one attorney was qualified to serve as lead counsel under Article 26.052(e), Code of Criminal Procedure. If one attorney was appointed, the policy monitor shall determine whether the State filed written notice that it is not seeking the death penalty and the date the notice was filed.

The proposed amendments to §174.28(d)(1) provide that staff shall submit draft policy monitoring reports to the Policies and Standards Committee, rather than to the county, for review within 60 days after the date staff receives all required data for the review, rather than within 60 days of a site visit. The first part of the amendment is proposed since the Committee review process can sometimes take a few weeks to complete, especially when changes to a report are needed. The second part of the amendment is proposed because some monitoring reviews are now fully remote and because delays in receiving needed data from counties often leads to staff not meeting the timeline in the current version of the rule.

The proposed amendments to §174.28(d)(3) provide that in the case of a follow-up review report, a county may receive an extension beyond the two 30-day periods provided for in the current rule if the county demonstrates it has extenuating circumstances that are approved by the Executive Director.

The proposed amendments to §174.28(d)(4) require only formula grant payments, rather than all grant payments, be withheld if a county does not respond to a policy monitoring report within 10 days of receipt of a certified letter notifying the local officials. This would assure that improvement grant-funded programs such as public defender offices are not immediately jeopardized.

The proposed amendments to §174.28(d)(5) specify the Commission may require regular reporting of data to determine if process changes are being implemented and their impact on compliance when counties fail to come into compliance after multiple reviews. Currently, the only processes specified are to impose a remedy for noncompliance under §173.307, Texas Administrative Code, such as withholding grant funds.

FISCAL NOTE

Mr. Scott Ehlers, Executive Director, Texas Indigent Defense Commission, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

PUBLIC BENEFIT AND COSTS

Mr. Ehlers has determined that for each of the first five-year period the amendment is in effect the public benefit will be an improvement in the indigent defense services by helping the Commission assure the requirements of federal and state law related to indigent defense are followed. There are no anticipated economic costs to persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Ehlers has determined that for each year of the first five years in which the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs or employee positions. Additionally, the proposed amendments will not require an increase or decrease in future legislative appropriations to the Commission or change any fees paid to the Commission. The proposed amendments do not create a new regulation. The proposed amendments expand certain existing regulations, including by providing for a monitoring visit to be conducted as a result of findings from a previous visit, a complaint, or media reports indicating a potential violation of laws related to indigent defense. The proposed amendments would not repeal any rules, nor increase or decrease the number of individuals subject to the applicability of the rules. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Comments on the proposed amendments may be submitted in writing to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 West 14th Street, Room 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

No other statutes, articles, or codes are affected by the proposed amendments.

§174.28. On-Site Monitoring Process.

(a) Purpose. The monitoring process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel. The policy monitor will determine if any waivers of counsel do not comply with the requirements of Article 1.051, Code of Criminal Procedure. The policy monitor will make a finding if the monitor finds the court did not always explain the procedures for requesting counsel to unrepresented defendants or identifies any cases where a defendant requested counsel and later entered an uncounseled plea without their counsel request being ruled upon.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of appointments of counsel and denials of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for the following documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a public defender's office, that appointments to the office are made in accordance with Article 26.04(f), Code of Criminal Procedure.

(C) In capital felony cases, the policy monitor shall determine if appointments are made in accordance with Article 26.052, Code of Criminal Procedure.

(i) In counties with a public defender's office that handles capital felony cases, the policy monitor shall determine if a public defender's office is appointed in each capital case. If the office is not, the policy monitor will determine whether the court or its designee made a finding of good cause on the record for appointing other counsel in accordance with Article 26.04(f)(1), Code of Criminal Procedure.

(ii) In capital felony cases where a public defender's office is not appointed, the policy monitor shall determine if two attorneys were appointed, at least one of whom is qualified to serve as lead counsel under Article 26.052(e), Code of Criminal Procedure, unless the state gives notice in writing that the state will not seek the death penalty.

(D) [~~(B)~~] In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(E) [~~(C)~~] That the attorney selection process actually used matches what is stated in the indigent defense plans; and

(F) [~~(D)~~] For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement of 26.04(b)(6), Code of Criminal Procedure, if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include only attorneys who were on an appointment list for the entire time period under review.

(6) Data Reporting. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. For full and limited-scope reviews, the policy monitor shall submit a draft [~~issue a~~] report to the Commission's Policies and Standards Committee [~~authorized official~~] within 60 days after staff receives required data for the monitoring review [~~of the on-site monitoring visit to a county~~], unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the date required data is received [~~on-site monitoring visit~~]. The report shall contain recommendations to address findings of noncompliance. For drop-in visits, the policy monitor may issue a letter with recommendations.

(2) County Response. Within 60 days of the date a report is issued by the policy monitor to the county, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where a report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to a report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days. If the county provides extenuating circumstances, the Executive Director may grant an additional extension of time to respond.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter shall [~~will~~] be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further formula grant payments will be withheld if no response to a report is received by the Commission within 10 days of receipt of the letter. If formula grant funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may require regular additional reporting of data to determine if process changes are being implemented, and other requirements, as appropriate. The Commission may also impose a remedy under §173.307 of this title (relating to Remedies for Noncompliance).

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 September 19, 2024.

TRD-202404525
Wesley Shackelford
Deputy Director
Texas Judicial Council
Earliest possible date of adoption: November 3, 2024
For further information, please call: (737) 279-9208

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER F. LICENSING PERSONS WITH CRIMINAL BACKGROUNDS

16 TAC §303.201

The Texas Racing Commission (TXRC) proposes to amend selected language in Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal

Backgrounds, §303.201. General Authority, concerning factors that relate to the person's present fitness to perform the duties and responsibilities. The purpose of this rule amendment is to align the Texas Rules of Racing with legislative changes made to the Texas Racing Act during the 88th Legislative Session, specifically Texas Occupations Code §2025.

AGENCY ANALYSIS

A. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments 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 rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to further align the administration of the occupational licensing program with recent statutory changes to the Texas Occupations Code that incorporate Chapter 53 in the agency licensing program.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

H. STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.001(a-1).

I. CROSS REFERENCE TO STATUTE. Texas Occupations Code §2025.001(a-1).

§303.201. General Authority.

(a) In accordance with state law, the commission may revoke, suspend, or deny a license [~~or the stewards or racing judges may suspend or deny a license to a person~~] because of the person's conviction of a felony or misdemeanor if the offense directly relates to the person's present fitness to perform the duties and responsibilities associated with the license.

(b) In determining whether [~~or not~~] an offense directly relates to a person's present fitness to perform the duties and responsibilities associated with the license, the commission [~~or stewards or racing judges~~] shall consider the relationship between the offense and the occupational [~~particular~~] license applied for and the following factors:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence presented by the person of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other persons in contact with the convicted person.

(c) The executive director [~~secretary~~] shall [~~may~~] develop and publish guidelines relating to the administration of the of occupational licensing program. [~~regarding the factors listed in subsection (b) of this~~

section and how the factors relate to the offenses listed in §303.202 of this title (relating to General Provisions.)]

(d) On learning of the felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision of a licensee, the executive director or designee [commission] shall determine whether a license may be subject to suspension or revocation [revoke the licensee's license].

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

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404463
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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16 TAC §303.202

The Texas Racing Commission (TXRC) proposes amendments to Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal Background, Rule §303.202. Guidelines, concerning the occupational licensing guidelines. The purpose of these amendments is to clarify the responsibilities of the executive director and align the administration of the occupational licensing program with current state law. The proposed amendments will allow the agency to conform with the provisions of Texas Occupations Code §2025.251-262.

A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed amendments, and the proposed amendments 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 rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed amendments are expected to reduce the overall costs of the licensing process by clarifying the factors considered for issuance of an occupational license.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed amendments.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

H. STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.251-262.

I. CROSS REFERENCE TO STATUTE.

Texas Occupations Code §2025.251-262.

§303.202. Guidelines.

[(a)] In accordance with state law, the commission has delegated the administration of the occupational licensing program to the executive director who shall develop guidelines [developed guidelines] relating to the suspension, revocation, or denial of occupational licenses based on criminal background. [The offenses that the commission has determined are directly related to the occupational licenses issued by the commission are:]

[(1) an offense for which fraud, dishonesty, or deceit is an essential element;]

[(2) an offense relating to racing, pari-mutuel wagering, gambling, or prostitution;]

[(3) a felony offense of assault, such as those described by Penal Code, Chapter 22;]

[(4) a criminal homicide offense, such as those described by Penal Code, Chapter 19;]

[(5) a burglary offense, such as those described by Penal Code, Chapter 30;]

[(6) a robbery offense, such as those described by Penal Code, Chapter 29;]

[(7) cruelty to animals;]

[(8) a theft offense, such as those described by Penal Code, Chapter 31;]

[(9) an offense relating to the possession, manufacture, or delivery of a controlled substance, a dangerous drug, or an abusable glue or aerosol paint;]

[(10) arson; and]

[(11) a felony offense of driving while intoxicated.]

[(b) The commission has considered the following factors in determining whether or not a particular offense directly relates to a particular occupational license:]

[(1) the nature and seriousness of the crime;]

[(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]

[(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(c) Based on the factors described in subsection (b) of this section, the commission has determined that the offenses described in subsection (a) of this section are directly related to the following occupational licenses. (An "X" on the chart means the offense directly relates to the license.)]
[Figure: 16 TAC §303.202(c)]

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 September 17, 2024.

TRD-202404464
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES
16 TAC §311.4

The Texas Racing Commission (TXRC) proposes amendments to Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter A, Division 1, Occupational Licenses, §311.4. Occupational License Restrictions. The purpose of these amendments is to align the Texas Rules of Racing with changes in the Texas Racing Act made during the 88th Legislative Session, specifically, Texas Occupations Code §2025.001(a-1).

AGENCY ANALYSIS

A. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminate existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments 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 rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs

of the licensing process aligning the administration of the licensing program by the Executive Director with the current version of the Texas Racing Act.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §2025.001 (a-1).

CROSS REFERENCE TO STATUTE.

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

§311.4. Occupational License Restrictions.

(a) Non-Transferable. Except as otherwise provided by this section, a license issued by the Executive Director is personal to the licensee and is not transferable.

~~[(1) Except as otherwise provided by this section, a license issued by the Commission is personal to the licensee and is not transferable.]~~

~~[(2) If the death of a licensee creates an undue hardship or results in a technical violation of the Act or a Rule, on application of a person who wishes to operate or work under the license, the Commission may issue a temporary license to the person for a period specified by the Commission not to exceed one year.]~~

(b) Education. To be eligible to receive a license to participate in racing with pari-mutuel wagering, an individual who is under 18 years of age must present to the Commission proof that the individual:

(1) has graduated from high school or received an equivalent degree; or

(2) is currently enrolled in high school or equivalent classes.

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 September 17, 2024.

TRD-202404466
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.362

The Texas Racing Commission (TXRC) proposes rule amendments in Texas Administrative Code, Title 16, Part 8, Chapter 319, Subchapter D, Provisions for Horses, §319.362. Split Specimen. The purpose of this rule amendment is to change the procedures for drug testing of horses to enable the storage of split samples at a laboratory along with testing both samples at that laboratory.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

AGENCY ANALYSIS

A. DRAFT GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rule change will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code §2001.022. The 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 OOG; will not require an increase or decrease in fees paid to the OOG; will not create new regulations; will not increase or decrease the number of individuals subject to the applicability of the rules; and will not positively or adversely affect the Texas economy.

B. ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code §2006.002, is not required.

C. REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002, is not required.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments 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 rule amendments do

not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to improve the positive economic impact, health, and safety of licensed horse racing in Texas by reducing the impact of unlicensed racing.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

H. STATUTORY AUTHORITY: The amendments are proposed under Texas Occupations Code §§2034.002; 2034.005.

I. CROSS REFERENCE TO STATUTE. Texas Occupations Code §§2034.002; 2034.005.

§319.362. Split Specimen.

(a) Before sending a specimen from a horse to a testing laboratory, the commission veterinarian shall determine whether the specimen is of sufficient quantity to be split. If there is sufficient quantity, the commission veterinarian or the commission veterinarian's designee shall divide the specimen into two parts and both parts will be shipped to the testing laboratory for testing and storage for future testing, if applicable. If the specimen is of insufficient quantity to be split, the commission veterinarian may require the horse to be detained until an adequate amount of urine can be obtained. If the commission veterinarian ultimately determines the quantity of the specimen obtained is insufficient to be split, the commission veterinarian shall certify that fact in writing and submit the entire specimen to the laboratory for testing.

~~[(b) The commission veterinarian or commission veterinarian's designee shall retain custody of the portion of the specimen that is not sent to the laboratory. The veterinarian or designee shall store the retained part in a manner that ensures the integrity of the specimen.]~~

(b) ~~[(c)]~~ An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the split of the specimen for the primary sample with the positive result, be submitted for testing by a different technician at a Commission approved testing laboratory. ~~[retained serum or urine, whichever provided the positive result, be submitted for testing to a Commission approved and listed laboratory that is acceptable to the owner or trainer.]~~ The owner or trainer must notify the executive director ~~[secretary]~~ of the request not later than 48 hours after notice of the positive result. Failure to request the split within the prescribed time period will be deemed a waiver of the right to the split specimen.

~~[(d) If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.]~~

(c) ~~[(e)]~~ If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

(d) ~~[(f)]~~ If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

(e) ~~[(g)]~~ If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

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 September 17, 2024.

TRD-202404467
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning Fees.

The proposed amendment fixes a clerical error made by staff to the total fee amounts for the dentist renewal fee, dentist renewal late - 1 to 90 days fee, and dentist renewal late - 91 to 364 days fee. An extra $15 charge was mistakenly imposed, and therefore the proposed amendment updates the fees to remove the extra charge.

In addition, the proposed amendment includes late fees for the dentist and dental hygienist temporary license by credentials renewal application. The late fees are imposed in accordance with Section 257.002(c)-(c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1 ½ times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in

effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposed rule because it implements statutory requirements, and is necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.0045(c)(6) and (9).

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No statutes are affected by this proposed rule.

§102.1. Fees.

(a) Effective November 28, 2024 [~~May 23, 2024~~], the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.

Figure 22 TAC §102.1(a)
[~~Figure 22 TAC §102.1(a)~~]

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on September 20, 2024.

TRD-202404550
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 305-8910

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 191. DISTRICT REVIEW COMMITTEES

22 TAC §§191.1 - 191.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 191, concerning District Review Committees, §§191.1 - 191.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 191 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§191.1 Purpose.

§191.2 Districts.

§191.3 Committee Meetings.

§191.4 Activities and Scope of Authority.

§191.5 Per Diem and Expenses.

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

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7030

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CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

22 TAC §§196.1, 196.2, 196.4, 196.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 196, concerning Voluntary Relinquishment or Surrender of a Medical License, §§196.1, 196.2, 196.4, and 196.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 196 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§196.1. Relinquishment of License.

§196.2. Surrender Associated with Disciplinary Action.

§196.4. Relicensure After Relinquishment or Surrender of License.

§196.5. Competence to Resume Practice.

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 199. PUBLIC INFORMATION

22 TAC §§199.1 - 199.6

The Texas Medical Board (Board) proposes the repeal of current Chapter 199, concerning Public Information, §§199.1 - 199.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 199 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: https://forms.office.com/g/DibuGXnyfE. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

No other statutes, articles or codes are affected by this proposal.

§199.1. Public Information Committee.

§199.2. Requests to Speak.

§199.3. Requests for Information.

§199.4. Charges for Copies of Public Records.

§199.5. Notice of Ownership Interest in a Niche Hospital.

§199.6. Enhanced Contract or Performance Monitoring.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§3.1 - 3.8, and replace them with new Division 1, containing §3.1 and §3.2; Division 2, containing §§3.10 - 3.23; Division 3, containing §3.40 and §3.41; Division 4, containing §§3.50 - 3.52; and Division 5, containing §§3.60 - 3.62, concerning filing and submission requirements for life, annuity, accident, health, and health maintenance organization (HMO) products. TDI proposes to amend §3.3100 and repeal §3.3101 and §3.3102 of Subchapter S, concerning readability. TDI also proposes to amend §§3.4004, 3.4005, and 3.4009 of Subchapter Z, concerning certain life, accident, health, and annuity forms that are exempt from review, and to repeal §3.4020, concerning policy form certifications in connection with exempt filings.

In a separate rulemaking, TDI proposes to amend 28 TAC §7.1301 and repeal §7.1302, concerning the billing system for regulatory fees, to be consistent with new and amended sections in 28 TAC Chapter 3. The proposed Chapter 7 amendment and repeal are also published in this issue of the *Texas Register*.

EXPLANATION. This proposal streamlines and modernizes the filing processes for life, annuity, accident, health, and HMO products, including form, rate, network, and advertising filings. These rules last underwent significant updates in 2003. The proposal:

- updates standards governing all filings that are submitted to TDI's Life and Health Division through SERFF;

- repeals provisions related to the manual TDI billing system;

- aligns filing procedures across the Life and Health Division by extending filing rules to apply to HMO and network filings;

- limits excessive use of variability in a filing to help TDI ensure compliance and promptly process filings;

- addresses acceptable methods of premium payment and circumstances when third-party payments must be accepted;

- expands the applicability of readability and plain language requirements to all life, annuity, credit, accident, health, and HMO products, other than group annuities and major medical products subject to existing plain language rules;

- strengthens consumer protections related to applications by adding disclosure requirements and clarifying that an applicant cannot be asked to sign an application before receiving a written copy;

- narrows the scope of filings eligible to be filed exempt; and

- reorganizes the rules for clarity and readability.

Descriptions of the new, amended, and repealed sections follow, organized by subchapter and division.

Subchapter A. Submission Requirements for Filings and Departmental Actions Related to Such Filings.

Proposed New Division 1. Applicability, Scope, and Definitions.

Section 3.1. Applicability and Scope. The proposed new section tracks provisions currently contained in the existing section. It explains that the subchapter applies to all form, rate, advertising, network, group eligibility, and informational filings for products including life, annuity, accident and health, credit life, credit accident and health, and HMO products. The new section differs from current §3.1, which is proposed for repeal. The current section does not apply to HMO products; the expanded applicability in the new section reflects that these filings are processed using the same submission procedures. While the proposed section is written broadly to capture a wide range of product and filing types, it does not require issuers to make any filing that is not already required under existing rules.

Section 3.2. Definitions. The proposed new section defines 33 terms for use in Subchapter A. Included among these are some terms contained in current §3.2, which is proposed for repeal. The proposed definitions for these terms are updated to align with terms used by industry through the filing process.

Proposed New Division 2. General Filing Requirements.

Section 3.10. Requested Filing Mode. The proposed new section is similar to subsections (a)(1) - (3) and (b)(1) in current §3.5, which is proposed for repeal. The proposed new section outlines four requested filing modes and specifies the types of filings that are eligible to be submitted on a file and use or exempt basis, at the option of the insurer, rather than being filed for review or approval. A filing that is not subject to review or approval may be filed in an informational filing mode.

Section 3.11. Submission Requirements. The proposed new section outlines submission requirements that apply to all types of filings. It duplicates submission of information currently required by existing §3.3 and §3.4(c) and (m), which are proposed for repeal. Proposed new subsection (a) would require issuers to submit filings electronically through the System for Electronic Rates & Forms Filing (SERFF) or a subsequent electronic system, and proposed subsection (b) addresses how the department would handle a system outage. TDI intends to continue using SERFF, and only anticipates that a subsequent system would be used if SERFF is replaced with a different system or the Texas Legislature mandates that a different system be used.

The proposed new section carries over language from current §3.3, but updates and simplifies it in regard to transmittal information to align with SERFF submission fields. Since some information previously collected through transmittal checklists can now be collected within SERFF fields, proposed new subsection (c) specifies the information that must be included, either in applicable SERFF fields or in a transmittal checklist. As technology evolves, TDI may modify transmittal checklists to streamline filing processes and avoid duplicative requirements. Most of the information specified in proposed new subsection (c) is substantially similar to existing §3.3 and §3.4(c) and (m). Company information in subsection (c)(1) is broader, to reflect SERFF fields. A confidentiality designation is included in subsection (c)(4) because SERFF allows all filings to be posted for public access, unless a document within the form is designated as containing confidential information. Requirements in subsection (c)(10) expand on the requirements in existing §3.3(b)(2)(J)(ii) to include a copy of a form approved before January 1, 2012, which is the date TDI's SERFF records begin.

Proposed new subsection (d) addresses submission requirements for a substantially similar, exact copy, substitution, or resubmission filing, which are similar to existing requirements in §3.6(a)(3), (4), and (6). Many of the certification requirements in existing §3.6 are included in new §3.16.

Proposed new subsection (e) references requirements for advertising filings contained in Chapter 21, Subchapter B.

Proposed new subsection (f) specifies that TDI may ask for any additional information necessary, which aligns with existing §3.6(d).

Section 3.12. Contact Person. The proposed new section aligns closely with language in existing §3.4(b). Additions include paragraph (2), requiring an issuer to provide the contact person's email address (rather than providing it "if available," as in the existing rule), and paragraph (3)(B), requiring that an issuer clearly authorize their designee to act on behalf of the issuer with respect to the type of filing. Designees might include a consulting firm, qualified actuary, or legal counsel.

Section 3.13. Filing Fees. The proposed new section sets the fee for form filings at $100, subject to certain exceptions, which are consistent with the fees in existing §3.4(r). Likewise, rate filing fee amounts are unchanged at $100 for certain products subject to approval, and $50 for others. The proposed new section does not apply filing fees to any other filing types (e.g., advertising, network, group eligibility, or informational filings). These changes simplify the fee structure currently addressed in §3.4(r). The proposed new section requires all form and rate filing fees to be paid through SERFF, or a subsequent electronic payment system designated by TDI. Proposed new §3.13 requires issuers to pay filing fees at the time a filing is accepted for review, and provides that TDI may consider a filing withdrawn if the issuer does not pay the fee within five business days following acceptance for review. This ensures that the appropriate fee will be paid before a filing is approved. The proposed new section will eliminate the need for TDI's manual billing system, thus TDI proposes to repeal §7.1302, which addresses TDI's manual billing system.

Section 3.14. Purpose and Use. The proposed new section includes provisions similar to existing §3.2(9) and §3.3(b)(2)(F). The existing provisions are included in new paragraphs (1) - (4), (6), and (7). Instead of using the term "form," which is found in existing §3.2(9), the proposed new section uses the term "filing" to reflect the focus of Chapter 3, as proposed, on filing requirements. Paragraph (3)(B) provides examples of the types of key or unique provisions in an accident and health filing that must be identified, including exclusive provider benefits and innovative excepted benefit products. Innovative excepted benefit products would include experimental or nonconventional coverage types addressed in §3.3081 and authorized by Insurance Code §1201.103. New paragraph (5) does not duplicate a provision from existing §3.2 or §3.3. It requires a filing to explain any new program or initiative addressed by the filing. Examples of this include a noninsurance benefit authorized by Insurance Code §1701.061, or a steering or tiering program addressed in Insurance Code §1458.101. This provision will streamline TDI's review by helping staff understand how the filing will be used at the beginning of the review and reducing the need to ask additional questions.

Section 3.15. Confidential Information in Filings. The proposed new section codifies TDI's existing process for handling confidential information in filings and aligns with the Property and Casualty Filings Made Easy rules in 28 TAC Chapter 5, Subchapter M. The new subsections address public inspection of filings through SERFF Filing Access; confidentiality and disclosure

under the Texas Public Information Act; a prohibition against declaring an entire filing confidential; redaction; and the confidentiality of personally identifiable information. The definition of personally identifiable information under §3.2 does not include the name of a group policyholder, thus this section does not require an issuer to designate a group policy face page as confidential.

Section 3.16. Certifications. The proposed new section lists requirements for certifications that are similar to those in existing §3.4(j) and §3.6(a). Proposed new subsection (a) lists general certifications required for all filings to affirm the company's responsibility to thoroughly review a filing, consistent with existing §3.6(a)(1). Paragraphs (1) and (2) state the certification is on behalf of the issuer and the issuer is bound by it. Paragraphs (3) and (4) state that the individual is familiar with the laws applicable to the filing, has reviewed the filing, and believes the filing is compliant. Paragraph (5) states that the form filed is not deceptive or misleading; this certification was previously required only in exempt filings. Paragraph (6) affirms that, if applicable, the filing accurately reflects the Flesch score of each form.

Subsection (b) lists additional certifications from existing §3.6(a)(2) that only apply to certain filings by creating new Figure 28 TAC §3.16(b) to clearly display when these specific certifications should be used. The first two certifications ensure that companies do not knowingly file forms with compliance deficiencies that have been previously flagged by the department. The third certification ensures that companies review and update previously filed forms as needed to comply with new requirements before submitting a substantially similar, exact copy, or substitution filing. The fourth and fifth certifications affirm that all changes to a form are identified and that any exact copy filing meets the definition. The sixth certification affirms that a substitution filing is made only for forms that have not been issued. The seventh certification affirms that a form will be marketed as supplemental coverage only if it is filed for review as supplemental. The eighth certification affirms that products created using matrix or insert page forms will comply, since TDI does not review such products in their final form. The ninth - 13th certifications affirm that exempt filings will comply with Chapter 3, Subchapter Z, similar to existing certifications in §3.6(a)(9).

Subsection (c) outlines the consequences for submitting false certifications by referencing Insurance Code §841.704 and §843.464, which address criminal penalties for knowingly making false statements to TDI.

Section 3.17. Form and Rate Filing Requirements. The proposed new section updates form and rate filing requirements for efficient review. Subsection (a) specifies that, except for general use filings, a single filing may contain rates and forms only for one product.

Subsection (b) requires general use forms to be filed individually, unless the forms are reasonably related and intended to be used with one or more of the same underlying products. These provisions are substantially similar to existing rules; for example, existing §3.4(r)(1)(A) specifies the $100 filing fee applies to "each contract or policy, including . . . its certificate, . . . application, and . . . riders filed as part of the entire policy or contract." These provisions ensure that filings are accurately classified on the basis of the type of product and help TDI staff apply the correct product standards. TDI encourages issuers to identify related filings in the general information provided with the filing so that TDI can assign related filings to the same reviewer, or otherwise coordinate TDI staff to ensure prompt and consistent reviews. Issuers can also identify subsequent filings as "substantially similar" to a previous filing, which allows TDI staff to focus on new language and perform a faster review.

Subsection (c) specifies the minimum requirements for a face page.

Subsection (d) addresses the requirements for unique form numbers, which are addressed in existing §3.4(c)(2). Form numbers are required on each page or below each matrix provision.

Subsection (e) contains requirements for limited, partial refilings that are consistent with existing §3.4(h).

Subsection (f) requires amendments and endorsements to be accompanied by an insert page or a revised form that incorporates the changes made. This requirement supports plain language and readability and ensures that when consumers are issued coverage, they receive a clean, updated document. An amendment or endorsement form should be issued only to modify a consumer's existing coverage document and should not accompany newly issued coverage.

Section 3.18. Variable Material. The proposed new section includes updated requirements similar to those in existing §3.4(d) and (e). These provisions promote the appropriate use of variability where it adds value and efficiency. The limits on variability are necessary to address challenging reviews and ensure compliance. TDI anticipates that the proposed limits on variable material will significantly increase speed-to-market by reducing the time issuers spend correcting deficient filings.

Subsection (a) describes the general and proper use of variable material.

Subsection (b) requires issuers to submit a statement of variability that demonstrates compliance and provides a clear explanation of how the material will vary.

Subsection (c) describes permissible uses of variability.

Subsection (d) explains limits on variability. A form number cannot be variable because TDI's approval of a form is tied to the form number. Likewise, an issuer's name cannot be variable because TDI separately approves each issuer's use of a form. Instead, issuers can submit an exact copy filing if they experience a name change or want to use the same form that was approved for another company. Different product types must be filed in separate filings so the filing reflects the appropriate type of insurance and the correct review standards can be applied. While variability cannot be used to create different product types, issuers have other tools available that support efficient filing methods, including general use, matrix provisions, insert page filing options, and the option to identify a filing as substantially similar to another filing, which allows for a streamlined review. The ranges of variability specified must be consistent with any applicable rate filing. TDI cannot approve a form unless it can verify that the issued form will comply with applicable requirements.

Subsection (e) addresses fill-in material for life and annuity forms, consistent with existing §3.4(d)(2).

Subsection (f) prohibits the use of variable material in life forms for text and specifications of nonforfeiture assumptions, similar to existing §3.4(e)(2), and it clarifies proper use of zero-range entries.

Subsection (g) clarifies that any change to a statement of variability is considered a change to the form itself and must be filed in conjunction with the form.

Subsection (h) specifies that TDI may request examples of issued forms without variability, if needed to aid staff's understanding of how the variability will function. The limits set on variability in this section provide insurers with clear guidance on the proper and expected use of variable material to ensure efficient reviews. These limits do not restrict general use filings that can capture similar documents used in a variety of contract forms.

Section 3.19. Matrix and Insert Page Forms. The proposed new section sets out submission requirements that apply to a matrix or insert page form filing. The proposed requirements are similar to requirements in existing §3.4(f) and (g), but they are combined where requirements for matrix or insert pages are identical. Subsection (a)(1) addresses form number requirements, and subsection (a)(2) clarifies when a matrix provision can be used in multiple products. Subsection (a)(3) requires the issuer to explain how the forms will be used. Subsection (b) explains how an insert page may be used to replace an existing page of a previously approved or exempted form, consistent with existing §3.4(g)(3).

Section 3.20. Plain Language and Readability Requirements. The proposed new section extends plain language and readability requirements to life and annuity products (other than group annuity products) and group accident and health excepted benefit products, other than major medical plans. Major medical plans continue to be subject to plain language and readability requirements under similar provisions in Chapter 3, Subchapter G. To promote uniformity, the requirements in this section replace similar readability requirements for individual accident and health products under Chapter 3, Subchapter S, which are proposed for repeal.

Subsection (a) describes the purpose of the plain language requirements.

Subsection (b) describes the forms to which the plain language requirements apply.

Subsection (c) requires applicable forms to be written in plain language.

Subsection (d) sets the Flesch Reading Ease score at 40; references the method of calculation in existing Chapter 3, Subchapter G; requires a statement of the Flesch score; and states that TDI may require additional information to verify compliance. The calculation method allows certain text to be excluded, including language required by any state or federal law.

Subsection (e) provides guidance to issuers by describing plain language best practices.

Subsection (f) addresses how a definitions section may be used.

Subsection (g) addresses font size and formatting.

Subsection (h) specifies when a table of contents or index is required.

These provisions are in line with industry standards and provide additional guidance to aid companies in submitting compliant form filings. Most issuers are already using plain language best practices.

Section 3.21. Group Filings. The proposed new section includes updated requirements similar to those currently in existing §3.4(o) and §3.6(c). Group filing requirements are streamlined by not including the requirement from existing §3.6(c)(2) for issuers to submit separate form filings for each group type.

Subsection (a) uses updated language to identify the Insurance Code provisions that address eligible policyholders for group and blanket coverage, applies the criteria for accident and health policyholders to apply to groups purchasing HMO coverage, specifies when an issuer must submit a group eligibility filing, and explains how group eligibility information and forms may be submitted. Under the new section, issuers will not be required to submit the group eligibility information for review for each product being issued. Instead, if TDI has verified the group's eligibility in the past five years, the issuer will submit only an informational filing.

Subsection (b) specifies the group eligibility filing requirements for coverage to be issued to an association, which are similar to requirements in existing §3.6(c)(3)(B) - (D). Those filings must identify the types of coverage the issuer will offer the association; demonstrate that the association is an eligible group policyholder; and include an alternate face page and a copy of the association's constitution, bylaws, and articles of incorporation.

Subsection (c) specifies the group eligibility filing requirements for coverage to be issued to a trust, which are similar to requirements in existing §3.6(c)(3)(D) and (F). Trust filings must include a copy of the trust agreement and an alternate face page form for each related industry group. Association trust filings also must include a list of all participating associations and a reference to the group eligibility filing for each association.

Subsection (d) requires issuers to notify TDI of additional associations within a multiple association trust by making an informational filing and is similar to requirements in existing §3.6(c)(3)(E). Approved association trusts must notify TDI of any additions to the trust upon enrollment and include additional documentation.

Subsection (e) requires issuers to submit a group eligibility filing for any type of group or blanket policyholder that is not identified in statute as an eligible policyholder, including actuarial information similar to requirements in existing §3.4(q)(6). These filings are needed to determine whether it is in the best interest of consumers to allow a particular "discretionary group" to offer insurance coverage.

Subsection (f) specifies information that issuers must provide when issuing a major medical health benefit plan to an association, which is similar to requirements in existing §3.6(c)(3)(A) and relevant for determining the applicable requirements. For example, different requirements apply to member-only bona fide associations, bona fide employer associations, and associations issuing coverage to small employers versus large employers.

Subsection (g) clarifies that products issued to educational institutions on a group basis must be filed under Insurance Code §1131.064 or §1251.056, and that products issued to educational institutions on a blanket basis must be filed under Insurance Code §1251.353. While educational institutions are specifically identified as eligible blanket policyholders under Insurance Code §1251.353, the statute does not specifically identify them as eligible group policyholders.

Subsection (h) is consistent with existing §3.4(o), which requires issuers to ensure that insurance certificates or HMO evidences of coverage being delivered to Texas residents comply with all the applicable laws of this state and include copies of out-of-state documentation.

Section 3.22. Braille and Non-English Filings. The proposed new section provides guidance regarding braille and non-English filings. Subsection (a) aligns with existing §3.4004(h) and requires a certification that the form meets the definition of an exact copy. Subsection (b) allows a filing that includes only a braille or non-English language version of a previously approved form to be filed in an informational mode or an exempt mode.

Section 3.23. Acceptance, Rejection, and Disposition of Filings. The proposed new section includes reorganized versions of rules in existing §3.7 to clarify procedures for accepting and processing filings and to avoid restating statutory provisions. New subsection (a) addresses acceptance of filings and includes provisions similar to existing §3.7(a) and (b). Subsection (a)(1) explains that filings that are subject to approval and not rejected will be considered filed as of the submission date. It also references the statutory provisions that address deemer periods. Subsection (a)(2) explains that an exempt filing that is not rejected will be considered exempt as of the disposition date. Subsection (a)(3) explains that an informational filing that is not rejected will be considered filed as of the submission date and will be closed with an informational disposition.

New subsection (b) addresses rejection of filings that are incomplete or otherwise do not meet submission requirements, similar to existing §3.7(a)(2). TDI may reject a filing if an issuer does not make corrections within two business days of TDI's request for corrections. This limited timeframe reflects the straightforward nature of submission deficiencies, in contrast to the more complex and substantive nature of the compliance standards for which corrections may be requested under subsection (c). TDI will not reopen a filing that has been rejected.

New subsection (c) is similar to existing §3.7(c) in addressing requests for correction and extensions and waivers of deemer dates. These provisions are necessary to ensure that a form is not deemed approved when compliance issues have been identified. Submission requirements for corrections consist of a summary and certification of identified changes similar to those in existing §3.6(a)(5)(E) and (F). In the interest of processing filings promptly, subsection (c)(3) requires issuers to submit corrections within 10 business days. This replaces the 30-day period provided in existing §3.7(c)(4) and is necessary to allow TDI to review filings within the statutory deemer dates.

New subsection (d) addresses how TDI will notify issuers of a filing disposition.

New subsection (e) explains that TDI may withdraw approval only after notice and opportunity for hearing, consistent with existing §3.7(e).

New subsection (f) addresses issuer responsibilities to retain records related to form filings.

Proposed New Division 3. Requirements Relating to Application Form Filings.

Section 3.40. Applications Generally. The proposed new section explains TDI's expectations for application form filings, consistent with Insurance Code §1701.055. Subsection (a) requires application form filings to address the type of contracts and products the application will be used with and whether the application will be used in paper, electronic, or telephonic form.

Subsection (b) requires issuers to submit entire applications for review and to make clear what an applicant is required to complete. This section does not require issuers to file screenshots or websites for review, but rather to include in the form filing all text that may be used in an application, however it is delivered.

Subsection (c) explains the requirements for applications to be used by multiple issuers. Subsections (a), (b), and (c) are consistent with TDI's current review standards.

Subsection (d) specifies fairness standards for questions asked on an application form. Questions must be consistent with underwriting standards, limited to information necessary to issue or administer the policy, and may not require the applicant to self-diagnose.

Subsection (e) specifies disclosure requirements for application forms, explaining that the application will become part of the contract and helping applicants understand underwriting standards. It also requires applications to include a method for applicants to opt out of electronic communications if the issuer does not seek affirmative consent. This provision helps issuers ensure their forms and procedures comply with Insurance Code Chapter 35 as amended by House Bill 1040, 88th Legislature, 2023. Finally, it requires issuers to disclose how applicants' personal information may be obtained from third parties.

Section 3.41. Standards for Electronic and Telephonic Applications. The proposed new section adds provisions to aid issuers in complying with appropriate delivery of applications, consistent with TDI's current review standards. Subsection (a) references an issuer's obligation to comply with Insurance Code Chapter 35.

Subsection (b) requires issuers to provide applicants with a written copy of the completed application before signing. This provision is needed to ensure that a consumer is not asked to verbally sign an application without being able to verify that it was completed accurately. It does not prevent an issuer from delivering a written copy of the application electronically.

Subsection (c) requires issuers to deliver the completed application in a manner that allows the consumer to keep it for their records in compliance with Texas Business Commerce Code §322.008(a) and Insurance Code §35.004(c).

Subsection (d) requires issuers to include a description of security procedures that will be used to verify the authenticity of an electronic transaction.

Proposed New Division 4. Requirements Specific to Accident, Health, and HMO Filings.

Section 3.50. Filing Requirements for Health Plan Disclosures. The proposed new section is similar to the requirements in existing §3.4(i) and identifies each product for which an outline of coverage or similar plan disclosure is required to be filed. Applicable product filings must either include the required disclosure document or reference the filing ID that the document was filed separately under.

Section 3.51. Payment of Premiums or Cost Sharing. The proposed new section implements Insurance Code Chapter 541 and addresses consumer protections related to restrictions on the form or manner of premium or cost-sharing payments for major medical and Medicare Supplement coverage.

Subsection (a) specifies practices that are unfair methods of competition or unfair or deceptive acts, such as failing to disclose in the contract a restriction on the form or manner of the payment of premiums or cost sharing.

Subsection (b) requires issuers to permit payments by an enrollee's family, approved entities under 45 CFR §156.1250, or another type of third party if certain criteria are met. This section does not require issuers to accept premium payments from third parties that are health care providers or are financially interested.

Subsection (c) clarifies that the section does not modify the requirements or applicability of Insurance Code §1369.0542.

Section 3.52. Filings Required for Termination of Guaranteed Renewable Major Medical Coverage. The proposed new section adds clarity to the filing requirements for issuers terminating or nonrenewing all guaranteed renewable major medical coverage in a given market or service area. This is needed to provide clarity on how to file required notices. These filings give TDI the opportunity to help issuers comply. They also allow TDI to help consumers affected by terminations.

Subsection (a) references the rules that require issuers to provide notice regarding termination of guaranteed renewable major medical coverage.

Subsection (b) identifies the information that issuers must include in filings related to termination of guaranteed renewable major medical coverage.

Subsection (c) clarifies that the filing requirements are in addition to withdrawal plan rules in Chapter 7, Subchapter R, if the termination of coverage constitutes a withdrawal under Insurance Code Chapter 827.

Proposed New Division 5. Actuarial Filing Requirements.

Section 3.60. General Actuarial Filing Requirements. The proposed new section requires issuers to submit either rate filings or other actuarial information as required by law and specifies the existing applicable statutes and rules. This section replaces existing provisions in §3.1(8) and (10) and §3.4(p), which are proposed for repeal.

Section 3.61. Actuarial Information for Certain Accident and Health Filings. The proposed new section specifies the actuarial information that must be included for certain accident and health products. This section includes updated versions of filing requirements previously contained in §3.4(q)(5) and (6). Subsection (a) specifies that the section applies to individual accident and health products and group accident and health products issued to alternative types of group policyholders.

Subsection (b) clarifies that the section does not apply to rate filings for non-grandfathered individual major medical, small group major medical, Medicare supplement, or long-term care products. Rate filing standards for these are addressed in separate rules.

Subsection (c) clarifies that a premium rate schedule must be filed before being used.

Subsection (d) requires a premium rate schedule to be accompanied by an actuarial memorandum signed by a qualified actuary.

Subsection (e) specifies actuarial filing submission requirements for new products, which are not specified in existing rules, beyond a brief reference in §3.4(q)(6). This information is necessary to implement Insurance Code §1251.056 and §1701.057, which require TDI to assess whether benefits are reasonable in relation to the premiums charged.

Subsection (f) specifies requirements for rate adjustment filings for existing products, and replaces provisions addressed in existing §3.4(q)(5).

Section 3.62. Actuarial Information for Life and Annuity Filings. The proposed new section replaces existing §3.4(q)(1) and (2) to update the actuarial information required for life and annuity filings, consistent with current agency standards. Subsection (a)(1) references requirements in Insurance Code Chapter 1105. Subsection (a)(2) addresses actuarial information required for universal life filings. Subsection (a)(3) references the actuarial information required for variable life forms. Subsection (a)(4) requires a certification similar to existing §3.4(q)(1)(C).

Subsection (b) addresses actuarial information required for annuity filings, which is substantially similar to existing §3.4(q)(2).

Subsection (c) addresses multiple guaranteed interest charge periods.

Subchapter S. Minimum Standards and Benefits and Readability for Individual Accident and Health Insurance Policies.

Section 3.3100. Policy Readability Generally. Amendments to the section revise duplicative readability references in Chapter 3, Subchapter S, to align with standards listed in new §3.20. Subsection (a) is amended to add the title for Insurance Code Chapter 1201, Subchapter E, and strike unnecessary references to Chapter 1201. Subsection (b) is amended to reference plain language and readability standards in proposed new Chapter 3, Subchapter A.

Repeal of §3.3101 and §3.3102. The proposal repeals rules related to plain language and readability standards that are replaced by proposed new §3.20.

Subchapter Z. Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review.

Section 3.4004. Exempt Forms. The proposed amendments to the section update the types of documents that are eligible to be filed in an exempt filing mode to reflect the types of forms prior review is necessary for to ensure consumer protection based on changes in the market and the department's observation of compliance issues through consumer complaints and audits of exempt forms.

Amendments proposed in subsection (a) broadly exempt group and individual term life insurance forms. Exempt privileges are removed for product types that are subject to actuarial review, including whole life, endowment life, and certain limited refilings. This change will have minimal impact on issuers because the volume of exempt filings is low--an estimated four whole life filings may be impacted based on filing patterns in 2022 and 2023. TDI's average review time for life filings is less than a month, and issuers can elect "file and use" if they do not want to wait for TDI to complete its review. The subsection is simplified to remove reference to different types of groups, forms, and products previously addressed in paragraphs (1) - (3). Individual variable life with a separate account only, which was previously specified as exempt in paragraph (3)(Q) is renumbered as paragraph (2). Subsequent paragraphs are renumbered. Nonsubstantive amendments are made to paragraphs (3) and (4) as renumbered to clarify abbreviated terms. Paragraph (5) as renumbered is amended to remove exempt privileges for limited refilings that change the mortality table or interest rates for new issues under the policy form because these filings require actuarial review.

Amendments proposed in subsection (b) clarify that it addresses the types of life insurance forms that are not permitted to be filed as exempt. Paragraph (1) is amended to clarify that universal life includes flexible premium adjustable life. Paragraph (2) is amended to remove universal-related life, which duplicates the reference to universal life in paragraph (1), and add whole life, consistent with the removal of ordinary life from subsection (a)(3)(A) because it is subject to actuarial review. Paragraph (3) is amended to remove adjustable life, which is now referenced in paragraph (1) and add endowment life, consistent with its removal from subsection (a)(3)(M) - (O), because it is subject to actuarial review. Nonsubstantive amendments are made to paragraphs (8) and (10) - (12). New paragraph (13) is added for limited refilings for life insurance that change the mortality table or interest rates for new issues under the policy form, consistent with the change made in subsection (a)(4).

Nonsubstantive amendments are proposed in subsection (c) to conform to agency style.

Amendments to subsection (d) are proposed to clarify that it addresses the types of annuity forms that are not permitted to be filed as exempt. The term "index-linked crediting" replaces "equity indexed" to be consistent with the terminology more commonly used by issuers. New paragraph (6) is added to list contingent deferred annuities.

Amendments proposed in subsection (e) update the types of accident and health forms that can be filed as exempt. Nonsubstantive amendments in paragraph (1)(A) and (C) simplify the exemption of certain group accident and health forms by removing reference to different types of forms. Paragraph (1) is amended to remove exempt privileges for blanket forms in subparagraph (B) because of a pattern of compliance issues. Subsequent subparagraphs are redesignated.

Nonsubstantive amendments are made to paragraph (1)(B) as redesignated to clarify the exemption for employer plans that supplement Medicare. Nonsubstantive amendments in paragraph (2) simplify the exemption of certain types of group and individual accident and health forms by removing reference to different types of forms. Paragraph (2)(C) is amended to remove exempt privileges for dental forms because of a pattern of compliance issues and clarify that hospital indemnity forms are eligible to be filed exempt. Paragraph (2)(D) is amended to remove exempt privileges for in-patient confinement and basic hospital expense coverages because, unless they are structured as hospital indemnity coverage, they are reviewed as major medical products. Subsequent subparagraphs are redesignated. A nonsubstantive amendment in paragraph (2)(H) removes the reference to Champus supplements because those policies are rarely filed, so the example is not useful. Paragraph (2)(K) is amended to remove exempt privileges for prescription drug policies because major medical review standards apply. Paragraph (3) is amended to remove exempt filing privileges for certain alternate face pages because group eligibility filing requirements are addressed in Chapter 3, Subchapter A. As proposed in §3.13, group eligibility filings would not be charged a filing fee.

Amendments to subsection (f) are proposed to remove repetitive language and clarify that it addresses the types of forms and rates that are not permitted to be filed as exempt. Paragraph (1) is amended to modernize the language related to comprehensive or major medical policies by adding a reference to "guaranteed renewable or short-term limited duration" and removing the reference to limited benefit policies, which are no longer permitted under federal law. Nonsubstantive amendments are made to paragraphs (2) - (6). New paragraph (7) is added to list "other fixed indemnity coverage" that is more extensive than coverage for hospital confinement because such forms often provide innovative benefits and contain compliance issues. New paragraph (8) is added to clarify that the exempt status for forms does not extend to rates that are required to be filed. TDI has identified that rates related to individual health products have been inappropriately filed as exempt, and these rates are often unreasonable in relation to the benefits provided. New paragraph (9) is added to list dental policies because TDI has consistently found compliance issues related to unique requirements in Texas law.

Amendments to subsection (g) are proposed to remove unnecessary language related to certifications and remove a reference to §3.4020, which is proposed for repeal. While exact copies can almost always be filed exempt, an exception is added to disallow an exact copy filing to be filed exempt for preferred provider benefit plans so that staff can verify that these plans have satisfied examination requirements added to Insurance Code §1301.056.

An amendment to subsection (h) is proposed to remove the reference to the outdated certification form. Certifications are addressed in proposed §3.16. For clarity and consistency with new §3.22, the term "foreign language" is replaced with references to the terms "braille" and "non-English."

Section 3.4005. General Information. Proposed amendments to subsection (c) remove unnecessary language related to certifications and a reference to §3.4020, which is proposed for repeal. Language is added to reference the certifications required for exempt filings in §3.16. Also, a nonsubstantive amendment is proposed for subsection (b) to improve readability.

Section 3.4009. Sanctions and Cancellation of Exempt Filing Privileges. Proposed amendments to subsection (a) explain that an insurer's exempt filing privileges may be cancelled if the insurer makes an exempt filing that fails to comply that results in TDI determining that the filing has failed audit. If TDI determines it is appropriate to cancel exempt filing privileges, this will be communicated in the failed audit notice. This removes the requirement that TDI hold a hearing before canceling an insurer's exempt filing privilege. However, it does not remove an insurer's right to request a hearing to challenge the failed audit determination, consistent with Insurance Code Chapter 36. TDI anticipates that the need to take action under this section will be rare. However, to protect consumers and maintain a fair and competitive market, it is important to ensure TDI can take prompt action when needed. Nonsubstantive amendments are made in subsections (b) and (c) to improve readability.

Section 3.4020. The proposal repeals §3.4020, which contains a figure with outdated certifications. New certifications are proposed in §3.16. Conforming changes are made in §3.4004 and §3.4005 to remove references to §3.4020.

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 sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by statute. Ms. Bowden made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

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 sections as proposed are in effect, Ms. Bowden expects that enforcing and administering the sections will have the public benefits of ensuring that TDI can efficiently process life and health filings, including forms, rates, networks, advertising, group eligibility, and other informational documents required to be filed with TDI, and ensure life and health products comply with applicable requirements. The requirements will also promote consumer protection and ensure life and health products are not unjust or deceptive.

The requirement in §3.11(a) for issuers to use SERFF to submit filings will help TDI efficiently comply with Government Code Chapter 552 by facilitating the appropriate release of information while including the necessary technical safeguards to protect confidential information. It will also help TDI function more efficiently by reducing the administrative tasks associated with receiving, scanning, storing, and replying to paper filings.

The requirement in §3.13(d) for issuers to pay applicable fees through the SERFF EFT system or another electronic payment option designated by TDI will allow TDI to eliminate its manual billing system that is addressed in §7.1302, which has been proposed for repeal. This change creates administrative efficiency for TDI and issuers by ensuring that correct fee amounts are transmitted within the filing, without the need to separately track which fees have not been paid and process invoices. It also ensures that no issuers will have their filings held up for lack of payment.

New plain language standards in §3.20 will have the public benefit of improving consumers' ability to understand their coverage documents. Likewise, the requirement in §3.17(f) will improve readability by reducing issuers' reliance on amendments and ensuring that newly issued coverage will be clearly explained in a single cohesive document. In the absence of plain language standards, issuers might use confusing language or organization, which could be unjust, misleading, or deceptive, contrary to Insurance Code §1701.055.

New requirements for applications in §3.40(d) will have the public benefit of ensuring that applications for life and health coverage are fair, do not require applicants to self-diagnose, and align with issuers' underwriting standards. New requirements for applications in §3.40(e) will have the public benefit of helping applicants understand the underwriting process and how the applicant's personal information may be obtained from third parties.

New requirements for electronic and telephonic applications in §3.41 will have the public benefit of ensuring that consumers can verify that any answers provided through a telephonic application have been accurately captured, and ensuring that issuers have security procedures in place that allow them to verify the authenticity of electronic transactions.

New provisions related to payment of premiums or cost sharing in §3.51 will have the public benefit of ensuring that issuers do not impose unfair restrictions on the form or manner of premium and cost-sharing payments and requiring issuers to disclose any payment requirements within their contract.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.

TDI anticipates that there will be possible costs to persons required to comply with the sections as proposed during each year of the first five years that the rules will be in effect. However, these possible costs will be offset with cost savings that result from the proposed sections.

Electronic Filing Requirements. Proposed new §3.11 requires issuers to submit filings through SERFF. Since the use of SERFF is not currently required, the proposed requirement in §3.11(a) could have a cost impact on any issuer that currently submits filings outside of SERFF. In 2024, SERFF charges a fee of $18.68 for each filing. In addition, for form filings, issuers also must pay a fee (currently $35 per filing) for data organization and consolidation services.

However, there is also a cost for paper filings. Issuers must pay to print and mail the filing. TDI estimates that a typical initial filing may cost $5 - $10 dollars to print, and $9.85 - $30.45 to mail, based on USPS prices for flat rate envelopes. Costs will vary depending on the number of pages submitted, the speed of delivery selected, and the number of times an issuer needs to make corrections. TDI also estimates it would take an additional 15 minutes of time for an administrative assistant to process a paper filing, compared with submitting a filing through SERFF. According to data maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages, an administrative assistant working in Texas earns a median hourly wage of approximately $19.47. Costs would be incurred multiple times within a filing if TDI identifies any compliance deficiencies that require changes because the issuer would need to print and mail new copies of the corrected documents. Also, waiting for documents to be mailed would add significant time to the typical review period.

While TDI is not able to quantify the value of the time saved by using SERFF, the data shows that issuers do not choose to use paper filings, even though that option exists under the current rules. Over the course of 2022 and 2023, TDI received just one paper filing. Issuers voluntarily use SERFF because it provides a cost-effective option for issuers to transmit filings, store information, communicate with TDI staff, make information publicly available, and designate any information that is proprietary or confidential. Because of this, Ms. Bowden estimates that this change in practice will not cause issuers subject to the proposal to incur additional costs.

Filing Fees. TDI anticipates that the proposed rules that impact the amount of filing fees charged will result in cost savings for issuers. The proposed rules maintain the existing fee structure for all form and rate filings. Fees will not be charged for other types of filings, including informational filings, advertising filings, network filings, and group eligibility filings. While Insurance Code §1701.053 authorizes fees to be charged for each form, the proposed rules apply a single fee for all forms contained in a filing (except for matrix forms, for which fees are unchanged). Issuers are permitted to include multiple forms related to a given product within a single filing, such as an application, policy, certificate, and optional rider.

There are no direct increases to filing fees; however, there are some circumstances where issuers may experience some indirect costs. While the fee for exempt filings is maintained at $50, changes to the types of filings that are eligible to be filed as exempt in §3.4004 will effectively raise the fee for certain filings from $50 to $100. In addition, new standards on variability may sometimes require issuers to submit additional filings, such as if the issuer previously included multiple products in a single filing.

However, these increased fees are offset by decreases in fees for other types of filings. The proposed rule will eliminate fees for

network filings and group eligibility filings that contain alternate face pages, which are currently set at $100. It will also eliminate fees for certain informational filings, including outlines of coverage and disclosure forms, which are currently set at $50. Also, the removal of the requirement to submit separate form filings for different group types that otherwise use substantially the same forms will reduce the number of filings issuers must submit.

Based on filing patterns observed in SERFF in 2022 and 2023, TDI estimates that the changes in fees proposed in §3.13 and the changes to exempt filings in §3.4004 will result in a net cost savings to issuers of $25,000 - $42,000 each year.

Variability. TDI anticipates that the proposed rules may have a cost impact on some issuers that submit forms with variable material. Proposed §3.18 clarifies the permissible use of variable material. TDI estimates that compliance officers currently spend an additional 20 - 80 hours completing necessary corrections to filings that contain a large amount of variable material. These filings typically take an additional four to eight weeks to process, and sometimes must be disapproved or withdrawn by the filer if they need additional time to make corrections. TDI anticipates that the proposed rules' new limits on variable material will significantly reduce the amount of time filers spend submitting corrections or clarifying filings. TDI estimates that a compliance officer will need to spend an extra four to 16 hours to comply with new limits on variable material, including submitting separate filings where appropriate. But because the changes will eliminate the time that is currently spent correcting and explaining overly complex variability, TDI estimates that the changes to variable material will save compliance officers an estimated four to 64 hours of time, resulting in a net cost savings of $141.24 - $2,259.84 per filing. The new requirements are also expected to reduce processing time and improve speed-to-market for applicable products.

Plain Language. TDI anticipates that the proposed plain language requirements in §3.20 could have a cost impact on any issuer that has not already developed forms to meet plain language and readability standards. However, TDI believes that the vast majority of issuers will not have to make changes to comply because the plain language requirements are substantially similar to standards contained in NAIC Model #575 (Life and Health Insurance Policy Language Simplification Model Act), which was last updated in 1995 and has been adopted in at least 27 states (though not Texas). In addition, as with Texas, several other states have adopted or otherwise require their own similar plain language requirements. Also, issuers are already required to follow the plain language standards for individual accident and health products and for major medical coverage. The rule does not require issuers to submit new forms or modify previously issued forms; the plain language standards will apply only to forms filed after the rule is effective.

Any issuer that needs to measure readability for the first time or update forms to comply with the new plain language and readability requirements in proposed §3.20 may experience some new costs. TDI estimates four to 20 hours for a compliance officer to draft revisions to affected products to comply with the new rules and two to five hours for an attorney to review the revisions. According to data maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages, compliance officers and attorneys earn a median hourly wage of approximately $35.31 and $64.50, respectively. It may cost affected issuers between $270 and $1,029 to comply with §3.20.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. As explained in the Public Benefit and Cost Note section, TDI anticipates that all possible costs that result from the proposal will be offset by cost savings. 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 cost on regulated persons because all possible costs will be offset by cost savings. 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 sections as proposed 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 require a decrease in fees paid to the agency;

- will create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will increase 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 November 4, 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2850 at 2:00 p.m., central time, on November 7, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

SUBCHAPTER A. SUBMISSION REQUIREMENTS FOR FILINGS AND DEPARTMENTAL ACTIONS RELATED TO SUCH FILINGS

28 TAC §§3.1 - 3.8

STATUTORY AUTHORITY. TDI proposes the repeal of §§3.1 - 3.8 under Insurance Code §§1111A.015, 1153.005, 1701.060, and 36.001.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §§3.1 - 3.8 implements Insurance Code §§1111A.005, 1153.053, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.1. Scope.

§3.2. Definitions.

§3.3 Transmittal Information.

§3.4. General Submission Requirements.

§3.5. Filing Authorities and Categories.

§3.6. Certifications, Attachments, and Additional Information Requirements.

§3.7. Form Acceptance and Procedures.

§3.8. Effective 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 September 19, 2024.

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Jessica Barta
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Texas Department of Insurance
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DIVISION 1. APPLICABILITY, SCOPE, SEVERABILITY, AND DEFINITIONS

28 TAC §3.1, §3.2

STATUTORY AUTHORITY. TDI proposes new §3.1 and §3.2 under Insurance Code §§35.0045, 541.401, 843.151, 1111A.015, 1153.005, 1201.006, 1251.008, 1271.004, 1271.253, 1501.010, 1651.004, 1651.051, 1652.005, 1652.051, 1652.052, 1652.103, 1698.051, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §35.0045 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 35.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1271.253 provides that the commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove a filing under Insurance Code Chapter 1271.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plans provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.103 provides that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1 and §3.2 implement Insurance Code §§1105.055, 1111A.005, 1131.064, 1131.101, 1131.102, 1153.005, 1153.053, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.051 - 1271.057, 1271.101, 1271.104, 1271.251, 1271.253, 1501.260, 1652.101, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.1. Applicability and Scope.

This subchapter applies to all filings related to a life insurance, annuity, life settlement, credit insurance, accident and health insurance, HMO, or point-of-service product that are filed with the department, including the following filing types:

(1) a form filing submitted under Insurance Code §1111A.005, concerning Requirements for Contract Forms, Disclosure Forms, and Advertisements; Insurance Code §1153.051, concerning Filing of Form; Insurance Code §1271.101, concerning Approval of Form of Evidence of Coverage or Group Contract; or Insurance Code Chapter 1701, concerning Policy Forms, including:

(A) a policy, contract, group agreement, certificate, evidence of coverage, application, enrollment form, rider, amendment or endorsement, insert page, matrix filing, or limited partial refiling; or

(B) any other coverage document attached to or made part of a contract;

(2) a rate filing submitted in connection with a form filing under this subsection or otherwise required to be filed under Division 5 of this subchapter (relating to Actuarial Filing Requirements), including a schedule of charges, actuarial memorandum, or change to rating methodology;

(3) an advertising filing submitted in connection with a product filed under this subchapter, including filings identified under §21.120 of this title (relating to Filing for Review);

(4) a network filing submitted in connection with an HMO plan under Chapter 11 of this title (relating to Health Maintenance Organizations), a preferred or exclusive provider benefit plan under Subchapter X of this chapter (relating to Preferred and Exclusive Provider Plans), or a Medicare Select plan under §3.3325 of this title (relating to Medicare Select Policies, Certificates and Plans of Operation), including:

(A) provider contract forms (including a template, executed contract, amendment, termination, or attestation of compliance), delegated entity contract forms (including a template, executed contract, amendment, or termination), and related filings;

(B) provider directories;

(C) network configuration filings, including:

(i) new applications;

(ii) limited provider networks;

(iii) annual network adequacy report filings;

(iv) access plans;

(v) service area expansions or reductions; and

(vi) material modification to a network configuration;

(D) notices, including a notice of a network termination or an annual application period for physicians and providers to contract; and

(E) quality assurance program filings;

(5) a group eligibility filing, as specified in §3.21 of this title (related to Group Filings), including articles of incorporation, bylaws, constitution, or a trust agreement, policy face page, and any other documentation needed to demonstrate that a prospective group or blanket policyholder is eligible under Insurance Code Chapter 1131, Subchapter B, concerning Group and Wholesale, Franchise, or Employee Life Insurance: Eligible Policyholders; Insurance Code Chapter 1251, Subchapter B, concerning Group Accident and Health Insurance: Eligible Policyholders; or Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders;

(6) an informational filing, other than a form filing, rate filing, advertising filing, network filing, or group eligibility filing, that is required for compliance with Texas law but is not subject to approval, including:

(A) a disclosure, outline of coverage, or a similar plan summary;

(B) notices, including those relating to a discontinuance, withdrawal, uniform benefit modification, and modification of drug coverage;

(C) reports, including reports required for Medicare Supplement in Subchapter T of this title (relating to Minimum Standards for Medicare Supplement Policies) and Long-Term Care in Subchapter Y of this title (relating to Standards for Long-Term Care Insurance, Non-Partnership and Partnership Long-Term Care

Insurance Coverage Under Individual and Group Policies and Annuity Contracts, and Life Insurance Policies That Provide Long-Term Care Benefits Within the Policy);

(D) certifications related to form filings, readability scores, actuarial memoranda, statements of variability, and small and large employer health benefit plans;

(E) Medicare SELECT plans of operation and amendments; and

(F) other documents and information necessary to make a filing complete or for a comprehensive review of the filing that are filed in an informational mode.

§3.2. Definitions.

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

(1) Amendment or endorsement--A form that is not a rider that changes or modifies the provisions of an issued policy, certificate, contract, or evidence of coverage.

(2) Blanket policy or contract--A policy or contract authorized by Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders, and issued to a master group policyholder or contract holder that covers all or nearly all individuals within a described group or class of individuals without individual application or underwriting.

(3) Commissioner--The commissioner of insurance.

(4) Department--The Texas Department of Insurance.

(5) Disposition--The final status of a filing, which is issued in writing by the department and communicated to the issuer upon closing the filing. A disposition status may include approved, disapproved, exempt, failed audit, informational, noncompliant, rejected, reviewed, substitution approval, or withdrawn.

(6) Disposition date--The date the department issues a disposition on a filing.

(7) Evidence of coverage--Any certificate, agreement, or contract, including a blended contract, that is issued by an HMO to an enrollee and states the coverage to which the enrollee is entitled.

(8) Exact copy--A filing that, except for the issuer's name, address, telephone number, or other similar identification information, is identical to a form that was previously approved by the department and is still compliant with current statutes and regulations. A braille or non-English-language copy of a form that is a direct translation from the English version of the form is also an exact copy.

(9) Failed audit--A finding made by the department, consistent with §3.4008 of this title (relating to Procedures for Corrections to Non-Compliant Exempt Forms) that a form filed in an exempt filing mode includes one or more compliance deficiencies.

(10) Filing--A document filed with the department under this subchapter, including a form filing, rate filing, advertising filing, group eligibility filing, network filing, or informational filing.

(11) Filing ID--A unique identifier assigned to a filing by SERFF (for example, SERFF ID).

(12) Filing types--A designation used to describe the purpose and contents of a filing, which includes form filings, rate filings, advertising filings, network filings, group eligibility filings, and informational filings and the associated categories identified in §3.1 of this title (relating to Applicability and Scope).

(13) Form--A document required to be filed under Insurance Code §1111A.005, concerning Requirements for Contract Forms, Disclosure Forms, and Advertisements; Insurance Code §1153.051, concerning Filing of Form; Insurance Code §1271.101, concerning Approval of Form of Evidence of Coverage or Group Contract; or Insurance Code §1701.051, concerning Filing Required;

(14) Form number--A unique identifier printed at the lower left-hand corner composed of numbers or letters that is assigned to a unique form.

(15) General use--A filing classification that indicates that the filed forms will be used with other forms submitted in the filing or with previously approved or exempted forms for a certain product or products or a subset of a product or type (for example, an application that will be used with all life products, an application that will be used with all universal life products, an application that will be used with group life and accident and health products, or an application that will be used with major medical and dental products).

(16) HMO--A health maintenance organization as defined in Insurance Code §843.002, concerning Definitions.

(17) Insert page--A form consisting of a page or section of a contract that has a unique identifiable form number and is used in combination with other forms to create a complete contract.

(18) Issuer--An insurance company or HMO that makes a filing under this subchapter.

(19) Limited, partial refiling--A change to a previously approved or exempted life or annuity form that meets one or more of the criteria set forth in subparagraphs (A) - (D) of this paragraph:

(A) a change in the text, interest rate, guaranteed charges, or mortality table used to compute nonforfeiture for life insurance or annuities;

(B) a change in the current interest rate, where such rates are guaranteed and shown in the policy or contract;

(C) a change in the reserves (if the change in reserves affects the text of the policy); or

(D) a change to the separate account for variable products when the separate account is bracketed as variable text on the initial filing.

(20) Matrix filing--A filing consisting of individual provisions, each with its own unique identifiable form number, allowing the flexibility to create multiple policies, evidences of coverage, certificates, contracts, or applications by using numerous combinations of the individual provisions.

(21) NAIC--National Association of Insurance Commissioners.

(22) New submission--A filing submission type that is applicable to all filings other than a resubmission subject to Insurance Code §1701.058, concerning Reconsideration of Form.

(23) Personally identifiable information--Facts or details about an individual that can be used either alone or in combination to distinguish the individual's identity, such as:

(A) any individual policyholder's, certificate holder's, or insured's identification, including name, address, phone number, or email;

(B) social security numbers;

(C) insurance policy, contract, or plan numbers;

(D) identification cards;

(E) debit, credit card, bank account, or routing numbers; or

(F) health information about an individual.

(24) Product--A package of benefits with a discrete set of rating and pricing methodologies that will be offered to a consumer within a single policy, group agreement, evidence of coverage, certificate, or contract. In the case of health coverage, a product also includes a particular network type (such as HMO, point of service, preferred provider, exclusive provider, or indemnity).

(25) Qualified actuary--An actuary who is certified by the American Academy of Actuaries to meet the U.S. Qualification Standards.

(26) Resubmission--A filing submission type that contains corrections made to a form that was previously disapproved or for which approval has been withdrawn.

(27) Rider--A form that adds or expands benefits and becomes a part of the policy, group agreement, evidence of coverage, certificate, or contract.

(28) SERFF--The System for Electronic Rates & Forms Filing established by the NAIC or a subsequent electronic system designated by the department.

(29) Submission guide--Documentation provided by the department that includes technical guidance concerning how to submit and classify filings. The submission guide is available on SERFF and on the department's website: www.tdi.texas.gov.

(30) Substantially similar--A form that, except for minor changes that are clearly identified and described in an accompanying document, is identical to a form that the department previously approved and is still compliant with current statutes and regulations.

(31) Substitution--A new submission that includes a form that replaces a previously approved or exempted form that has not been and will not be issued or otherwise used in Texas at any time by the issuer and that has a form number that is the same as the form it is replacing.

(32) Supplemental--A type of product that is specifically designed and issued to supplement other in-force coverage.

(33) Withdrawn filing--A filing that is not pending the department's review and is not considered approved or exempted, including a filing that was submitted and subsequently removed from the department's review for any reason, including at the issuer's request, or by the department because of an issuer's failure to respond to a request for information or request for revision.

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
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For further information, please call: (512) 676-6555

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DIVISION 2. GENERAL FILING REQUIREMENTS

28 TAC §§3.10 - 3.23

STATUTORY AUTHORITY. TDI proposes new §§3.10 - 3.23 under Insurance Code §§541.401, 843.151, 843.154, 1111A.015, 1153.005, 1153.006, 1201.006, 1201.101, 1201.206, 1251.008, 1271.004, 1271.253, 1501.010, 1651.004, 1651.051, 1652.005, 1652.051, 1652.052, 1652.103, 1698.051, 1701.053, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1153.006 provides that TDI set a fee not to exceed $200 for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing standards for the readability of individual accident and health policies.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1271.253 provides that the commissioner may require the submission of any relevant information the commis-

sioner considers necessary in determining whether to approve or disapprove a filing under Insurance Code Chapter 1271.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement the chapter and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plan provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.103 provides, that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1701.053 provides that TDI shall collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 3.10 - 3.23 implement Insurance Code §§1105.055, 1111A.005, 1131.064, 1131.101, 1131.102, 1153.005, 1153.053, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.051 - 1271.057, 1271.101 - 1271.104, 1271.251, 1271.253, 1501.260, 1652.101, 165.102, 1701.053, 1701.055, 1701.057, and 1701.061.

§3.10. Requested Filing Mode.

Requested filing mode. All filings must identify a requested filing mode as described in this section.

(1) Review or approval. The following types of filings must be submitted for review or approval:

(A) a form or rate filing that is required to be filed for review or approval under §3.1(1) or (2) of this title (relating to Applicability and Scope), other than a filing made under paragraphs (2) or (3) of this section;

(B) an advertising filing that is required to be filed for review under §21.120 of this title (relating to Filing for Review);

(C) a group eligibility filing for review; and

(D) a network configuration filing under §3.1(4)(C) of this title.

(2) File and use. A form or rate filing may be submitted in a file-and-use mode only as permitted under Insurance Code §1701.052, concerning File and Use.

(3) Exempt. A form filing may be submitted in an exempt mode only as permitted under Insurance Code §1701.005, concerning Exemptions, and Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review).

(4) Informational. A filing may be submitted in an informational filing mode as specified in §3.1(6) of this title or if paragraphs (1) - (3) of this section do not apply.

§3.11. Submission Requirements.

(a) All filings and supporting documentation within the scope of this subchapter must be submitted through SERFF or a subsequent electronic system designated by the department.

(b) If the electronic system designated by the department experiences a system-wide outage for any reason, any applicable deemer date or due date for a company response is tolled until the outage is resolved. The department may designate an alternative submission method for filings and supporting documents during such an outage.

(c) Filings submitted to the department must provide complete and accurate information about the filing, include responsive information in all applicable SERFF fields, and include applicable responsive information that is not duplicative of SERFF fields in a transmittal checklist uploaded into SERFF as provided in the department's submission guide. Material information required to be submitted in an initial filing through SERFF fields and transmittal checklists will not exceed the following:

(1) the issuer's name, address, and identifying information, including the NAIC number, NAIC group number, federal employer identification number (FEIN), and the issuer's license type and state of domicile;

(2) the contact person information as required by §3.12 of this title (relating to Contact Person);

(3) an explanation of the purpose and use of the filing as required in §3.14 of this title (relating to Purpose and Use);

(4) a clear designation if the issuer would like to make confidential a specific form, rate, or document in the filing, consistent with §3.15 of this title (relating to Confidential Information in Filings);

(5) the information and certifications required in §3.16 of this title (relating to Certifications);

(6) identification of the unique form number of each form submitted;

(7) a classification of the attributes of the filing and forms included in the filing, consistent with the department's submission guide, including the:

(A) type of filing, consistent with the categories identified in §3.1 of this title (relating to Applicability and Scope);

(B) type of submission, including new or resubmission;

(C) requested filing mode, including review and approval, file and use, informational, or exempt, as described in §3.10 of this title (relating to Requested Filing Mode);

(D) requested effective date for the filing;

(E) type of product and subtype of product, consistent with the product classification guidance provided in the department's submission guide;

(F) type of form, including policy, certificate, application or enrollment, schedule of benefits, rider, endorsement, outline of coverage, advertising, network access plan, provider contract, provider addendum, provider leasing agreement, and provider directory;

(G) type of rate, including a new or revised rate; and

(H) type of market, including individual, franchise, or group, and if applicable:

(i) size of group, including small, large, or small and large;

(ii) type of group, including employer, association, trust, discretionary, blanket, or other; and

(iii) name of group policyholder, in connection with a group eligibility filing;

(8) rate filing information for any product a rate filing is required for;

(9) a statement that the submission will be used on a general-use basis, only with the product being filed, or with previously approved or exempted forms;

(10) in the case of a filing that will be used with previously approved or exempted forms, or other pending filings, a list of the following:

(A) the form numbers and filing IDs of the pending or previously approved or exempted forms;

(B) the disposition dates of the previously approved or exempted forms;

(C) for a form approved before January 1, 2012, a copy of the approved or exempted form;

(D) if applicable, the updated list of form numbers the previously approved or exempted form is to be used with; and

(E) a brief description of when or how each submitted form or rate will be used with the previously approved or exempted forms or other pending forms;

(11) an explanation of any variable material as required by §3.18 of this title (relating to Variable Material); and

(12) the Flesch score for each submitted form, consistent with §3.20 of this title (relating to Plain Language and Readability Requirements).

(d) For a substantially similar, exact copy, substitution, or resubmission filing, the issuer must include the following information concerning how the forms in the filing relate to the forms that were previously approved, exempted, disapproved, or withdrawn from approval, as applicable:

(1) the form number, filing ID, and disposition date of the previously filed form; and

(2) a summary of the differences between the previously approved form and the new form, including a description of any deleted text and a clear identification of all changes with new or modified text underlined.

(e) An advertising filing must include the information and certifications required under Chapter 21, Subchapter B of this title (relating to Advertising, Certain Trade Practices, and Solicitation).

(f) The department may request any additional information necessary for a comprehensive review of any filing.

§3.12. Contact Person.

An issuer submitting a filing to the department must:

(1) designate one person as the contact person for that filing;

(2) provide the contact person's name, address, direct telephone number, and email address;

(3) provide, for any filing submitted by anyone other than the issuer, a dated letter of specific authorization that:

(A) designates the contact person for that filing;

(B) authorizes the designee to act on behalf of the issuer with respect to the type of filing; and

(C) is signed by an officer of the issuer or a person with authority to bind the issuer; and

(4) notify the department immediately of any change of information for the contact person on a pending filing, regardless of whether the contact person is the issuer's employee or other authorized representative.

§3.13. Filing Fees.

(a) For a form filing identified under §3.1(1) of this title (relating to Applicability and Scope), a fee of $100 is required, subject to the following exceptions:

(1) a fee of $50 is required for an exempt form filing that is made under Insurance Code Chapter 1701, concerning Policy Forms, and Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review);

(2) a fee of $50 is required for a resubmission of a previously disapproved form, or a form for which approval has been withdrawn;

(3) for a matrix filing, due to the ability to create multiple contracts or policies from matrix provisions, a fee of $50 per form is required, subject to a maximum fee of $500 per filing; and

(4) no fee shall be required for a substitution filing.

(b) For a rate filing made under §3.1(2) of this title that is separate from a form filing:

(1) a fee of $100 is required for a filing under Insurance Code Chapters 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance; 1651, concerning Long-Term Care Benefit Plans; and 1652, concerning Medicare Supplement Benefit Plans; and

(2) a fee of $50 is required for all other rate filings.

(c) No fee is required for advertising, network, group eligibility, or informational filings under §3.1(3) - (6) of this title.

(d) Filing fees required under this section must be paid to the department using the electronic funds transfer system provided on SERFF or a subsequent electronic payment system designated by the department.

(e) Fees are due and must be paid at the time a filing is accepted for review. If the issuer does not pay the fee within five business days following the date of acceptance for review, the department may consider the filing withdrawn from review by the issuer. The department will not give any withdrawn filing consideration until the issuer resubmits the filing as a new filing.

§3.14. Purpose and Use.

Each filing must include an explanation of the purpose and use of the forms, rates, advertising, networks, or other information contained in the filing within the general information section of the filing that includes:

(1) how the contents of the filing will be used (for example, the application will be used on a general-use basis; or used with specific policies, evidences of coverage, or contract forms previously approved or exempted);

(2) the type of coverage addressed by the filing;

(3) any key or unique provisions contained in the filing, including:

(A) for a life or annuity filing, the inclusion of bonus interest, additional interest credits, two-tier values, bail-out, market value adjustments, and long-term care;

(B) for an accident and health filing, the inclusion of preferred or exclusive provider benefits, innovative excepted benefit products, standalone prescription drugs, or innovative benefits in a Medicare supplement policy;

(4) if applicable, how the product will be marketed (for example, direct, agent, or electronic);

(5) if applicable, whether the filing addresses a new program or initiative and, if so, how the program will affect consumers and whether the program or initiative has been filed, approved, or disapproved in other states;

(6) if applicable, to whom the product is to be marketed, for example, specific group types or sizes, such as an annuity contract marketed to issue ages 25 - 60; or a health benefit plan that will issued on the exchange; and

(7) if applicable, an indication of whether the filing is prompted by a business change such as an assumption, a name change, or a demutualization/conversion.

§3.15. Confidential Information in Filings.

(a) Filings submitted under this subchapter are subject to Government Code Chapter 552, concerning Public Information, including any applicable exception from required disclosure under that chapter. Except as provided in subsection (b) of this section, each submitted filing, including any supporting information filed, will be open for public inspection through SERFF Filing Access (or a subsequent electronic system) as of the date of the filing.

(b) If an issuer believes a portion of the information required to be filed under this subchapter is confidential and excepted from disclosure under Government Code Chapter 552, the issuer must use the SERFF confidentiality function to mark as confidential each document that contains information that the issuer believes is confidential and excepted from disclosure.

(c) An issuer is not permitted to add password protection or encryption, or otherwise format a document in a manner that restricts:

(1) the department's ability to fully process, review, search, and save the document without a password or other decryption process; or

(2) the public's ability to view public information in SERFF.

(d) An issuer may not declare an entire filing confidential. Entire filings marked confidential will be rejected under §3.23(c) of this title (relating to Acceptance, Rejection, and Disposition of Filings).

(e) An issuer may choose to include in the filing a redacted copy of a document that is marked as confidential, which would be available for public access. If included, the document must be clearly marked as a redacted copy.

(f) An issuer must not include an individual consumer's personally identifiable information in a filing, other than the name of a group policyholder that is included in a filing as required under §3.21 of this title (relating to Group Filings).

§3.16. Certifications.

(a) General certification - all filings. All filings must include the following certifications:

(1) the certification is on behalf of the issuer;

(2) the issuer is bound by the certification;

(3) the individual making the certification is familiar with all statutes and regulations of this state and the United States that are applicable to the filing and certifies that to the individual's best knowledge, information, and belief, the filing complies with those statutes and regulations;

(4) the individual making the certification has reviewed the filing and the information in the filing is true and correct;

(5) the form filed is not deceptive or misleading; and

(6) if applicable, the Flesch score of each form is accurately reflected and meets the requirements of §3.20 of this title (relating to Plain Language and Readability Requirements).

(b) Additional certifications. An issuer must include additional certifications as applicable and specified in Figure 28 TAC §3.16(b). An individual making a certification referenced in Figure 28 TAC §3.16(b) must also make the certifications required by subsection (a) of this section.

Figure: 28 TAC §3.16(b).

(c) Certification requirements. A false certification made under this section is an offense under Insurance Code §841.704, concerning False Statement, Report, or Other Document; Criminal Penalty, and §843.464, concerning Criminal Penalty.

§3.17. Form and Rate Filing Requirements.

(a) Except as provided by subsection (b) of this section, for a form or rate filing, only one product (including all forms that will constitute the entire contract and their associated rates) may be submitted in a single filing. This does not prevent an issuer from filing a product that contains multiple types of benefits that will be issued in combination in a single contract if that combination otherwise complies with applicable requirements.

(b) A form may be submitted for general use with multiple policies, evidences of coverage, or certificates. A form submitted for general use must be filed individually, except that multiple forms that are clearly related and intended to be used with one or more of the same underlying products may be filed together.

(c) Each form must prominently display on the cover page or the first page a face page that includes:

(1) the full name of the issuer assuming the risk of the product; and

(2) the complete mailing address of the issuer.

(d) Each form submitted must be designated by a unique form number that:

(1) is sufficient to distinguish it from all other forms used by the issuer;

(2) is shown in the lower left-hand corner of each page of the form, or in the case of a matrix provision, is shown below each matrix provision; and

(3) has the additional identifying form number requirements set forth in §3.5201 of this title (relating to Submission of Form and Rate Filings) if the form is submitted under Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance.

(e) A limited, partial refiling must contain the change and any additional actuarial information necessary for a comprehensive review of the refiling, if applicable.

(f) An amendment that is submitted to modify an existing form must be accompanied by a revised version of that form (with a new unique form number) that incorporates the contents of the amendment, unless the amendment does not apply to newly issued forms. For a newly issued policy, certificate, contract, or evidence of coverage, the issuer must issue the revised version of the form.

§3.18. Variable Material.

(a) Variable material generally. As specified in this section, an issuer may file forms, advertising, or provider contracts using variable material to illustrate the ways an issued document may vary from the filed material. Any variable material must be identified using brackets and include specimen language or fill-in material that reflects the most restrictive option, if applicable, within the range of variability. Variable material may not be used in an issued form. The issued form must clearly state the actual benefits and contract terms.

(b) Statement of variability. When variable material is included in a filing, the issuer must submit a statement of variability to accompany the filing that:

(1) provides a clear explanation of how the material will vary for each variable option or range that appears in the brackets on the form; and

(2) demonstrates compliance with applicable requirements.

(c) Permitted uses of variable material. It is acceptable for an issuer to use variable material to illustrate:

(1) how a document may vary due solely to the age, sex, or classification of the insured or enrollee;

(2) the range of benefit levels or options that will be offered to consumers;

(3) nonsubstantive administrative items in the document, such as phone numbers, addresses, or third-party administrators; and

(4) the type of group the policy will be issued to if different review standards do not apply based on the group type.

(d) Prohibited uses of variable material. It is not acceptable for:

(1) a unique form number on a form to be bracketed as variable;

(2) the issuer name to be bracketed as variable;

(3) a form to use variability to create different types of products using a single form number, rather than making separate product filings;

(4) a form to specify a range of variability that exceeds the range supported in the issuer's filed rates or schedule of charges and actuarial memorandum, if applicable; or

(5) an issuer to use variability to an extent that the department is unable to fully understand how the product will appear when issued.

(e) Fill-in material for life and annuity forms. Life and annuity forms must contain fill-in material for a 35-year-old insured. If the form is not issued at age 35, the fill-in material must contain the youngest issue age. If any form includes reduced death benefits, the fill-in material must include the age with the greatest reduction in benefits at issue. The fill-in material must be for the longest premium-paying period available.

(f) Life and annuity standards.

(1) For life forms, the text and specifications of nonforfeiture assumptions cannot include variable material;

(2) For life and annuity forms, a zero entry in a range of values on the specifications page:

(A) is acceptable for tiering levels, expense charges, or other fees applicable under the contract; and

(B) is not acceptable for any benefit or credit provided for in the language of the contract.

(g) Changes to variability. Any change to a statement of variability is considered a change to the form itself and must be filed in conjunction with the form.

(h) Examples upon request. The department reserves the right to request that the issuer supplement its filing with examples of forms without variability, including examples of forms actually issued to consumers (with confidential information redacted).

§3.19. Matrix and Insert Page Forms.

(a) Forms may be submitted as matrix or insert page forms. Any issuer submitting a matrix or insert page form:

(1) must identify each matrix provision or insert page with a unique form number that:

(A) is sufficient to distinguish it from all other matrix provisions or insert pages used by the issuer; and

(B) is shown in the lower left-hand corner of the matrix provision or insert page;

(2) may use the same matrix provision or insert page form number within multiple products, provided the language is applicable to each product; however, any changes in the language to comply with the requirements for each product will require a unique form number; and

(3) must list the form number for each matrix provision or insert page and provide a statement indicating how and with what type of product or products the matrix provision or insert page will be used.

(b) An issuer may use an insert page to replace an existing page or section of a previously approved or exempted form if the replaced page or section has a unique form number that distinguishes it from the other pages of the form it is inserted in.

§3.20. Plain Language and Readability Requirements.

(a) Purpose. This section establishes plain language requirements and procedures to make contracts easier to read by the public and to remove language that may be unjust, deceptive, misleading, or unreasonably confusing.

(b) Applicability. This section applies to all forms that are filed under this subchapter and issued to consumers, except for:

(1) forms that are subject to Subchapter G of this chapter (relating to Plain Language Requirements for Health Benefit Policies); and

(2) group annuity products.

(c) Plain language. Forms must be written in plain language and organized in a manner to make it easy for consumers to understand.

(d) Flesch Reading Ease requirements.

(1) The text of the form must achieve a minimum Flesch Reading Ease score of 40, calculated using the method described in §3.602(b)(1), (c), and (d) of this title (relating to Plain Language Requirements).

(2) An issuer must include a statement of the Flesch score of the document when the form is submitted to the department. The department may require the submission of further information to verify compliance.

(e) Best practices. In determining whether forms are written in plain language and organized in a manner to aid consumer understanding, the department will consider plain language best practices, including:

(1) the use of short, familiar words or words that are used in common speech, rather than the use of jargon or technical terms, and defining technical terms used when necessary;

(2) whether the form is written in a clear and coherent manner;

(3) the unnecessary use of technical or abstract words;

(4) whether short sentences are used in paragraphs limited to a single topic, when possible, rather than the use of complex and compound sentences;

(5) the unnecessary use of prefixes and suffixes;

(6) whether the style, arrangement, and overall appearance of the form gives undue prominence to any portion of the text; and

(7) the organization of the form, including as modified by any rider, endorsement, or amendment, such as:

(A) whether the form is organized in a logical order, with clear sections and headings;

(B) whether the form's coverage provisions are self-contained and independent;

(C) whether the form is appropriately divided and captioned in meaningful sequence, where each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section;

(D) whether the form unnecessarily refers the reader from section to section;

(E) whether general policy provisions, such as defined words and terms or limitations and exclusions, are located in a common area and appropriately captioned; and

(F) whether the use of a separate form, such as an amendment or endorsement used to modify a contract, policy, certificate, or evidence of coverage, will result in confusion about the coverage, particularly if this will occur at the time coverage is first issued.

(f) Definitions. Companies may use a separate definitions section for words used throughout the policy or evidence of coverage. If a separate definitions section is used, it must appear early in the form.

(g) Formatting. The form must:

(1) except for specification pages, schedules, and tables, be printed in not less than 10-point type;

(2) use a font style and size that is easy to read, considering the audience; and

(3) use a format that aids readability, with sufficient white space and the use of bulleted or numbered lists when appropriate.

(h) Table of contents. A form must contain a table of contents or an index of the principal sections if it has more than 3,000 words on three or fewer pages of text or if it has more than three pages, regardless of the number of words.

§3.21. Group Filings.

(a) An issuer submitting a filing for a group policy, agreement, evidence of coverage, or contract must comply with the requirements in this section.

(1) An issuer must identify the specific group type the form is being filed under by indicating the applicable Insurance Code section, as follows:

(A) for life insurance, Insurance Code Chapter 1131, Subchapter B, concerning Group and Wholesale, Franchise, or Employee Life Insurance: Eligible Policyholders;

(B) for accident and health insurance and HMO coverage, Insurance Code Chapter 1251, Subchapter B, concerning Group Accident and Health Insurance: Eligible Policyholders; or

(C) for accident and health insurance, Insurance Code Chapter 1251, Subchapter H, concerning Blanket Accident and Health Insurance: Eligible Policyholders.

(2) If Texas resident members of a group will be eligible to obtain coverage under a product issued to a group type specified in subsections (b) - (f) of this section, then an issuer must submit a group eligibility filing, as specified in those subsections, indicating:

(A) the name of the group;

(B) the products to be issued to the group;

(C) the associated form numbers and filing IDs the forms were approved under; and

(D) either:

(i) information that demonstrates that the group is eligible; or

(ii) a reference to a previous filing ID submitted by the issuer that the group's eligibility was verified under if the filing was made within the past five years and there has not been a material change to the information submitted or the group's continued eligibility.

(3) Forms to be used with multiple groups must be submitted separately from the group eligibility filing. Forms to be used with a single group may be submitted separately or in conjunction with the group eligibility filing.

(b) For a product to be issued to an association under Insurance Code §1131.060, concerning Nonprofit Organizations or Associations; §1251.052, concerning Associations; §1251.053, concerning Funds Established by Employers, Labor Unions, or Associations; or §1251.358, concerning Association, the issuer must submit a group eligibility filing that includes:

(1) a copy of the association's constitution, bylaws, and articles of incorporation;

(2) an alternate face page form that identifies the association, unless the forms are filed to be used with a specific association, in which case the association must be identified on the case-specific face page;

(3) identification of the types of coverage the issuer intends to offer the association; and

(4) information demonstrating that the association is an eligible group policyholder.

(c) For a product to be issued to a trust under Insurance Code §1251.053, the issuer must submit a group eligibility filing that includes:

(1) a copy of the trust agreement;

(2) an alternate face page form for each related industry group, with a unique form number; and

(3) for a product to be issued to associations participating in a multiple association trust:

(A) a listing of all the associations participating in the multiple association trust; and

(B) a reference to the unique filing ID or IDs in which the department previously confirmed that each participating association is an eligible group, consistent with subsection (b) of this section.

(d) An issuer that has received a determination for a filing to be issued to associations participating in a multiple association trust must make a group eligibility filing for information to notify the department of any subsequent additions of participating associations upon enrollment. The filing must include the documentation required in subsection (c) of this section for each association that joins the trust after the initial filing.

(e) An issuer that intends to offer a product to a type of group or blanket policyholder that is not identified in statute as an eligible policyholder must submit a group eligibility filing that demonstrates the group's eligibility, consistent with Insurance Code §1131.064, concerning Other Groups, §1251.056, concerning Other Groups, and §1251.359, concerning Coverage for Other Risks. The issuer must also submit actuarial information as required in §3.61 of this title (relating to Actuarial Information for Certain Accident and Health Filings), as applicable.

(f) For a major medical health benefit plan issued to an association under Insurance Code §1251.052, the issuer must:

(1) for a member-only association, identify whether the plan is issued to a member-only bona fide association as defined under §21.2702 of this title (relating to Definitions); or

(2) for an employer association filing:

(A) comply with all filing requirements set forth in Chapter 26 of this title (relating to Employer-Related Health Benefit Plan Regulations);

(B) specify whether the plan will cover small or large employer members; and

(C) specify whether the group is considered a bona fide employer association under §26.301 of this title (relating to Applicability, Definitions, and Scope).

(g) A product to be issued to an educational institution, if it is issued on a group basis, must be filed under Insurance Code §1131.064 or §1251.056, or, if it is issued on a blanket basis, must be filed under §1251.353, concerning Educational Institutions.

(h) An issuer licensed in this state that issues a certificate of insurance or evidence of coverage covering a Texas resident is responsible for ensuring that the form complies with applicable Texas insurance laws and rules, regardless of whether the group policy, agreement, or contract underlying the certificate or evidence of coverage was issued outside the state. A copy of the master policy, group agreement, or contract issued outside of Texas must accompany any life, annuity, credit, or accident and health certificate, or HMO evidence of coverage filed for review or filed as exempt, along with certification and evidence that the master policy, group agreement, or contract was lawfully issued and delivered in a state the issuer was authorized to do business in.

§3.22. Braille and Non-English Filings.

(a) A filing that includes a copy of a form that is submitted in braille as an exact copy of a previously approved form, or that is submitted in a non-English language that is translated from a previously approved English language form, must include a certification as required under §3.16(b) of this title (relating to Certifications) that the form is an exact copy of the English version of the previously approved form.

(b) The filing must reference the filing ID of the filing in which the English version of the form was previously approved. A filing that includes only a Braille or non-English language version of a previously approved form may be filed in an informational mode and is eligible to be filed in an exempt mode, consistent with Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review).

§3.23. Acceptance, Rejection, and Disposition of Filings.

(a) Acceptance, approval, and exemption of filings. Upon submission, a filing will be accepted for preliminary review of compliance with the filing requirements in this subchapter. If the filing requirements in this subchapter have not been satisfied, the department will

consider the filing incomplete and may reject the filing or request that the issuer make corrections. After a filing has been accepted by the department, an issuer is not permitted to expand the scope of a filing, such as by submitting additional forms for review, unless the department has instructed the issuer to do so.

(1) Review period for filings subject to approval. Filings subject to approval, whether filed in a review-and-approval mode or a file-and-use mode, will be reviewed for compliance with the Insurance Code, this title, and any other applicable law of this state or the United States. Filings are considered filed as of the date the filing is submitted, unless the filing is rejected as provided in subsection (b) of this section. The filings, after review, will be affirmatively approved or disapproved within the statutory deemer period if applicable, under Insurance Code §1271.102, concerning Procedures for Approval of Form of Evidence of Coverage or Group Contract; Withdrawal of Approval; §1701.054, concerning Approval of Form; or §1701.058, concerning Reconsideration of Form, unless the department initiates a request for correction as set forth in subsection (c) of this section.

(2) Date for exempt filings. As permitted under Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review), an issuer may submit a filing in an exempt mode. A filing closed with an exempt disposition is considered exempt as of the disposition date, unless the filing is rejected as provided in subsection (b) of this section. Exempt filings are subject to audit as specified in §3.4008 of this title (relating to Procedures for Corrections to Non-Compliant Exempt Forms).

(3) Date for informational filings. A filing submitted in an informational mode will be closed with an informational disposition, unless the department determines that the filing is subject to review. Informational filings are considered filed as of the date the filing is submitted, unless the filing is rejected as provided in subsection (b) of this section.

(b) Rejection of filings.

(1) If the department determines that a filing does not meet the requirements of this subchapter, the department will reject the filing as incomplete and notify the issuer of the reason for rejection or request that the issuer make corrections to the filing. If the issuer does not make corrections within two business days of the department's request for corrections, the department may reject the filing. A filing that is closed with a rejected disposition will not be considered to have been filed or accepted with the department for purposes of Insurance Code §§1153.106, concerning Rate Outside Certain Percentages of Presumptive Rate; 1271.102; or 1701.054, or this subchapter.

(2) The department may reject a filing for failure to comply with any requirement in this subchapter, for example if a filing:

(A) is marked confidential in its entirety;

(B) contains an individual consumer's personally identifiable information in violation of §3.15 of this title (relating to Confidential Information in Filings);

(C) contains changes from the previous form that are not clearly identified; or

(D) contains a certification that is materially inaccurate.

(3) The department will not reopen a rejected filing to allow the issuer to make corrections. The issuer must submit a new filing for the department to consider any corrections.

(c) Request for correction.

(1) Rather than disapproving a filing, the department may request that the issuer make corrections to a form that contains compliance deficiencies if:

(A) for an insurance filing, the issuer, as necessary and at least seven days before the date the filing is deemed approved (unless otherwise permitted by the department):

(i) requests a 45-day extension of the review period; or

(ii) provides a waiver of the issuer's right to deem the filing approved, if applicable; or

(B) for an HMO filing:

(i) the department notifies the issuer that the review period has been postponed, consistent with §11.301(6) of this title (relating to Filing Requirements); or

(ii) the issuer, as necessary and no less than seven days before the date the filing is deemed approved (unless otherwise permitted by the department), provides a waiver of the issuer's right to deem the filing approved, consistent with §11.301(7) of this title.

(2) An issuer submitting a form as a correction to a pending form must provide:

(A) a summary of the differences between the previously reviewed form and the corrected form, including a description of any deleted text, and a clear identification of all changes, with new or modified text redlined; and

(B) a statement that no changes were made to the form other than those identified.

(3) If an issuer fails to submit corrections to the department within 10 business days after the department provides a notice of any deficiencies and request for corrections, the department may consider the filing withdrawn from review by the issuer. The department will not give any withdrawn filing consideration unless the issuer resubmits it as a new filing.

(d) Disposition. The department will send written or electronic notice of any actions taken by the department when it has completed the processing of the filing. The notice will state the disposition and its effective date.

(e) Withdrawal of approval. Before withdrawing approval, the department will provide notice and opportunity for hearing. The notice will specify each applicable form number and the compliance deficiencies.

(f) Retention of filings and dispositions. Companies must retain the written notification or a copy of the electronic notification as documentation of the department's action on a form and maintain copies of approved, reviewed, and exempted forms. This requirement no longer applies if there are no lives insured under the form and the issuer has submitted a written or electronic request that the department withdraw approval of the form.

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: November 3, 2024
For further information, please call: (512) 676-6555

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DIVISION 3. REQUIREMENTS RELATING TO APPLICATION FORM FILINGS

28 TAC §3.40, §3.41

STATUTORY AUTHORITY. TDI proposes new §3.40 and §3.41 under Insurance Code §§35.0045, 541.401, 843.151, 1153.005, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §35.0045 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 35.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.40 and §3.41 implement Insurance Code §§35.0045, 541.401, 843.151, 1201.271, 1271.051 - 1271.057, 1271.101 - 1271.104, and 1701.055.

§3.40. Applications Generally.

(a) Application form filings must include an explanation of the purpose and use of the application that specifies:

(1) the purpose of the application, including the type of contracts and products the application will be used for; and

(2) whether the application will be in paper, electronic, or telephonic form.

(b) Application form filings must:

(1) include a form of the application that shows all text contained on the application, including all sections and questions that the applicant must complete, and any additional drop-downs, scripts, questions, questionnaires, or supplements that may be conditionally required on the basis of the applicant's responses; and

(2) clearly indicate which statements an applicant must agree to in order to be considered eligible for coverage.

(c) Applications for use by multiple companies or for use in offering products from multiple companies must be submitted to the department by each issuer that will use the form and must prominently display:

(1) the full name of each issuer assuming the risk of the products, and the products offered by each issuer;

(2) the complete mailing address of each issuer; and

(3) a means of designating the appropriate issuer (such as checkboxes) that coverage is being sought through.

(d) Questions that applicants must complete on an application:

(1) must be limited to questions necessary to issue or administer the policy or contract;

(2) may not be structured in a manner that requires the applicant to self-diagnose; and

(3) if limited by time or scope, must be consistent with the underwriting standards.

(e) Application forms must:

(1) clearly state that the application will be attached to the policy or evidence of coverage and will become part of the contract;

(2) state that coverage may not be denied on the basis of information not requested in the application except as described in the application;

(3) include a method for an applicant to opt out of electronic communications if the issuer does not seek affirmative consent for conducting business electronically under Insurance Code §35.004, concerning Minimum Standards for Regulated Entities Conducting Business with Consumers; and

(4) if the issuer will obtain personal information on applicants from third parties, disclose the types of information that might be obtained, the circumstances when it might be obtained, and how it will be used.

§3.41. Standards for Electronic and Telephonic Applications.

(a) When conducting business electronically, an issuer must comply with Insurance Code Chapter 35, concerning Electronic Transactions.

(b) For all applications, including applications that involve electronic or telephonic transactions, the issuer must provide the

applicant with a written copy of the completed application, including any responses given verbally, before the applicant is asked to sign and submit the application.

(c) The issuer must deliver the completed written application in a manner that allows the consumer to retain the information, consistent with Texas Business and Commerce Code §322.008(a), concerning Provision of Information in Writing; Presentation of Records, and Insurance Code §35.004(c), concerning Minimum Standards for Regulated Entities Electronically Conducting Business with Consumers.

(d) When filing an application that will be used with electronic or telephonic transactions, the issuer must include in the filing a description of the security procedures that will be used to verify the authenticity of the transaction.

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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DIVISION 4. REQUIREMENTS SPECIFIC TO ACCIDENT, HEALTH, AND HMO FILINGS

28 TAC §§3.50 - 3.52

STATUTORY AUTHORITY. TDI proposes new §§3.50 - 3.52 under Insurance Code §§541.401, 843.151, 1201.006, 1202.051, 1271.004, 1301.007, 1501.010, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §541.401 provides that the commissioner may adopt reasonable rules as necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1202.051 provides that the commissioner adopt rules necessary to implement the section and meet the minimum requirements of federal law.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (which concerns individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1301.007 provides that the commissioner may adopt rules necessary to implement the chapter.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement Insurance Code Chapter 1701.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 3.50 - 3.52 implement Insurance Code §§843.201, 1202.051, 1271.004, 1271.051 - 1271.057, 1271.101 - 1271.104, 1301.158, 1701.055, 1701.057, and 1701.061.

§3.50. Filing Requirements for Health Plan Disclosures.

A filing for any product for which an outline of coverage, written description of plan terms and conditions, or similar disclosure is required must include a copy of the required disclosure document for review or a reference to the filing ID that the disclosure document was separately filed under. The disclosure document must comply with the applicable requirements, including:

(1) for individual accident and health coverage, the requirements in Subchapter S of this chapter (relating to Minimum Standards and Benefits and Readability for Individual Accident and Health Insurance Policies);

(2) for Medicare supplement coverage, the requirements in §3.3308 of this title (relating to Required Disclosure Provisions);

(3) for short-term limited-duration coverage, the requirements in §3.3602 of this title (relating to Requirements for Short-Term Limited-Duration Coverage);

(4) for a preferred or exclusive provider plan, the requirements in §3.3705 of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations);

(5) for long-term-care coverage, the requirements in §3.3832 of this title (relating to Outline of Coverage); or

(6) for an HMO plan, the requirements in §11.1600 of this title (relating to Information to Prospective and Current Contract Holders and Enrollees).

§3.51. Payment of Premiums or Cost Sharing.

(a) With respect to an issuer's restrictions on the form or manner of the payment of premiums or cost sharing for a major medical health insurance, HMO, or Medicare supplement product, the following practices are unfair methods of competition or unfair or deceptive

acts or practices prohibited under Insurance Code Chapter 541, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices:

(1) failing to disclose such restrictions in the contract;

(2) requiring payment by personal check; and

(3) prohibiting payments made by the enrollee, such as by money order, if the source of the funds meets the criteria in subsection (b) of this section.

(b) For a major medical insurance, HMO, or Medicare supplement product, an issuer must accept premium payments and apply cost-sharing payments to the enrollee's deductible, copayment, cost-sharing responsibility, or out-of-pocket maximum if the payments are made by:

(1) the enrollee's family;

(2) an entity described in 45 CFR §156.1250, concerning Acceptance of Certain Third Party Payments, as applicable; or

(3) another third party if the following criteria are met:

(A) the assistance is provided on the basis of the insured's financial need;

(B) the individual or organization providing the funds is not a health care provider; and

(C) the individual or organization providing the funds is not financially interested. Financially interested individuals or organizations include those that receive most of their funding from individuals or entities with a pecuniary interest in the payment of health insurance claims, or organizations that are subject to direct or indirect control of individuals or entities with a pecuniary interest in the payment of health insurance claims.

(c) Nothing in this section modifies the requirements or applicability of Insurance Code §1369.0542, concerning Effects of Reductions in Out-of-Pocket Expenses on Cost Sharing.

§3.52. Filings Required for Termination of Guaranteed Renewable Major Medical Coverage.

(a) Any issuer required to provide notice to the department related to termination by discontinuance or refusal to renew all guaranteed renewable major medical coverage in a given market or service area under §3.3038 of this title (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical, or Surgical Coverage; Exceptions), §11.506 of this title (relating to Mandatory Contractual Provisions: Group, Individual, and Conversion Agreement and Group Certificate), §21.2704 of this title (relating to Mandatory Guaranteed Renewability Provisions for Health Benefit Plans Issued to Members of an Association or Bona Fide Association), §26.16 of this title (relating to Refusal to Renew and Application to Reenter Small Employer Market), or §26.309 of this title (relating to Refusal to Renew and Application to Reenter Large Employer Market) must submit a filing consistent with this section at least 180 days before coverage under the first plan terminates.

(b) An issuer must submit a filing for each applicable line of business that includes:

(1) whether a withdrawal plan has been submitted under Chapter 7, Subchapter R of this title (relating to Withdrawal Plan Requirements and Procedures) and Insurance Code Chapter 827, concerning Withdrawal and Restriction Plans;

(2) as applicable, the service areas affected by the withdrawal and a reference to the filing ID that the issuer filed the service area reduction under;

(3) the number of covered lives affected in each Texas county;

(4) the effective date or dates the coverage will terminate on;

(5) a copy of the notices to be provided to policyholders, group contract holders, and enrollees; and

(6) a list of products that will be terminated that includes the form numbers and filing IDs.

(c) Filing requirements in this section are in addition to requirements in Chapter 7, Subchapter R of this title that may apply if the failure to renew coverage constitutes a withdrawal under Insurance Code Chapter 827.

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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DIVISION 5. ACTUARIAL FILING REQUIREMENTS

28 TAC §§3.60 - 3.62

STATUTORY AUTHORITY. TDI proposes new §§3.60 - 3.62 under Insurance Code §§843.151, 1107.108, 1111A.015, 1153.005, 1153.103, 1201.006, 1201.206, 1251.008, 1271.004, 1501.010, 1651.004, 1651.051, 1651.053, 1651.055, 1652.005, 1652.051, 1652.052, 1652.101 - 1652.103, 1698.051, 1698.052, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to (1) implement Insurance Code §1367.053; Chapter 843; Chapter 1452, Subchapter A; Chapter 1507, Subchapter B; Chapters 222, 251, and 258, as applicable to an HMO; and Chapters 1271 and 1272, including rules to (A) prescribe authorized investments for an HMO for all investments not otherwise addressed in Chapter 843; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.

Insurance Code §1107.108 provides that the commissioner may adopt rules to implement the provisions of Insurance Code Chapter 1107.

Insurance Code §1111A.015 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111A.

Insurance Code §1153.005 provides that the commissioner, after notice and hearing, may adopt rules to implement Insurance Code Chapter 1153.

Insurance Code §1153.103 provides that the commissioner, after notice and a hearing, by rule may adopt a presumptive premium rate for various classes of business and terms of coverage regarding credit life insurance and credit accident and health insurance.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1251.008 provides that the commissioner may adopt rules necessary to administer Insurance Code Chapter 1251, subject to a notice and hearing as required by Insurance Code §1201.007.

Insurance Code §1271.004 provides that the commissioner may adopt rules necessary to implement the section (relating to individual health care plans) and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1501.010 provides that the commissioner adopt rules necessary to implement Insurance Code Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1651.004 provides that TDI may adopt rules that are necessary and proper to carry out Chapter 1651.

Insurance Code §1651.051 provides that the commissioner by rule establish standards for long-term care benefit plans, and for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of these plans.

Insurance Code §1651.053 provides that the commissioner adopt rules to establish standards for loss ratios of long-term care benefit plans.

Insurance Code §1651.055 provides that the commissioner adopt rules to stabilize long-term care premium rates.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Insurance Code Chapter 1652, the commissioner adopt reasonable rules necessary and proper to carry out the chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides that the commissioner adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different plans, and may adopt reasonable rules that specifically prohibit benefit plans provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.052 provides that the commissioner adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

Insurance Code §1652.101 provides that the commissioner adopt reasonable rules to establish minimum loss ratio standards for Medicare supplement benefit plans.

Insurance Code §1652.102 provides that the commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios.

Insurance Code §1652.103 provides that the commissioner by rule provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

Insurance Code §1698.051 provides that the commissioner by rule establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal law.

Insurance Code §1698.052 provides that the commissioner adopt rules and provide guidance related to individual health plans, including qualified health plans, to address several factors, including covered benefits or health benefit plan design.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.60 implements Insurance Code §§1131.064, 1131.101, 1131.102, 1153.101, 1153.701, 1251.056, 1251.101, 1251.359, 1271.004, 1271.251, 1271.253, and 1651.056.

Section 3.61 implements Insurance Code §§1251.056, 1251.101, and 1251.359.

Section 3.62 implements Insurance Code §§1105.055, 1107.108, 1114.007, 1131.064, 1131.101, 1131.102, 1153.053, 1153.101, and 1153.701.

§3.60. General Actuarial Filing Requirements.

Issuers are required to submit rate filings or other actuarial information as required by law, including:

(1) Insurance Code Chapter 1105, concerning Standard Nonforfeiture Law for Life Insurance;

(2) Insurance Code Chapter 1107, concerning Standard Nonforfeiture Law for Certain Annuities;

(3) Insurance Code §1131.064, concerning Other Groups;

(4) Insurance Code §1153.101, concerning Filing of Schedule of Rates and Subchapter FF of this chapter (relating to Credit Life and Credit Accident and Health Insurance);

(5) Insurance Code §1251.056, concerning Other Groups;

(6) Insurance Code §1251.359, concerning Coverage for Other Risks;

(7) Insurance Code Chapter 1271, Subchapter F, concerning Schedule of Charges, and Chapter 11, Subchapter H of this title (relating to Schedule of Charges);

(8) Insurance Code Chapter 1501, Subchapter E, concerning Underwriting and Rating of Small Employer Health Benefit Plans, and §26.11 of this title (relating to Restrictions Relating to Premium Rates);

(9) Insurance Code Chapter 1651, concerning Long-Term Care Benefit Plans, and Subchapter Y of this chapter (relating to Standards for Long-Term Care Insurance, Non-Partnership and Partnership Long-Term Care Insurance Coverage Under Individual and Group Policies and Annuity Contracts, and Life Insurance Policies That Provide Long-Term Care Benefits Within the Policy);

(10) Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, and Subchapter T of this chapter (relating to Minimum Standards for Medicare Supplement Policies);

(11) Insurance Code Chapter 1698, concerning Rates for Certain Coverage, and Subchapter F of this chapter (relating to Rate Review for Health Benefit Plans); and

(12) Insurance Code §1701.057, concerning Withdrawal of Individual Accident and Health Insurance Policy Form Approval.

§3.61. Actuarial Information for Certain Accident and Health Filings.

(a) This section applies to:

(1) individual accident and health products under Insurance Code §1701.057, concerning Withdrawal of Individual Accident and Health Insurance Policy Form Approval; and

(2) group accident and health coverage issued to alternative types of group policyholders under Insurance Code §1251.056, concerning Other Groups, and §1251.359, concerning Coverage for Other Risks.

(b) This section does not apply to rate filings specified in §3.60(9) - (11) of this title (relating to General Actuarial Filing Requirements).

(c) No premium rate schedule may be used until a copy of the schedule has been filed with the department.

(d) Each premium rate schedule must be accompanied by an actuarial memorandum, signed by a qualified actuary.

(e) A new product filing must include the following actuarial information:

(1) the form numbers the rates apply to and the filing IDs that the forms were filed, approved, or exempted under;

(2) a new rate sheet that includes rates for each plan and each combination of rating factors used by the issuer;

(3) an actuarial memorandum that contains:

(A) a brief description of the policy benefits, renewability provision, and general marketing method;

(B) a brief description of how rates were determined, including a general description and source of each assumption used;

(C) a list of retention components, including, expenses, taxes, fees, and profit expressed as a percent of premium, dollars per policy, or dollars per unit of benefit;

(D) the target loss ratio, including a brief description of how it was calculated, and all components used in its calculation;

(E) a description of the experience used in developing the issuer's rates, including the level of credibility and appropriateness of experience data or justification for the use of the proposed manual rates if the issuer's own experience is not credible;

(F) assumptions and support used in developing rates, including adjustments for trend, morbidity, lapses, risk-mitigating programs, and changes in benefits; and

(G) any other data used to support the proposed rate.

(f) A rate adjustment filing for an existing product must include:

(1) the form numbers that the rate adjustments apply to and the filing IDs that the forms were filed, approved, or exempted under;

(2) a new rate sheet that includes rates for each plan and each combination of rating factors used by the issuer; and

(3) an actuarial memorandum that contains:

(A) a brief description of the benefits, renewability provision, and the general marketing method;

(B) scope and reason for the rate revision;

(C) a description of the experience used in developing the issuer's rates, including past experience, loss ratios for all applicable prior experience periods, and the level of credibility and appropriateness of experience data;

(D) a brief description of how revised rates were determined, including a general description and source of each assumption used;

(E) a list of expenses, taxes, fees, and profit, expressed as a percent of premium, dollars per policy, or dollars per unit of benefit;

(F) the target loss ratio and description of how it was calculated;

(G) assumptions and support used in developing rates, including adjustments for trend, morbidity, lapses, risk-mitigating programs, and changes in benefits; and

(H) any other data used to support the proposed rate increase.

§3.62. Actuarial Information for Life and Annuity Filings.

(a) Each life filing that changes the nonforfeiture values of a particular policy or certificate must be accompanied by the information described in this subsection.

(1) For a life insurance product that is subject to Insurance Code Chapter 1105, concerning Standard Nonforfeiture Law for Life Insurance, an issuer must include an actuarial memorandum that demonstrates compliance with Insurance Code Chapter 1105.

(2) For a universal life filing, an issuer must include:

(A) an actuarial memorandum, signed by a qualified actuary, with a detailed and complete explanation of the basis for computing the policy value and the cash surrender value of the policy, including:

(i) the guaranteed maximum expense charges and loads;

(ii) the guaranteed interest rate or rates;

(iii) the guaranteed maximum mortality charges;

(iv) any other guaranteed charges; and

(v) any surrender or partial withdrawal charges;

(B) a comparison table for issue age 35 that displays columns of:

(i) the guaranteed death benefits;

(ii) guaranteed accumulated values;

(iii) cash surrender values; and

(iv) reserves for the policy; and

(C) itemized monthly universal life calculations for the first and 50th years showing:

(i) beginning values;

(ii) maximum expense charges;

(iii) maximum cost-of-insurance deductions;

(iv) monthly expense and/or policy fees;

(v) interest accumulations; and

(vi) the ending values for the specimen policy.

(3) For variable life forms, the issuer must provide actuarial information as required by §4.1504 of this title (relating to Insurance Contract and Filing Requirements), and as required by this section.

(4) The issuer must provide a certification that it will calculate all premiums, reserves, and nonforfeiture values in a manner consistent with the information submitted under this subchapter.

(b) For each annuity filing, an actuarial memorandum must be provided to meet the minimum requirements of Insurance Code Chapter 1107, concerning Standard Nonforfeiture Law for Certain Annuities, and specify the guaranteed interest rates, the maximum surrender charges, and any other maximum charges applicable in the determination of nonforfeiture values. If the issuer intends to change the guaranteed interest rates specified in the form, notification must be submitted to the department before the change. The notification must specify the new guaranteed interest rate and the date when the new guaranteed interest rate will be effective for new issues of a specified policy form, as required by §3.1004 of this title (relating to Policy Form Review).

(1) For variable annuities, the actuarial information must include the information required in this subsection and the information required by §4.2105 of this title (relating to Contract Requirements) to the extent such material is applicable.

(2) For policies or contracts that contain a market-value adjustment, the actuarial memorandum must:

(A) identify the name of the separate account;

(B) indicate the basis for the market-value-adjustment formula and that the formula provides reasonable equity to both the contract holder and the issuer;

(C) detail that the reserve liabilities are established in accordance with actuarial procedures that recognize that assets of the separate account are based on market values, the variable nature of the benefits provided, and any mortality guarantees;

(D) include a table of minimum guaranteed policy values and cash surrender values that:

(i) are based on the longest guaranteed investment period;

(ii) reflect both upward and downward market-value adjustments; and

(iii) show that the minimum guaranteed values before the adjustment are not less than the minimum nonforfeiture values required by law; and

(E) provide a numerical illustration reproducing the values shown in the table for the first, second, and third years of investment, and at the end of the guaranteed investment period.

(c) For a filing that includes more than one guaranteed interest charge period, the actuarial memorandum must address each guaranteed interest charge period.

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

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Jessica Barta
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Texas Department of Insurance
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SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

28 TAC §3.3100

STATUTORY AUTHORITY. TDI proposes amendments to §3.3100 under Insurance Code §§1201.006, 1201.101, 1201.206, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing specific standards for the content and manner of sale of an individual accident and health insurance policy.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.3100 implements Insurance Code §§1201.002, 1201.201, and 1201.202.

§3.3100. Policy Readability Generally.

(a) In order to increase policyholder understanding of individual accident and sickness policies, insurers are encouraged to draft individual accident and sickness policies in a readable manner. To maintain the value of [~~In order not to devalue~~] the policy as a legal document, the utmost care and caution must be used in its preparation. Insurance Code Chapter 1201, Subchapter E, concerning Required Policy Provisions, requires the use of certain policy provisions in particular language or provisions that are as [~~not less~~] favorable to the insured or beneficiary as [~~than~~] those set forth in that [~~said~~] subchapter. Even with [~~The same is true with respect to optional policy provisions as provided in Insurance Code §§1201.219 - 1201.226. Notwithstanding~~] these requirements of law, insurers are encouraged [~~urged~~] to experiment with new language in these areas.

(b) The standards for plain language and readability set forth in Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) apply to forms filed under this subchapter. [~~Insurers are encouraged to follow the principles set forth in §3.3101 of this title (relating to Organization of Policy Format for Readability) and §3.3102 of this title (relating to Language Readability) when preparing individual accident and sickness policies.~~]

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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28 TAC §3.3101, §3.3102

STATUTORY AUTHORITY. TDI proposes the repeal of §3.3101 and §3.3102 under Insurance Code §§1201.006, 1201.101, 1201.206, 1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules establishing specific standards for the content and manner of sale of an individual accident and health insurance policy.

Insurance Code §1201.206 provides that the commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to Insurance Code Chapter 1201 that are necessary, proper, or advisable for the administration of the chapter.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §3.3101 and §3.3102 implements Insurance Code §§1201.002, 1201.101, 1201.201, and 1201.202.

§3.3101. Organization of Policy Format for Readability.
§3.3102. Language Readability.

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 Z. EXEMPTION FROM REVIEW AND APPROVAL OF CERTAIN LIFE, ACCIDENT, HEALTH, AND ANNUITY FORMS AND EXPEDITION OF REVIEW

28 TAC §§3.4004, 3.4005, 3.4009

STATUTORY AUTHORITY. TDI proposes amendments to §§3.4004, 3.4005, and 3.4009 under Insurance Code §§1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable

rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 3.4004, 3.4005, and 3.4009 implement Insurance Code §§1701.005, 1701.060, and 1701.061.

§3.4004. Exempt Forms.

(a) Group and individual life forms. The group and individual life insurance forms specified in this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, concerning Policy Forms, unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (b) of this section:

(1) group and individual term life insurance forms; [~~master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of Insurance Code §§1131.003, 1131.051 -1131.058, 1131.060, and 1131.064(b), listed in subparagraphs (A) and (B) of this paragraph:~~]

[~~(A) term policies and riders; and~~]

[~~(B) cash value and endowment policies with no more than five death benefit and/or premium changes;~~]

[~~(2) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code §1131.053;~~]

[~~(3) individual, joint life, and last survivor insurance forms, including applications, listed in subparagraphs (A) - (Q) of this paragraph:~~]

[~~(A) ordinary life;~~]

[~~(B) limited pay life with no more than five death benefit and/or premium changes;~~]

[~~(C) life paid up at specified ages with no more than five death benefit and/or premium changes;~~]

[~~(D) single premium life with no more than five death benefit changes;~~]

[~~(E) modified premium level death benefit life with no more than five premium changes;~~]

[~~(F) level premium life with no more than five death benefit changes;~~]

[~~(G) retirement income policies;~~]

[~~(H) level or decreasing term policies and riders;~~]

[~~(I) increasing term policies and riders;~~]

[~~(J) family plans;~~]

[~~(K) family income;~~]

[~~(L) family plan riders, including but not limited to children's term riders, dependent term riders, and spouse term riders;~~]

[~~(M) limited pay endowment with no more than five death benefit and/or premium changes;~~]

[~~(N) level premium endowment with no more than five death benefit changes;~~]

[~~(O) single premium endowment with no more than five death benefit changes;~~]

[~~(P) indeterminate premium policies with no more than five death benefit changes; and~~]

(2) [~~(Q)~~] individual variable life policies with a separate account only;

(3) [~~(4)~~] rider forms listed in subparagraphs (A) - (K) of this paragraph:

(A) accidental death benefit riders;

(B) waiver of premium riders;

(C) guaranteed insurability riders;

(D) individual retirement account [~~accounts~~] (IRA) riders (to include Roth and Simple IRAs [~~IRA~~]) [~~riders~~];

(E) preliminary term riders;

(F) conversion riders;

(G) exchange riders;

(H) waiver of cost riders, including waiver of cost and monthly expense charge, and waiver of cost and premium payment;

(I) dividend option riders;

(J) additional insured riders; and

(K) additional insurance on base insured riders;

(4) [~~(5)~~] endorsement forms listed in subparagraphs (A) - (K) of this paragraph:

(A) optional retirement program (ORP) [~~ORP~~] endorsements;

(B) nontransferability endorsements;

(C) H.R. 10 (Keogh plan) endorsements;

(D) tax sheltered annuity endorsements;

(E) nonassignability endorsements;

(F) settlement option endorsements;

(G) individual retirement account endorsements (to include Roth and Simple IRAs [~~IRA endorsements~~]);

(H) unisex endorsements;

(I) loan endorsements;

(J) waiver of surrender charges on disability or confinement in a hospital or nursing home endorsements; and

(K) step-up or roll-up death benefit endorsements; and

(5) [(6)] limited refilings for [life insurance which indicate only a change in the mortality table or interest rates for new issues under the policy form, or] changes to the separate account for variable products.

(b) Exceptions. A filing identified in [The provisions of] subsection (a)(1) [and (2)] of this section is not permitted to be filed as exempt for [do not apply to] any group or individual life insurance forms providing the types of coverages set out in paragraphs (1) - (13) [(12)] of this subsection:

(1) universal life, including flexible premium adjustable life;

(2) whole [universal related] life;

(3) endowment [adjustable] life;

(4) variable life with a fixed account;

(5) business value;

(6) any forms containing a market value adjustment;

(7) deposit term;

(8) forms subject to Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance;

(9) any life insurance product used to fund prepaid funeral contracts;

(10) any form containing a persistency bonus provision, no-lapse premium provision, or other additional interest credit to the policy value provision (guaranteed or non-guaranteed), index-linked crediting [equity indexed] provision, residual death benefit provision, accelerated death benefit provision, long-term care or other accident- and health-related [accident and health related] benefit provision;

(11) applications for use with variable life or index-linked [equity indexed] life, or forms that contain a market value adjustment provision, a long-term care or other accident- and health-related [accident and health related] benefit provision; [or]

(12) group life master policies, contracts, certificates, applications, or enrollment forms, as well as any applicable riders, amendments, and endorsements [applicable thereto], issued under the authority of Insurance Code §1131.064, concerning Other Groups, that are related [relating] to discretionary groups; or[.]

(13) limited refilings for life insurance that indicate a change in the mortality table or interest rates for new issues under the policy form.

(c) Group and individual annuity forms. The group and individual annuity forms[, including applications,] specified in paragraphs (1) - (7) of this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, unless the forms are required by the laws of Texas, another state, or of the United States to be specifically approved or are otherwise excepted in subsection (d) of this section:

(1) single premium immediate annuities (including variable immediate annuities);

(2) deferred annuities used as structured settlement options;

(3) individual deferred annuities that do not include persistency bonuses or additional interest credits of any type, waiver of surrender charges (except for death, disability, or confinement in a hospital or nursing home); two-tier values; or a market value adjustment:

(A) for purposes of this paragraph, and paragraph (4) of this subsection, "waiver of surrender charges" means a waiver of surrender charges that [which] is applied to any amount greater than 10% of the surrender value;

(B) for purposes of this paragraph, and paragraph (4) of this subsection, "two-tier values" means values on an annuity available at the maturity date of the contract that [which] are different, depending on whether the value is taken from the contract in a lump sum or left with the issuer for periodic payments, regardless of whether the different values are available at issue or later;

(4) group annuities that do not include persistency bonuses or additional interest credits of any type, waiver of surrender charges (except for death, disability, or confinement in a hospital or nursing home), two-tier values, or a market value adjustment; group annuities that are guaranteed investment contracts (GICs), synthetic GICs, funding agreements, and unallocated group annuities funding pension plans;

(5) limited refilings for annuity products that [which] indicate only a change in the mortality table or interest rates for new issues under the policy form, or changes to the separate account for variable products;

(6) variable annuities with a separate account only, which do not include a provision for guaranteed living benefits; and

(7) reversionary annuities.

(d) Exceptions. A filing identified in [The provisions of] subsection (c) of this section may not be filed as exempt for [do not include] any of the following annuity forms:

(1) annuities used to fund prepaid funeral contracts;

(2) variable annuities that contain guaranteed living benefit provisions;

(3) annuities that contain an index-linked crediting [equity indexed] provision, long-term care, or other accident- and health-related benefit provision;

(4) applications for use with variable annuities, index-linked crediting [equity indexed] annuities, annuities that contain a market-value-adjustment, or that contain a [market value adjustment provision,] long-term care or other accident- and health-related provision;

(5) group annuity master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable to those [thereto], issued under the authority of Insurance Code §1131.064, relating to discretionary groups; or[.]

(6) contingent deferred annuities.

(e) Group and individual accident and health forms. The group and individual accident and health insurance forms specified in paragraphs (1) and (2) [- (3)] of this subsection are exempt from the review and approval requirements of Insurance Code Chapter 1701, unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (f) of this section:

(1) the group [and blanket] accident and health forms set out in subparagraphs (A) - (C) [(D)] of this paragraph:

(A) a [any] group accident and health form [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto] issued to employers under [authority of] Insurance Code §1251.051, concerning Employers, or to a labor union or association of labor unions [and

§1251.052; provided the forms issued] under [authority of] Insurance Code §1251.052, concerning Associations [are exempt only if delivered or issued for delivery to a labor union or organization of labor unions];

[(B) any blanket accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under authority of Insurance Code §§1251.351 - 1251.358;]

(B) [(C) any] group forms [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto,] issued under [the authority of] Insurance Code §§1251.051;[,] 1251.052;[,] or 1251.053, concerning Funds Established by Employers, Labor Unions, or Associations, respectively, that provide [providing] Medicare Supplement coverage to an employer, multiple employer arrangement, or a labor union and that are exempt from regulation under Insurance Code §1652.002(b)(1), concerning Medicare Supplement Benefit Plan;

(C) [(D) any] group forms [master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto,] issued under [the authority of] Insurance Code §1251.051 and §1251.052 that provide [providing] long-term care coverage to a single employer, [or] a labor union, or an association of labor unions through a policy that [which] is delivered or issued for delivery outside of Texas;

(2) group and individual accident and [and/or] health forms that provide the following coverages: [policies, contracts, certificates, applications, enrollment forms, riders, amendments, endorsements, and related forms (including but not limited to outlines of coverage, notices, rates, and conditional receipts) applicable thereto, providing coverages set forth in subparagraphs (A) - (K) of this paragraph:]

(A) accident only (including occupational accident and other specified accident);

(B) accidental death and dismemberment;

(C) hospital indemnity [dental];

[(D) in-patient confinement and basic hospital expense coverages (including policies with coverage on an indemnity or expense-incurred basis);]

(D) [(E)] vision;

(E) [(F)] specified disease (including cancer, heart attack, stroke, and other specifically named diseases);

(F) [(G)] disability coverages (including [but not limited to] income replacement, key-man, buy/sell, and overhead expense);

(G) [(H)] policies designed to provide conversion coverages;

(H) [(I)] other permitted coverages that [which] are designed to supplement other in-force health insurance[, including Champus supplements]; and

(I) [(J)] group stop loss/excess loss policies containing an attachment point of $5,000 or more.[; and]

[(K) prescription drug policies; and]

[(3) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code §1251.053.]

(f) Exceptions. A filing identified in [The provisions of] subsection (e) of this section is not permitted to be filed as exempt for [do not apply to] any of the following insurance forms or rates: [set out in paragraphs (1)-(6) of this section.]

(1) a [The provisions of subsection (e)(2) of this section do not apply to any] group or individual health insurance policy that [which] provides, on a comprehensive basis for illness and injury, a combination of hospital, medical, and surgical coverages, including [but not limited to] any guaranteed renewable or short-term limited-duration major medical policies; [and any limited benefit hospital, medical, and surgical policies as defined in §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage).]

(2) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] Medicare supplement policy [policies] as defined in Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, except as specifically provided in subsection (e)(1)(C) of this section;[.]

(3) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] long-term care policy [policies] as defined in Insurance Code Chapter 1651, concerning Long-Term Care Benefit Plans, (including [but not limited to] any policies providing nursing home or home health care coverages), except as specifically provided in subsection (e)(1)(D) of this section;[.]

(4) a form containing [The provisions of subsection (e)(1) and (2) of this section do not apply to any forms which contain] preferred provider or exclusive provider benefit plan provisions as defined in Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; [§§3.3701 - 3.3706 of this title (relating to Preferred Provider Plans).]

(5) a [The provisions of subsection (e)(1) and (2) of this section do not apply to any] group form that is [forms which are] issued under [the authority of] Insurance Code §1251.056, concerning Other Groups; [(discretionary groups).]

(6) a conversion [The provisions of subsection (e)(2)(H) of this section do not apply to any] policy subject to the provisions of Chapter 21, Subchapter SS of this title, (relating to Continuation and Conversion Provisions) [Subchapter F of this chapter (relating to Group Health Insurance Conversion Privilege)], except for policies providing conversion from a policy included as an exempt form in this section;[.]

(7) a policy of "other fixed indemnity coverage" that is more extensive than coverage for hospital confinement, including a policy that provides limited long-term care coverage for a period of less than 12 months;

(8) rate or actuarial information that is required to be filed, even if the form is filed exempt as permitted by this section; and

(9) a dental policy.

(g) Copies of previously approved forms. Except for filings not eligible to be filed exempt under subsection (f)(4) of this section, a [Any] form not otherwise exempted under this subchapter that is an exact copy of a [previously approved] form is exempt from the review and approval requirements of Insurance Code Chapter 1701. These [Such] forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings). [The certification form required to be used in filing the certification is "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052, as well as for corrections, resubmissions, substitutions, and filings for forms exempted from review and official action by this subchapter. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the

~~Life and Health Division, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter. The form also is reproduced in full as Figure 1 in §3.4020 of this title (relating to Appendix).~~]

(h) Copies of previously approved forms subsequently submitted in braille or a non-English [~~foreign~~] language [~~(non-English)~~]. Any form not otherwise exempted under this subchapter that is submitted in braille [~~Braille~~] as an exact copy of a previously approved form, or any form that has been translated into a non-English [~~foreign~~] language from its previously approved English version, is exempt from the review and approval requirements of Insurance Code Chapter 1701. These [~~Such~~] forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter. [~~The certification form required to be used in filing the certification is the same as that described in subsection (g) of this section.~~]

§3.4005. General Information.

(a) This section does not relieve any insurer or other licensee from complying with the Insurance Code or the rules and regulations of the Texas Department of Insurance.

(b) Insurers must cause all forms to comply with all required provisions of all applicable law, including [~~but not limited to~~] the Insurance Code and the rules and regulations of the department. In addition to other legal requirements:

(1) forms may not contain any ambiguous, deceptive, misleading, unfair, inequitable, or unjust wording or terminology;

(2) title headings or other indications of a form's provisions may not be misleading;

(3) forms may not contain any exception, exclusion, limitation, or reduction that is deceptive, unjust, unfair, encourages misrepresentation, or is inequitable or that would deceptively affect the risk understood [~~purported~~] to be assumed in the general coverage of the contract; and

(4) forms may not be printed or otherwise reproduced in such a manner as to render any provision of the form substantially illegible or not easily legible to persons of normal vision.

(c) Every filing exempted from review by this subchapter must be accompanied by each item of information set out in paragraphs (1) - (3) of this subsection.

(1) The certifications for exempt filings required in §3.16 of this title (relating to Filing Modes, Categories, and Certifications). [~~A signed copy of the certification form which is entitled "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052, as well as for corrections, resubmissions, substitutions, and filings for previously approved similar forms. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life and Health Division, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter. The form also is reproduced in full as Figure 1 in §3.4020 of this title (relating to Appendix).~~]

(2) Any additional information or documentation generally required under the provisions of Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(3) A cover letter setting out the items in subparagraphs (A) - (C) of this paragraph, as follows:

(A) that the filing is exempt;

(B) the particular section, subsection, paragraph, and subparagraph of the section under which the filing is exempt; and

(C) a brief description of the benefits provided by the form.

§3.4009. Sanctions and Cancellation of Exempt Filing Privileges.

(a) The privileges under this subchapter that permit an insurer to make exempt filings may be [~~these sections are~~] canceled [~~for an insurer~~] if the insurer makes an exempt filing that fails to comply with one or more provisions of this title or the Insurance Code that results in the department determining that the filing has failed audit. The department will issue a notice of failed audit consistent with §3.23 of this title (relating to Acceptance, Rejection, and Disposition of Filings) that explains [~~either of the determinations in paragraphs (1) or (2) of this subsection are made after notice and hearing as follows~~]:

(1) the compliance deficiencies identified during the audit process;

[~~(1) an insurer's filing made under §3.4004 of this title (relating to Exempt Forms) fails to comply with §3.4005 of this title (relating to General Information); or~~]

(2) the corrective action required;

[~~(2) an insurer's filing made under §3.4004(g) of this title fails to be an exact copy of a filing previously approved.~~]

(3) the cancellation of the insurer's exempt filing privileges; and

(4) how those privileges may be reinstated.

(b) If an insurer's privileges to make exempt filings under this subchapter are cancelled [~~In the event of cancellation of privileges under these sections~~], the insurer is [~~henceforth~~] required to file for review and approval any and all forms intended for use in Texas, until the [~~such time as~~] privileges under these sections are reinstated.

(c) Reinstatement of any privilege canceled under these sections will occur after a period of not more than one year, as provided in the notice of failed audit under subsection (a) of this section [~~from the date the privileges finally terminate, unless otherwise determined by the commissioner~~]. An insurer may make application for reinstatement prior to the passage of the period specified in the notice of failed audit under subsection (a) of this section [~~one year following the termination of such privileges~~].

(d) Nothing in these sections limits the commissioner from imposing any other sanction authorized by the Insurance Code or other applicable law.

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

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404547
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 676-6555

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SUBCHAPTER Z. EXEMPTION FROM REVIEW AND APPROVAL OF CERTAIN LIFE, ACCIDENT, HEALTH AND ANNUITY FORMS AND EXPEDITION OF REVIEW

28 TAC §3.4020

STATUTORY AUTHORITY. TDI proposes the repeal of §3.4020 under Insurance Code §§1701.057, 1701.060, 1701.061, and 36.001.

Insurance Code §1701.057 provides that the commissioner, in accordance with Insurance Code §1201.007, adopt reasonable rules necessary to establish standards for the withdrawal of approval of an individual accident and health insurance policy form.

Insurance Code §1701.060 provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria relating to review and approval of types of forms.

Insurance Code §1701.061 provides that the commissioner may adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Insurance Code Chapter 1701, ensure that noninsurance benefits are not unfairly deceptive or do not constitute a prohibited inducement, and address application of other chapters of the Insurance Code to noninsurance benefits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §3.4020 implements Insurance Code §1701.005 and §§1701.052 - 1701.055.

§3.4020. Appendix.

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

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For further information, please call: (512) 676-6555

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER M. REGULATORY FEES

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §7.1301, concerning regulatory fees, and repeal §7.1302, concerning billing system, to be consistent with the proposed repeal and amendment of certain existing sections and adoption of new sections in 28 TAC Chapter 3, Subchapter A, Submission Requirements for Filings and Departmental Actions Related to Such Filings. The Chapter 3 proposal is published separately in this issue of the *Texas Register.*

EXPLANATION. Amending §7.1301 and repealing §7.1302 are necessary to conform to the proposed repeal, amendment, and addition of new sections in Chapter 3, Subchapter A. As proposed, the applicability of Chapter 3, Subchapter A, is expanded to include filings by health maintenance organizations (HMOs). The fee amounts for HMO filings addressed in §7.1301 will be replaced with fee amounts specified in proposed §3.13. Existing §3.7, which references the billing system in §7.1302, is proposed for repeal. Proposed new §3.13 requires filing fees to be paid through the electronic funds transfer system provided within the System for Electronic Rates & Forms Filing (SERFF). This change eliminates the need for the electronic billing system; thus, §7.1302 is proposed for repeal.

Descriptions of the proposed amendments to the sections follow.

Section 7.1301. Regulatory Fees. The proposed amendments to subsection (g) revise paragraph (4) and delete paragraph (5) to remove the existing provisions that specify a fee of $100 for an evidence of coverage that requires approval, and a fee of $50 for a filing that is required by rule but that does not require approval. Subsection (g)(4) is amended to reference filing fees specified in §3.13 for a filing governed by Chapter 3, Subchapter A. Subchapter A applies to form, rate advertising, network, group eligibility, and informational filings for life and health products, and as proposed, also applies to HMO products. As proposed separately in this edition of the *Texas Register,* §3.13 requires a fee of $100 for form and rate filings (including HMO evidence of coverage forms and their associated schedules of charges), subject to certain exceptions, and no fee for other types of filings (such as network filings). This change will result in a cost savings to issuers, as described in the Public Benefit and Cost Note section for Chapter 3, Subchapter A. In addition, TDI proposes nonsubstantive changes throughout §7.1301 to conform to agency style and usage guidelines, and to add titles to Insurance Code references.

Repeal of §7.1302. TDI proposes to repeal §7.1302, which establishes TDI's internal billing system. This change aligns with the proposed repeal of existing §3.7, and proposed new §3.13, which requires issuers to pay filing fees previously governed by §7.1302 through the SERFF EFT system. This change will increase efficiency for TDI and issuers by reducing the administrative work involved in creating, processing, and paying invoices.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office in the Life and Health Division, has determined that during each year of the first five years the sections as proposed 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 statute. Ms. Bowden made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

Ms. Bowden 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 sections as proposed are in effect, Ms. Bowden expects that administering them will have the public benefit of ensuring that TDI's rules conform to the proposed changes in Chap-

ter 3, Subchapter A, relating to Submission Requirements for Filing and Departmental Actions Related to Such Filings. Chapter 3, Subchapter A, is also proposed for repeal and replacement, and its publication coincides with the publication of the proposed amendments to §7.1301 and the proposed repeal of §7.1302.

For each of the first five years the sections as proposed are in effect, Ms. Bowden also expects that the public benefit anticipated as a result of administration and enforcement of the proposed amendments to §7.1301 and the proposed repeal of §7.1302 will be increased efficiency in the filing process, both for filers and for TDI, resulting in increased speed-to-market for product filings. Currently, filers that fail to pay fees have their filings put "on hold" until delinquent fees are paid, consistent with §7.1302(f) and (g). The updated filing fee process will avoid such holds. In addition, Ms. Bowden expects that administering the sections as proposed will have the public benefit of ensuring that TDI's rules are accurate, consistent, and transparent by reflecting updated Insurance Code references and correct state agency names and by addressing and eliminating errors in punctuation, grammar, and typography.

Ms. Bowden expects that the sections as proposed will not increase the cost of compliance for stakeholders because, as explained in the proposal for Chapter 3, the amendments result in a decrease in filing fees. Based on filing data for 2022 and 2023, TDI estimates an annual cost savings of $10,000 - $17,000 associated with the changes to fees for HMO filings that are addressed in §7.1301.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed 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. Instead, the proposal results in a cost savings, as explained in the Public Benefit and Cost Note section. 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 sections as proposed 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 decrease 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 November 4, 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2850 at 2:00 p.m., central time, on November 7, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

28 TAC §7.1301

STATUTORY AUTHORITY. TDI proposes amendments to §7.1301 under Insurance Code §§843.154, 1153.006, 1701.053, and 36.001.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1153.006 provides that TDI set a fee not to exceed $200 for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1701.053 provides that TDI collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 7.1301 implements Insurance Code §§843.154, 1153.006, and 1701.053.

§7.1301. Regulatory Fees.

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section include all authorized insurers writing any class of insurance in this state that [~~which~~] are regulated by Insurance Code Title 2, concerning Texas Department of Insurance; Title 6, concerning Organization of Insurers and Related Entities; Title 7, concerning Life Insurance and Annuities; Title 8, concerning Health Insurance and Other Health Coverages; Title 9, concerning Provisions Applicable to Life and Health Coverages; Title 10, concerning Property and Casualty Insurance; Title 11, concerning Title Insurance; and Title 12, concerning Other Coverage [~~Titles 2 and 6 - 12~~]. For filings and other actions received by the Texas Department of Insurance (department) [~~department~~] on and after the effective date of this section, the [~~Texas Department of Insurance (department)~~] department will charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department before the effective date of this section will be governed by this subchapter as it existed immediately prior to that date.

(b) Fees for insurers with annual gross premium receipts less than $450,000. As provided in Insurance Code §202.004, concerning Reduced Fees for Certain Insurers, any insurer to which Insurance Code Chapter 202, concerning Fees, applies and whose gross premium receipts are less than $450,000 according to its annual statement for the preceding year ending December 31, is required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate

unless the applicant can provide the department with satisfactory documentation that gross premium receipts were less than $450,000.

(c) Fees for specified filings under [~~pursuant to~~] Insurance Code Chapter 1701, concerning Policy Forms. Fees for specified filings under [~~pursuant to~~] Insurance Code Chapter 1701 are set forth in and governed by Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(d) Fees for authorized insurers writing classes of insurance in this state that are regulated by Insurance Code Titles 2 and 6 - 12. For the following filings and actions, the fees are as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements is $250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee is $0.

(3) For reservation of name, the fee is $0.

(4) For renewal of reservation of name, the fee is $0.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee is $0.

(6) For filing original charter, including issuance of certificate of authority, the fee is $0.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee is $0.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee is $0.

(9) For filing designation of attorney for service of process or amendment to that [~~thereto~~], the fee is $0.

(10) For filing a total reinsurance agreement, the fee is $0.

(11) For filing a partial reinsurance agreement, the fee is $0.

(12) For filing a direct reinsurance agreement under [~~pursuant to~~] Insurance Code Chapter 884, Subchapter K, concerning Direct Reinsurance Agreements, the fee is $0.

(13) For filing for approval of reinsurance agreement under [~~pursuant to~~] Insurance Code Chapter 828, concerning Purchase of Stock for Total Assumption Reinsurance, the fee is $0.

(14) For filing for approval of merger under [~~pursuant to~~] Insurance Code Chapter 824, concerning Merger and Consolidation of Stock Insurance Corporations, the fee is $0.

(15) For accepting a security deposit, excluding deposits made under [~~pursuant to~~] Insurance Code §425.002, concerning Certain Insurers: Deposit of Securities, Money, or Property in Amount of Legal Reserves, the fee is $0.

(16) For substitution/amendment of a security deposit, excluding deposits made under [~~pursuant to~~] Insurance Code §425.002, the fee is $0.

(17) For certification of statutory deposit, the fee is $0.

(18) For filing notice of intent to relocate the books/records under [~~pursuant to~~] Insurance Code Chapter 803, concerning Location of Books, Records, Accounts, and Offices Outside of This State, the fee is $0.

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee is $0.

(20) For filing a statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter D, concerning Control of Domestic Insurer; Acquisition or Merger, and Subchapter E, concerning Acquisition Statement, [~~Subchapters D and E~~] for the first $9,900,000 of the purchase price or consideration, the fee is $0.

(21) For filing a statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapters D and E, if the purchase price or consideration exceeds $9,900,000, the fee is $0.

(22) For filing registration statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter B, concerning Registration, the fee is $0.

(23) For filing for review under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter C, concerning Transactions of Registered Insurer, or Chapter 884, Subchapter L, concerning Direct Reinsurance Agreements with Mutual Assessment Companies, the fee is $0.

(24) For filing for an exemption under [~~pursuant to~~] Insurance Code §823.164, concerning Exemptions from Subchapter, the fee is $0.

(e) Other fees established by Insurance Code Chapter 202. For the following filings, the fee is as follows.

(1) For filing joint control agreement, the fee is $0.

(2) For filing substitution/amendment to the joint control agreement, the fee is $0.

(3) For filing a change in attorney in fact, the fee is $0.

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the department, as enumerated in subsection (d)(10) - (14) of this section, the appropriate fee will be determined based on the ceding or merged company.

(2) The fee relating to reinsurance transactions entered into under [~~pursuant to~~] Insurance Code Chapter 823, Subchapter C, and subsection (d)(23) of this section will be [~~determined~~] based on the ceding company.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the department, as mentioned in paragraph (1) of this subsection, the appropriate fee will be based on the ceding company.

(4) An amendment to the charter would constitute any change in the original charter, including [~~, but not limited to,~~] name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal will be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement under [~~pursuant to~~] Insurance Code Chapter 823, Subchapters D and E, and subsection (d)(20) and (21) of this section will apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees under [~~pursuant to~~] the Texas Health Maintenance Organization Act, Insurance Code Chapter 843, concerning Health Maintenance Organizations. For the following filings and actions, the fees are as follows.

(1) For filing original application for certificate of authority, the fee is $0.

(2) For filing annual report, the fee is $250.

(3) For all examinations made on behalf of the State of Texas by the department or under its authority, the fee will be an amount the commissioner certifies to be just and reasonable.

(4) For a filing governed by Chapter 3, Subchapter A of this title, fees are set forth in and governed by §3.13 of this title (relating to Filing Fees). [~~filing evidence of coverage which requires approval, the fee is $100.~~]

[~~(5) For filing required by rule but which does not require approval, the fee is $50.~~]

(h) Fees for filings under [~~pursuant to~~] Insurance Code Chapter 1153, concerning Credit Life Insurance and Credit Accident and Health Insurance. Fees for filings under [~~pursuant to~~] Insurance Code Chapter 1153 are set forth in and governed by Chapter 3, Subchapter A of this title.

(i) Fee for filing an annual statement under Insurance Code Chapter 841, concerning Life, Health, or Accident Insurance Companies. The fee for filing an annual statement is $250.

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 September 19, 2024.

TRD-202404549
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 676-6555

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28 TAC §7.1302

STATUTORY AUTHORITY. TDI proposes the repeal of §7.1302 under Insurance Code §§843.154, 1153.006, 1701.053, and 36.001.

Insurance Code §843.154 provides that the commissioner, within the limits provided by the section, prescribe the fees to be charged under Insurance Code §843.154.

Insurance Code §1153.006 provides that TDI set a fee for a form or schedule filed under Insurance Code Chapter 1153.

Insurance Code §1701.053 provides that TDI collect a fee in an amount determined by the commissioner for the filing of the form of a document under Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §7.1302 implements Insurance Code §§843.154, 1153.006, and 1701.053.

§7.1302. Billing System.

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: November 3, 2024
For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER B. AUTHORITY TO CONTRACT

31 TAC §51.61

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to 31 TAC §51.61, concerning Enhanced Contract Monitoring. The proposed amendment would add a comprehensive provision to the list of factors in subsection (b) that the department considers when making a determination to implement enhanced contract monitoring measures.

Under Government Code, §2261.253(c), a state agency is required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring. The current rule lists multiple factors that TPWD will consider when determining whether a contract requires enhanced monitoring. The proposed amendment would add new paragraph (17) to provide for the consideration of any factors in addition to those enumerated in subsection (b) and is intended to provide the department with additional flexibility to consider other important factors, especially those recommended by the Comptroller of Public Accounts Statewide Procurement Division.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Tammy Dunham, Director of Contracting, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Ms. Dunham also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing or administering the proposed rule will be enhancement of the department's ability to ensure that contracts and contractors are effectively monitored, which will ensure that the public trust is preserved.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Tammy Dunham at (512) 389-4752, e-mail: tammy.dunham@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring.

The proposed amendment affects Government Code, §2261.253.

§51.61. Enhanced Contract Monitoring.

(a) (No change.)

(b) In determining if a contract requires enhanced contract monitoring, the department will consider the following factors, to the extent applicable:

(1) - (16) (No change.)

(17) Additional Factors. The department will consider additional factors that it determines appropriate, in accordance with Government Code, §2261.253(c).

(c) - (d) (No change.)

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.168

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.168, concerning Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans. The proposed amendment would replace an inaccurate acronym where necessary throughout the section. Under the provisions of §51.161, concerning Definitions, the acronym for "nonprofit partner" in Subchapter G is "NP." However, in §51.168, the acronym "NPP" is employed, which could cause confusion. The proposed amendment would rectify the inaccuracy.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §11.208, which allows the commission to establish by rule the criteria under which the department may select a nonprofit partner and the guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities provided by the nonprofit partner.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.168. Nonprofit Partnerships to Promote Hunting and Fishing by Resident Veterans.

(a) The department shall select one or more NP [~~nonprofit partners (NPP)~~] to promote hunting and fishing by residents of this state who are veterans of the United States Armed Forces. A prospective NP [~~NPP~~] under this section must exist exclusively to serve veterans of the United States Armed Forces. The selection process shall be conducted according to the applicable provisions of this subchapter, and shall occur at three-year intervals by means of a request for proposals published by the department.

(b) The following guidelines shall govern hunting and fishing activities under this section.

(1) An NP [~~NPP~~] must provide angling and hunting opportunities on private lands and/or public waters in Texas.

(2) (No change.)

(3) Hunting and fishing opportunity provided by an NP [~~NPP~~] under this section:

(A) (No change.)

(B) must be advertised by the NP [~~NPP~~] by providing public notice.

(4) Hunting and fishing opportunity provided by an NP [~~NPP~~] shall be at no cost to participants, not to include travel, lodging, meals, and other expenses ancillary to hunting and fishing activities unless those costs are provided by the NP [~~NPP~~] at the discretion of the NP [~~NPP~~].

(5) Not less than 30 days before any hunting or fishing activity may be provided or engaged in, an NP [~~NPP~~] shall complete and provide to the department on a form provided or approved by the department, the specific hunting and/or angling opportunities to be provided, to include the following, at a minimum:

(A) - (C) (No change.)

(D) the name and address of each representative of the NP [~~NPP~~] who will be participating in the activity.

(6) (No change.)

(7) The representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting activities shall immediately tag any animal or bird killed by a participant for which a tag is required under Parks and Wildlife Code, Chapter 42 with a tag issued by the department to the NP [~~NPP~~] for the hunting opportunity.

(8) The representative of an NP [~~NPP~~] who accompanies a participant who engages in fishing activities shall immediately tag any fish caught by a participant for which a tag is required under Parks and Wildlife Code, Chapter 46 with a tag issued by the department to the NP [~~NPP~~] for the fishing opportunity.

(9) A wildlife resource document provided by the department to the NP [~~NPP~~] and completed by the representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting or fishing activities shall accompany any harvested wildlife resource or portion thereof not accompanied by a tag until the wildlife resource reaches:

(A) - (C) (No change.)

(10) An NP [~~NPP~~] shall maintain a daily harvest log of hunting or fishing activity conducted.

(A) (No change.)

(B) The representative of an NP [~~NPP~~] who accompanies a participant who engages in hunting or fishing activities shall, on

the same day that a wildlife resource is killed or caught, legibly enter the following information in the daily harvest log:

(i) the name of the NP [~~NPP~~] representative;

(ii) - (v) (No change.)

(C) (No change.)

(D) The daily harvest log shall be retained by an NP [~~NPP~~] for a period of two years following the latest entry of hunting or fishing activity required to be recorded in the log.

(11) An NP [~~NPP~~] shall complete and submit an annual report to the department on a form prescribed or approved by the department.

(c) A person acting as a representative of an NP [~~NPP~~] under this section is not exempt from any licensing, stamp, documentation, or other rule of the department while engaging in hunting or fishing activities under this section.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §51.301

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.301, concerning Duties of the Department. The proposed amendment would eliminate subsection (a), which is no longer necessary.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule, as the rule applies only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule applies only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release and use of customer information by rule.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.301. Duties of the Department.

[~~(a) The executive director shall prepare and make available a list of the types of information maintained by the department that are included in each of the applicable categories listed in §51.300 of this title (relating to Definitions).~~]

(a) [(b)] The department will collect only that customer information and personal customer information required to carry out department functions.

(b) [(c)] The department will use customer information and personal customer information only as required to carry out department functions.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 56. AGENCY DECISION TO REFUSE LICENSE OR PERMIT ISSUANCE OR RENEWAL AND AGENCY DECISION TO SUSPEND OR REVOKE AFFECTED LICENSE OR PERMIT

31 TAC §56.7

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §56.7, concerning Permits and Licenses Affected. The proposed amendment would add all cultivated oyster mariculture permits (COM) issued by the department under 31 TAC Chapter 58, Subchapter E, to the list of permits and licenses to which the provisions of Chapter 56 apply.

In 2022, the department promulgated Chapter 56 to comply with recommendations of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. The Sunset Commission also recommended a similar process for agency decisions to suspend or revoke such licenses and permits.

In another proposed rulemaking published elsewhere in this issue regarding COM rules, the department proposes the repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision. The department has determined that the COM permits are a type of permit to which the Texas Sunset Advisory Commission recommendation applies, and this proposed rule would therefore apply the standards established in Chapter 56 to all COM permits.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be consistency with the recommendation of the Texas Sunset Advisory Commission.

There will be no adverse economic effect on persons required to comply with the rule, as the provisions of Chapter 56 are substantively similar to the provisions of §58.359 currently in effect.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rule does not substantively affect internal department administrative processes currently in effect under existing rule. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §12.001, which authorizes the department to collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department; §12.508, which authorizes the department to refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee has been finally convicted of

a violation under the Parks and Wildlife Code or rule adopted or a proclamation issued under the Parks and Wildlife Code; and Chapter 75, which requires the commission to adopt rules to establish a program governing cultivated ouster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed amendment affects Parks and Wildlife Code, Chapters 12 and 75.

§56.7. Permits and Licenses Affected.

The provisions of this chapter apply to the following types of permits and licenses.

(1) - (10) (No change.)

(11) Cultivated Oyster Mariculture - all;

(12) [~~(11)~~] Depredation;

(13) [~~(12)~~] Educational Display;

(14) [~~(13)~~] Falconry - all;

(15) [~~(14)~~] Finfish Import;

(16) [~~(15~~] Fish Dealer - all;

(17) [~~(16)~~] Fishing Guide - all;

(18) [~~(17)~~] Furbearing Animal - all;

(19) [~~(18)~~] Game Animal Breeder;

(20) [~~(19)~~] Game Bird Breeder - all;

(21) [~~(20)~~] Hunting Cooperative - all;

(22) [~~(21)~~] Marine Dealer, Distributor, or Manufacturer;

(23) [~~(22)~~] Menhaden Boat - all;

(24) [~~(23)~~] Nongame Fish;

(25) [~~(24)~~] Party Boat Operator;

(26) [~~(25)~~] Private Bird Hunting Area;

(27) [~~(26)~~] Scientific Plant Research;

(28) [~~(27)~~] Scientific Research;

(29) [~~(28)~~] Shell Buyer - all;

(30) [~~(29)~~] Shrimp Boat Captain - all;

(31) [~~(30)~~] Shrimp Offloading;

(32) [~~(31)~~] Wildlife Management Association Area Hunting Lease - all;

(33) [~~(32)~~] Wildlife Rehabilitation; and

(34) [~~(33)~~] Zoological.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would temporarily prohibit the harvest of oysters for two years within the boundary of the restoration area on two reefs in Conditionally Approved Area TX-6 in Galveston Bay (approximately 529 acres on Dollar Reef and approximately 14 acres on Desperation Reef). The proposed amendment would temporarily close a total of 543 acres to oyster harvest for two years. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for repopulation in those areas after planting of oyster cultch, and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed. The restoration activities also will establish stable substrate and provide suitable conditions for spat settlement and oyster bed development.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. TPWD has restored approximately 800 acres of oyster habitat with cultch placement techniques such as those used here.

The proposed amendment would close 14 acres on Desperation Reef in Galveston Bay for cultch placement through funding generated through H.B. 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, construction associated with the Houston Ship Channel (HSC) Expansion Improvement Project resulted in unavoidable adverse impacts to oyster reefs. During the Final Interagency Feasibility Report-Environmental Impact Statement, mitigation efforts were proposed, consisting of the restoration of oyster reef in Galveston Bay to compensate for the loss of habitat. In coordination with resources agencies, the

United States Corps of Engineers selected areas on Dollar Reef and San Leon Reef for restoration. Both sites were impacted by Hurricane Ike and this area has been the focus of recent TPWD efforts to restore oyster reef. This mitigation project includes restoration on seven separate areas ranging in size from 13 acres to 20 acres. The proposed closure of 529 acres includes this network of seven restoration areas. The closure area is a perimeter surrounding the totality of the restoration areas because the individual closed areas are close to one another and the department seeks to eliminate potential confusion that could result from closing restoration areas individually. Parts of this area were closed in 2022 and that closure would have expired in 2024; however, due to the additional restoration efforts, the proposed amendment would expand the closure area and extend the period of closure for another two years.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the potential for increased oyster production by repopulating damaged public oyster reefs and allowing these oysters to reach legal size and subsequent recreational and commercial harvest; and providing protection from harvest to a reef complex thus establishing a continual supply of oyster larvae to colonize oyster habitat within the bay system.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the areas designated for closure have been degraded to the extent that they no longer support any commercial exploitation, the closures effected by the proposed rules will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will expand an existing regulation (by creating new area closures); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules is in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed rule may be submitted to Hanna Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8255; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i)-(ii) cease effect on November 1, 2025. The provisions of subparagraph (A)(iii)-(iv) cease effect on November 1, 2026. The provisions of subparagraph [~~(A)(iii) and~~] (B) of this paragraph cease on November 1, 2024.

(A) Galveston Bay.

(i) - (ii) (No change.)

(iii) Dollar Reef HSE Mitigation Site. The area within the boundaries of a line beginning at 29° 27' 32.85"N, 94° 53' 45.62"W (29.459125°N, 94.896006°W, corner marker buoy A); thence to 29° 27' 04.95"N, 94° 52' 39.17"W (29.451376°N, 94.877548°W, corner marker buoy B); thence to 29° 26' 27.69"N, 94° 53' 02.34"W (29.441026°N, 94.883984°W, corner marker buoy C); thence to 29° 26' 42.34"N, 94° 53' 37.31"W (29.445094°N, 94.893697°W, corner marker buoy D); thence to 29° 27' 25.61"N, 94° 53' 52.37"W (29.457114°N. 94.897881°W, corner marker buoy E); and thence back to buoy A. [~~29° 27' 22.92"N, 94° 53' 46.44"W (29.456367°N, -94.896233°W, corner marker buoy A); thence to, 29° 27' 13.62"N, 94° 53' 23.80"W (29.453784°N, -94.889944°W, corner marker buoy B); thence to, 29° 26' 51.77"N, 94° 53' 40.51"W (29.447713°N,~~

~~-94.894587°W, corner marker buoy C); thence to, 29° 27' 18.96"N, 94° 53' 49.96"W (29.455265°N, -94.897211°W, corner marker buoy D); and thence back to corner marker buoy A.~~]

(iv) Desperation Reef. The area within the boundaries of a line beginning at 29° 29' 34.40"N, 94° 52' 53.08"W (29.49289°N, 94.88141°W, corner marker buoy A); thence to 29° 29' 35.69"N, 94° 52' 46.70"W (29.49325°N, 94.87964°W, corner marker buoy B); thence to 29° 29' 28.14"N, 94° 52' 41.56"W (29.49115°N, 94.87821°W, corner marker buoy C); thence to 29° 29' 26.56"N, 94° 52' 51.56"W (29.49071°N, 94.88098°W, corner marker buoy D); thence back to buoy A.

(B) - (L) (No change.)

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

The Texas Parks and Wildlife Department proposes amendments to §§58.352, 58.353, 58.355, and 58.356 and the repeal of §§58.354, 58.359, and 58.360 concerning Cultivated Oyster Mariculture. The amendments and repeals are necessary to improve and enhance the regulation of cultivated oyster mariculture (COM) operations in the state.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which added new Chapter 75 to the Texas Parks and Wildlife Code and delegated to the Parks and Wildlife Commission the authority to regulate the process of growing oysters in captivity. In turn, the Texas Parks and Wildlife Commission in 2020 adopted the first and current regulations governing oyster mariculture (45 TexReg 5916). In brief, those rules established various types of COM permit(s) and the general provisions governing permit privileges and obligations as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements. The department was aware at that time that there would be a need to refine and modify the rules, as cultivated oyster mariculture had never existed in Texas prior to that time. In the time since the rules have been in effect, the department and the regulated community have communicated extensively to identify and develop improvements which form the substantive basis for much of the proposed rulemaking.

One goal of the proposed rulemaking is to more explicitly denote compliance with applicable requirements of the National Shellfish Sanitation Plan (NSSP), a program administered by United States Food and Drug Administration (FDA) to ensure that molluscan shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce are safe for human consumption. Compliance with the NSSP is required for all oysters grown and harvested in Texas to enter interstate commerce.

The proposed amendment to §58.352, concerning Definitions, would add definitions for "Approved area" and "Conditionally Approved area" to clearly articulate that those terms have the meaning assigned by the Texas Health and Safety Code. The proposed amendment also would create new definitions for "Cultivated Oyster Mariculture Harvest Authorization" and "Hatchery." The proposed amendment would define Cultivated Oyster Mariculture Harvest Authorization (harvest authorization) as "a yearly authorization to allow the harvest of mariculture oysters." This annual authorization more clearly meets NSSP guidelines for harvest authorizations to only be valid for a one-year period. This authorization will be issued annually to each permit holder and will not result in any additional fees. The proposed amendment defines hatchery as "facility that spawns oyster broodstock" so that these activities can be included in what is covered by a permit issued by this subchapter. The proposed amendment would also modify the definition of "oyster seed" to refine the definition to any oyster 1 inch or less in size; this helps distinguish this particular stage of oysters rather than the broader terminology less than legal size.

The proposed amendment to §58.353, concerning General Provisions, also consists of several components. The proposed amendment would alter subsection (a) to allow a permittee to possess their permit either physically or electronically, which is intended to increase convenience for the regulated community.

The proposed amendment to §58.353 also would alter subsections (b) and (c) to more clearly delineate the differences between the two permits issued under this subchapter. The Cultivated Oyster Mariculture Permit would be renamed the Cultivated Oyster Mariculture Grow-Out Permit, and the Cultivated Oyster Mariculture - Nursery Only Permit would be renamed the Cultivated Oyster Mariculture Nursery-Hatchery Permit. The changes are intended to more clearly and explicitly delineate the activities authorized under a Nursery-Hatchery Permit. As many oyster hatcheries also function as nurseries, staff determined it would be more efficient to group nurseries and hatcheries into a single permit type. The alterations to the permit titles are made throughout the proposed rules.

The proposed amendment would add new subsection (e), which is current §58.360(1), concerning Prohibited Acts. Section 58.360 is proposed for repeal in this rulemaking as the majority of the text is redundant to General Provisions, and the two nonredundant contents of that section would be distributed to other locations within the rules as noted. The proposed modification is nonsubstantive.

The proposed amendment would alter current subsection (g) to include using line-bred descendants of oysters originally from Texas waters as allowable broodstock. Current rules limit broodstock to oysters collected from Texas waters; however, this would allow the descendants of those oysters to be used, not requiring a direct collection of broodstock from the wild each time. The regulated community requested this change as oyster hatcheries often keep offspring of broodstock to grow into broodstock themselves to reduce the impact on wild populations from continuous collections to facilitate production. The department has determined that so long as the offspring have Texas origin genetics there is little danger to the native genetics of Texas oyster populations.

The proposed amendment to paragraph (1) of current subsection (g) extends the time period during which the department may authorize the importation of oysters under certain conditions from other states for use in oyster mariculture operations. The deadline in the current rule was intended to allow permittees to utilize genetically acceptable stock produced outside of Texas within a limited amount of time, after which the department expected all stock to be propagated in Texas facilities using Texas broodstock lineage. Most oysters in the wild are diploid (having two sets of chromosomes); however, triploid (having three sets of chromosomes) oysters are mostly sterile, which makes them desirable for mariculture because they grow significantly faster than diploids and maintain high meat quality year-round, since no energy goes into reproduction. Triploid oysters rarely occur in the wild but can be produced reliably in a hatchery by crossing a diploid female with a tetraploid (four sets of chromosomes) male. However, the development of a Texas lineage tetraploid line has not occurred as quickly as anticipated, which necessitates an extension of the timeline. The proposed amendment also would more explicitly delineate the acceptable types of genetic provenance allowed for triploid oysters that can be lawfully imported to Texas for use in oyster mariculture operations. We specify that the diploid parent must be of Texas origin broodstock to add further insurance to protect genetic identity of Texas oysters.

The proposed amendment also would add new subsection (i), which is relocated from current §58.360(2) but has been reorganized and reworded for clarity. As noted previously in this preamble, §58.360 is proposed for repeal in this rulemaking, as the majority of the text is redundant to General Provisions. The rewording clarifies that the offense of commingling wild-caught oysters with oysters possessed under the provisions of this subchapter means that possession of wild-caught oysters is prohibited within COM Grow-Out sites, within COM Nursery-Hatchery sites (except for legally obtained broodstock), or on a vessel operating under a permit issued under the subchapter.

The proposed amendment would retitle current subsection (l) to reflect the fact that the rule language is being altered to address the harvest of cultivated oysters in general and does not apply solely to size requirements.

The proposed alterations to current paragraph (1) would reduce the minimum size requirements for harvest of cultivated oysters, from 2.5 inches to two inches. The current COM rules stipulate a minimum size limit of 2.5 inches primarily to facilitate field identification by department personnel of cultivated oysters as opposed to cargos of wild oysters. Since the current rules have been in effect, the department has determined that because cultivated oysters can be readily distinguished from wild oysters, the minimum size limit can be reduced, which not only allows cultivated oysters to be marketed more quickly, but also introduces additional market opportunities for the regulated community by creating the opportunity to sell smaller oysters that are popular in certain markets. The proposed amendment additionally creates a five percent allowance for undersized oysters (oysters between 1.5 inches and two inches in length) to acknowledge the inherent difficulty when sorting and harvesting large quantities of oysters to ensure that all of them meet the minimum size limit.

The proposed amendment would revise paragraphs (2) and (3) of current subsection (l) to separate and more clearly state provisions applicable to oysters coming from Nursery-Hatchery sites in or using waters from Unclassified and Prohibited areas from provisions applicable to oysters coming from sites in or using waters from Restricted areas. The provisions give the size by which oysters in Nursery-Hatchery facilities located in or using certain waters (e.g., designated by DSHS as Unclassified, Prohibited, or Restricted) must be moved to waters designated by DSHS as Approved or Conditionally Approved, as well as the minimum length of time the oysters must remain in those waters before harvest. These standards are established by the NSSP. Further, the proposed amendment to paragraph (2) would also provide that oysters of over one inch in length in a Nursery-Hatchery facility located in or using waters from a Restricted area may be moved, but are subject to relay regulation requirements under the NSSP. The proposed amendment would add new paragraph (5) to stipulate explicitly that oysters that are for whatever reasons (e.g., tumbling and sorting) out of the water longer than the limits established by DSHS rule (Time-to-Temperature controls in the Vibrio vulnificus Management Plan for Oysters) must be re-submerged for at least 14 days prior to harvest, which is necessary to conform with NSSP standards intended to protect human health and safety. Finally, proposed new paragraph (4) would clearly establish that it is unlawful to harvest oysters unless both a valid Grow-Out permit and a valid Cultivated Oyster Mariculture Harvest Authorization are possessed, which is necessary to more explicitly align department rules with the NSSP.

The proposed amendment to §58.353 also would alter current subsection (n) to clearly establish that the department will review a permittee's request to add subpermittees to the permit, designate those persons approved for subpermittee status, and may refuse to authorize subpermittees who would not be qualified for permit issuance. The proposed provisions are necessary to ensure that persons authorized to conduct permitted activities in the absence or in lieu of the permittee are identified, qualified to do so, and not otherwise prohibited or ineligible from being a permittee.

The proposed amendment to current subsection (p) would provide for the transfer of permits. Under current rule, COM permits are not transferrable. At the request of the regulated community, the department considers that because the period of validity of a COM permit is ten years and COM activities often result in for-profit commercial ventures, there likely will be scenarios in which the nature of business transactions result in changes in ownership, which could result in disruptive or inconvenient situations resulting from the process of issuing a new permit each time ownership changes. Therefore, the department is persuaded that a mechanism for transferring permits is reasonable and prudent. The proposed amendment would allow for the transfer of a permit upon completion of a transfer request and payment of a $200 transfer fee.

The proposed amendment also would alter the provisions of current subsection (r) to allow required infrastructure gear tags to bear the phone number of the permittee in lieu of the permittee's address.

The proposed amendment to current subsection (s) would consist primarily of clarifying changes to nomenclature. The word "harvest" would replace current language referencing the removal of oysters from permitted facilities, clarify that harvest tagging requirements apply to oysters being delivered and/or sold for human consumption, and that all tagging requirements of the subchapter must be met before oysters leave the permitted area.

Finally, the proposed amendment would alter current subsection (v) to rename the Oyster Seed Transport Document as the Oyster Transport Authorization and allow for transport of oysters to a

temporary location for purposes of tumbling and sorting. These authorizations allow for mechanisms to document permitted activities that transport oysters of various lengths outside of permitted sites, and to account for the possession of undersized oysters. The name change to Oyster Transport Authorization better encompasses what an authorization can cover, (i.e., not just oyster seed). The further proposed alterations better describe the process of requesting an authorization that is then reviewed and issued by the department. As with the current documentation, it would be required to accompany all non-harvest tagged oysters, oyster seed or oyster larvae that are being transported outside of a permitted area. The current documentation requirements (name, address, and if applicable, permit identifier of each permittee from whom the oysters were obtained; name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered; precise accounting for and description of all containers in possession) would remain as is. The proposed amendment also would create a mechanism for oysters to be temporarily relocated outside of a permitted area for tumbling and sorting. A common oyster mariculture practice, tumbling and sorting oysters is a mechanical process that separates oysters according to size. Many permittees perform tumbling and sorting aboard boats on open water in permitted areas; however, wind and wave energy in Texas bay systems often make tumbling and sorting activities unsafe or unfeasible. The regulated community has requested the creation of some sort of mechanism that would allow the transport of oysters to a nearby location (such as a dock or onshore) to tumble and sort oysters. The department has determined that it is reasonable to allow permittees to transport mariculture oysters to shore temporarily for tumbling and sorting, provided that oysters are then returned to the original permitted site prior to harvest and such oysters are not aboard any boat at the same time that oysters tagged for harvest are aboard.

The proposed repeal of §58.354, concerning Oyster Seed Hatchery, is necessary because the provisions of the section are no longer needed in light of other aspects of this rulemaking.

The proposed amendment to §58.355, concerning Permit Application, would alter the subsection to provide for public notice of an application for a permit under the subchapter to be effected via the department's website. The current rule stipulates that the department will "publish notice" of permit applications and hold public meetings, the notices for which are by newspaper publication. Because the Texas coast is lengthy and for the most part consists of small communities, newspaper publication is not as efficient as electronic notification. The department believes it is more efficient to provide all notifications via the department's website and to have the option of conducting the required public meetings virtually or in person.

The proposed amendment to §58.356, concerning Renewal, would alter the current provisions to eliminate confusion that the application fee specified in §53.13(d), concerning Fees, is also the renewal fee, since a submission of a renewal is simply another form of an application.

The proposed repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, is necessary because all department regulations governing such processes were consolidated in 31 TAC Chapter 56 in compliance with the directives of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute and prescribe a similar process regarding agency decisions to suspend or revoke a license or permit affected by the new subchapter.

Hanna Bauer, Policy and Education Team Lead, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be minimal additional fiscal implications to state or local government as a result of administering the rule as proposed, as department personnel currently allocated to the administration and enforcement of the Cultivated Oyster Mariculture Program will continue to administer and enforce the rules as part of their current job duties. The additional implications consist of possible revenue resulting from imposition of the $200 fee imposed by the proposed rules for transfer of a permit. That fee is established at the same cost as the application fee because a transfer request would require an updated application. The fee is based on the administrative cost of implementing a transfer between two parties, which would include the issuance and oversight to determine that all previous provisions of the permit are in compliance at the time of transfer.

Ms. Bauer also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be enhancement and further development of a growing industry, the ecological benefits provided by oysters in public waters, and the production of oysters for public consumption.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

To ensure that this analysis captures every small or micro-business affected by the proposed rules, the department assumes that most, if not all persons who hold a COM permit qualify as small or micro-businesses. Department data indicate that there are currently 17 fully permitted and nine conditionally approved cultivated oyster mariculture sites.

As noted earlier in this preamble, the rules as proposed would implement a $200 fee for transfer of a permit. The price of the fee is meant to recover the administrative costs to the department of recordkeeping, compliance, notifications, and processing.

Several alternatives were considered to achieve the goals of the proposed rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to maintain status quo. This alternative was rejected because the regulated community has requested alteration of the current rules to allow for permit transfers and the department has determined that it is reasonable and practicable to allow permit transfers.

Another alternative was to allow permit transfers at no cost to the permittee. This alternative was rejected because implementing a transfer between two parties, which would include the issuance and oversight to determine that all previous provisions of the per-

mit are in compliance at the time of transfer, will require very similar administrative costs as the original issuance.

The department has determined that the rules as proposed will not result in adverse impacts to rural communities, as the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not directly impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of a fee (by imposing a $200 fee for permit transfers); create a new regulation (by creating a process to transfer a permit); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov; or via the department website at www.tpwd.texas.gov.

SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

31 TAC §§58.352, 58.353, 58.355, 58.356

The amendments are proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed amendments affect Parks and Wildlife Code, Chapter 75.

§58.352. Definitions.

When used in this subchapter, the following words and terms shall have the following meanings, except where the context clearly indicates otherwise. All other words and terms used in this subchapter shall have the meanings assigned by the Parks and Wildlife Code.

(1) Administratively complete--An application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions.

(2) Approved area--As defined by Texas Health and Safety Code, §436.002(1).

(3) Conditionally Approved area--As defined by Texas Health and Safety Code, §436.002(7).

(4) [~~(2)~~] Container--Any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter.

(5) Cultivated Oyster Mariculture Harvest Authorization (harvest authorization)--A yearly authorization to allow the harvest of mariculture oysters.

(6) [~~(3)~~] Cultured oyster mariculture facility (facility)--Any building, cage, or other infrastructure within a permitted area.

(7) [~~(4)~~] Gear tag--A tag composed of material as durable as the device to which it is attached.

(8) Hatchery--A facility that spawns oyster broodstock.

(9) [~~(5)~~] Infrastructure--A building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area.

(10) [~~(6)~~] Larvae--The free-swimming, planktonic life stage of an oyster.

(11) [~~(7)~~] National Shellfish Sanitation Program (NSSP)--The cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services.

(12) [~~(8)~~] Nursery structure--A tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown.

(13) [~~(9)~~] Oyster seed--Shellstock one inch or less in length [~~of less than legal size~~].

(14) [~~(11)~~] Permit Identifier (permit ID)--A unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit.

(15) [~~(10)~~] Permitted area--The geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized.

(16) [~~(12)~~] Permittee--A person who holds a permit issued under this subchapter.

(17) [~~(13)~~] Prohibited Area--As defined by Texas Health and Safety Code, §436.002(27).

(18) [~~(14)~~] Restricted Area--As defined by Texas Health and Safety Code, §436.002(30).

(19) [~~(15)~~] Restricted visibility--Any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes.

(20) [~~(16)~~] Shellstock (stock)--Live eastern oysters (*Crassotrea* virginica) in the shell.

(21) [~~(17)~~] Wild-caught oyster--An oyster harvested from natural oyster beds.

§58.353. General Provisions.

(a) No person may engage in cultivated oyster mariculture (COM) in this state unless they have on their person a valid permit issued by the department authorizing the activity. A valid permit may be possessed in physical or electronic format. [~~that person either:~~]

[~~(1) physically possesses a valid permit issued by the department authorizing the activity; or~~]

[~~(2) is acting as a subpermittee as provided in this subchapter.~~]

(b) A Cultivated Oyster Mariculture (COM) Grow-out Permit authorizes the permittee [~~Permit (COMP) authorizes a person~~] to purchase, receive, grow, and sell cultivated oysters.

(c) A Cultivated Oyster Mariculture (COM) Nursery-Hatchery Permit authorizes a permittee to: [~~A Cultivated Oyster Mariculture Permit--Nursery Only (nursery permit) authorizes a person to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.~~]

(1) hold oyster broodstock and germplasm;

(2) spawn oyster broodstock;

(3) purchase, receive, and grow oyster seed and larvae; and

(4) sell oyster broodstock, germplasm, seed, and larvae; but

(5) does not authorize the sale of oysters in any form for human consumption.

(d) No person may conduct an activity authorized by a permit issued under this subchapter at any location other than the location specified by the permit.

(e) It is unlawful for a permittee or subpermittee to possess an oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter.

(f) [~~(e)~~] The period of validity for a permit issued under this subchapter is 10 years, subject to the limitations of this subchapter.

(g) [~~(f)~~] Unless otherwise specifically authorized in writing by the department, one year from the date of issuance of a COM Grow-Out Permit [~~COMP~~] and by the anniversary of the date of issuance for each year thereafter, the permittee must provide evidence to the department's satisfaction that at least 100,000 oyster seed per acre of permitted area has been planted.

(h) [~~(g)~~] Unless otherwise specifically authorized by the department in writing, cultivated oyster mariculture is restricted to seed and larvae from native Eastern oyster (*Crassostrea* virginica) broodstock collected or originating from [~~in~~] Texas waters and propagated in a permitted Nursery-Hatchery [~~hatchery~~] located in Texas.

(1) The department may authorize a person permitted under this subchapter to, on or before December 31, 2033 [~~December 31, 2027~~], import:

(A) [~~triploid,~~] tetraploid seed, larvae, and/or [~~and or~~] semen/eggs (germplasm) produced in department-approved [~~permitted~~] out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(B) triploid seed, larvae, and/or semen/eggs (germplasm) from a tetraploid line of oysters originating from the Gulf of Mexico crossed with broodstock originating from Texas waters produced in department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(C) [~~(B)~~] diploid seed, larvae, and/or semen/eggs (germplasm) produced from Texas broodstock at department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state.

(2) A department authorization made under the provisions of this subsection must be in writing and provide for any permit conditions the department deems necessary.

(3) The department will not authorize the possession of any oyster, larvae, or oyster seed that the department has determined, in the context of the prospective activity, represents a threat to any native oyster population, including to genetic identity.

(i) It is unlawful to possess wild caught oysters:

(1) within a COM Grow-Out permitted area;

(2) within a COM Nursery-Hatchery permitted area unless:

(A) they are legally obtained;

(B) labeled as to their identity and use for broodstock; and

(C) held separately from cultivated oysters; or

(3) on a vessel operating under a permit issued under this subchapter.

(j) [~~(h)~~] The department may:

(1) inspect any permitted area, facility, infrastructure, container, vessel, or vehicle used to engage in cultivated oyster mariculture;

(2) sample any oyster in a permitted area, facility, container, vessel, or vehicle used to engage in cultivated oyster mariculture in order to determine genetic lineage; and

(3) specify any permit provisions deemed necessary.

(k) [~~(i)~~] The holder of a COM Permit (Grow-out or Nursery-Hatchery) [~~COMP or nursery permit~~] must notify the department within 24 hours of the:

(1) discovery of any disease condition within a permitted area; and

(2) discovery of any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae.

(3) The requirements of this subsection do not apply to the discovery of dermo (Perkinosis, *Perkinsus* marinus).

(l) [~~(j)~~] The department may take any action it considers appropriate, including ordering the removal of all stock and larvae from a permitted area or facility and the cessation of permitted activities, upon:

(1) a determination that a disease condition other than dermo (Perkinsosis, *Perkinsus* marinus) exists; or

(2) the suspension or revocation by a federal or state entity of a permit or authorization required under §58.355 of this title (relating to Permit Application).

(m) [~~(k)~~] The department may order the suspension of any or all permitted activities, including the removal of all stock and larvae from a permitted area or facility, upon determining that a permittee is not compliant with any provision of this subchapter, which suspension

shall remain in effect until the deficiency is remedied and the department authorizes resumption of permitted activities in writing.

(n) [~~(l)~~]Harvest Requirements [~~Size limit~~].

(1) No person may harvest for the purpose of delivery and/or sale for human consumption any oyster less than 2.0 inches in length (measured along the greatest length of the shell) from a COM Grow-Out permitted area; however, a cargo of oysters may contain oysters between 1.5 inches and 2 inches (measured along the greatest length of the shell), provided such oysters constitute five percent or less of the cargo in question.

(2) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Prohibited or Unclassified must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 120 days before harvest.

(3) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Restricted must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 60 days before harvest. Oysters greater than one inch may be transferred from these facilities but are subject to relay regulation requirements under the NSSP.

(4) Oysters that are out of the water for a time period exceeding the parameters specified by the Time-to-Temperature controls established by DSHS in 25 TAC §241.68, relating to *Vibrio* vulnificus Management Plan for Oysters, must be re-submerged for a minimum of 14 days prior to harvest. Records regarding re-submergence must be maintained in accordance with permit provisions.

(5) It is unlawful for a permittee to harvest oysters under this subchapter unless they have a Grow-Out permit and a Cultivated Oyster Mariculture Harvest Authorization.

[~~(1) No person may remove or cause the removal of any oyster less than 2.5 inches in length (measured along the greatest length of the shell) from a COMP permitted area.~~]

[~~(2) Oysters greater than one inch in length (as measured along the greatest length of the shell) produced under a nursery permit in waters classified as a Restricted Area must be transferred to a DSHS-approved depuration area and held in that depuration area for a minimum of 120 days before harvest.~~]

[~~(3) No person may remove or cause the removal of oysters obtained by a COMP from a nursery facility located in waters classified as a Prohibited or Restricted Area until a minimum of 120 days following the date of transfer to the COMP.~~]

(o) [~~(m)~~] Harvest of oysters under this subchapter is unlawful between sunset and [~~30 minutes after~~] sunrise.

(p) [~~(n)~~] Except as may be specifically provided otherwise in this section, activities authorized by a permit issued under this subchapter shall be conducted only by the permittee or subpermittees [~~subpermittee~~] named on the permit.

(1) A permittee may designate subpermittees to perform permitted activities in the absence of the permittee.

(A) The permittee shall submit a subpermittee request on a form provided by the department that is signed and dated by both the permittee and subpermittee.

(B) The department will review the request and issue a list of individuals authorized as subpermittees.

(C) The department may refuse to approve a subpermittee if that person would not be eligible to be a permittee under this subchapter.

(2) At all times that a subpermittee is conducting permitted activities, the subpermittee shall have[~~possess~~] on their person a valid permit and subpermittee list in physical or electronic format.[~~:~~]

[~~(A) a legible copy of the appropriate permit under which the activity is being performed; and~~]

[~~(B) a completed subpermittee authorization. The subpermittee authorization shall be on a form provided or approved by the department and shall be signed and dated by both the permittee and the subpermittee.~~]

(3) It is an offense for a permittee to allow any permitted activity to be performed by a person not listed with the department as a subpermittee as required under this subsection.

(4) A permittee and subpermittee are jointly liable for violations of this subchapter or the provisions of a permit issued under this subchapter.

(q) [~~(o)~~] A permittee shall, prior to the placement of any infrastructure within a permitted area located in or on public water:

(1) mark the boundaries of the permitted area with buoys or other permanent markers and continuously maintain the markers until the termination of the permit. All marker, buoys, or other permanent markers must:

(A) be at least six inches in diameter;

(B) extend at least three feet above the water at mean high tide;

(C) be of a shape and color that is visible for at least one half-mile under conditions that do not constitute restricted visibility; and

(D) be marked with the permit identifier assigned by the department to the permitted area, in characters at least two inches high, in a location where it will not be obscured by water or marine growth; and

(2) install safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.) [~~must be installed~~] and must be functional. A permittee shall repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department.

(r) [~~(p)~~] Transfer of Permit. The department may approve the transfer of a permit. [~~Permits shall not be transferred or sold.~~]

(1) A transfer request must be submitted to the department for approval on a form provided by the department, accompanied by the application fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

(2) The department may refuse to approve a transfer if that person would not be eligible to be a permittee under this subchapter.

(3) A transfer does not change the terms, conditions, or provisions of a permit.

(s) [~~(q)~~] Permittees must remove, at the expense of the permittee, all containers, enclosures, and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation.

(t) [(r)] A valid gear tag must be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear the name and either address or phone number of the permittee and the permit identifier of the permitted area. The information on a gear tag must be legible.

(u) [(s)] It is unlawful for any person to harvest [remove or cause the removal of] oysters from a COM Grow-Out [COMP] area for purposes of delivery and/or [and] sale for human consumption unless the oysters are in a container that has been tagged in accordance with the applicable provisions of the NSSP concerning shellstock identification, and this subchapter. Tagging must occur prior to leaving the permitted area. [In addition to the tagging requirements imposed by the NSSP, the tag must clearly identify the destination, by permit identifier and/or business name and physical address, to which the shellstock is to be delivered.]

(v) [(t)] Except as provided by subsection (u) [(s)] of this section for harvested oysters transported for delivery and/or [and] sale for human consumption, it is unlawful for any person to possess oysters, oyster seed, or oyster larvae outside of a permitted area unless the person also possesses a department-issued Oyster Transport Authorization or the department has authorized in a permit provision the transport of oysters for tumbling and sorting: [completed Oyster Seed Transport Document.]

(1) [An] Oyster [Seed] Transport Authorization. [Document must:]

(A) An Oyster Transport Request must be submitted to the department prior to the proposed transport date and:

(i) be on a form provided or approved by the department;

(ii) [(B)] contain the name, address, and, if applicable, permit identifier [of each person] from whom the oysters, oyster seed, or oyster larvae were [was] obtained;

(iii) [(C)] contain the name, address, and permit identifier [of each permittee] to whom the oyster, oyster seed, or oyster larvae are [is] to be delivered; and

(iv) [(D)] precisely account for and describe all containers in possession.

(B) [(2)] The department will review the request and, if approved, will issue an Oyster Transport Authorization specific to the oysters, oyster seed, or oyster larvae being transported. [Each Oyster Seed Transport Document shall bear a numeric or alphanumeric unique identifier supplied by the permittee. Identifiers under this subsection must be systematic and sequential and no identifier may be used more than once.]

(2) Permit Provision Authorization for Tumbling and Sorting outside of permitted area

(A) The department may authorize, within a permit's provisions, a permittee to transport oysters to a specified location outside of their permitted area for tumbling and sorting oysters.

(B) Oysters must be returned to the permitted area after tumbling and sorting before harvest.

(C) It is unlawful to transport oysters for tumbling and sorting while in possession of oysters tagged for harvest.

(w) [(u)] A vessel used to engage in activities regulated under this subchapter shall prominently display an identification plate supplied by the department at all times the vessel is being used in such activities.

§58.355. Permit Application.

(a) An applicant for a permit under this subchapter must submit an administratively complete application to the department. The department will not review an application that is not administratively complete.

(b) The department will place notification on the departmental website [publish notice] of the application for a permit under this subchapter and provide opportunity for public comment. The department will consider all public comment relevant to matters under the jurisdiction of the department.

(c) For proposed facilities that will be within or partially within public water, the department will hold a public meeting virtually or in person in the city or municipality closest to the proposed permitted area and provide an opportunity for [to take] public comment on the proposed project. The department will publish notice of the public meeting on the departmental website at least two weeks prior to the meeting[, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area. Costs of newspaper notice are the responsibility of the applicant and no permit will be issued until the department has received payment for the required notice].

(d) An application for a permit under this subchapter shall be accompanied by the applicable permit fee established in §53.13 of this title (relating to Business License and Permits (Fishing)).

(1) The department shall assess a nonrefundable annual fee based on the size of the permitted area for which a COM Grow-Out or Nursery-Hatchery [COMP or nursery] permit is issued. The fee is as specified under §53.13 of this title [for a COMP].

(2) For Nursery-Hatchery [nursery] structures located on public waters, a surcharge in addition to the fee imposed by paragraph (1) of this subsection shall be assessed as specified under §53.13 of this title.

(3) The fees established in this subsection may [shall] be recalculated at three-year intervals [beginning on the effective date of the permit] and proportionally adjusted to any change in the Consumer Price Index.

(4) The fees established by this subsection are due annually by the anniversary of the date of permit issuance.

§58.356. Renewal.

The department may renew a permit under this subchapter, provided the permittee has submitted an administratively complete application for permit renewal on a form provided or approved by the department, accompanied by the application [permit renewal] fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

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 September 23, 2024.

TRD-202404553
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 389-4775

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31 TAC §§58.354, 58.359, 58.360

The repeals are proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed repeals affect Parks and Wildlife Code, Chapter 75.

§58.354. Oyster Seed Hatchery.

§58.359. Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision.

§58.360. Prohibited Acts.

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

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For further information, please call: (512) 389-4775

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CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

31 TAC §61.21

The Texas Parks and Wildlife Department (the department) proposes an amendment to 31 TAC §61.21, concerning Contracts for Public Works. The proposed amendment would delegate authority to the executive director of the department to award "job order contract" jobs, tasks, and purchase orders in excess of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects. The proposed amendment would also delegate authority to the department's Infrastructure Division director and deputy director for awards in excess of $500,000 but not more than $1,000,000.

Under Parks and Wildlife Code, §11.0171, the commission is required to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts for project management, design, bid, and construction administration consistent with Subchapter A, Chapter 2254, Government Code.

Under Government Code, §2269.401, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. Government Code, §2269.403, requires the governing body of a governmental entity to approve each job, task, or purchase order under a blanket job order contract that exceeds $500,000 in value. The legislature established the statutory threshold of $500,000 years ago. Since then, the planning, procurement, and construction costs for maintenance activities have increased to the extent that projects in excess of $500,000 in value are now numerous and commonplace. Government Code, §2269.053, provides that a governing body of a governmental entity may delegate its authority under Chapter 2269 regarding an action authorized or required by that chapter to a designated representative, committee, or other person. To reduce the amount of time for project delivery, staff seeks an alternative to the cumbersome and time-consuming process of presenting every minor construction/repair project to the commission for funding approval.

Proposed new §61.21(c) would delegate authority to the executive director of the department to award job order contract jobs, tasks, and purchase orders of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects.

Proposed new 61.21(d) would delegate authority to the division director and deputy division director to award job order contract jobs, tasks, and purchase orders in excess of $500,000 but no more than $1,000,000 under the provision of Government Code, Chapter 2269, Subchapter I to qualifying projects.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the proposed rule will be more efficient administrative processes relating to construction and maintenance contracting, which in turn will result in faster completion of projects that benefit the public.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic effects" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits;

changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that the rule as proposed will not affect small businesses, micro-businesses, or rural communities, since the rule does not impose any direct economic impacts on any business or community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand, limit, or repeal an existing regulation; not increase the number of individuals subject to regulation; and neither positively nor adversely affect the state's economy.

Comments on the proposed rule may be submitted to Darrell Owens, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4660; email: darrell.owens@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts, and Government Code §2269.053, which authorizes the governing body of a governmental entity to delegate by rule its authority to approve job order contract jobs, tasks, or purchase orders that exceed $500,000.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§61.21. Authority to Contract.

(a) The department shall solicit, evaluate, negotiate, select, and award contracts for construction projects by means of a fair and impartial method as authorized by applicable law and department policy.

(b) The department shall ensure that any method used to solicit, evaluate, select, and award a contract for construction results in the best value for the department.

(c) The executive director of the department is authorized to award job order contract jobs, tasks, and purchase orders in excess of $1,000,000 under the provisions of Government Code, Chapter 2269, Subchapter I, for any qualifying project.

(d) The director and deputy director of the department's Infrastructure Division are authorized to award job order contract jobs, tasks, and purchase orders in excess of $500,000 but not more than $1,000,000 under the provisions of Government Code, Chapter 2269, Subchapter I, for any qualifying project.

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 September 23, 2024.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts proposes the repeal of §9.4037, concerning the use of electronic communications for transmittal of property tax information. The comptroller repeals existing §9.4037 to replace it with new §9.4037. The repeal of §9.4037 will be effective the date the new Rule §9.4037 takes effect.

Tetyana Melnyk, Director of Revenue Estimating Division, 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.

Ms. Melnyk 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 conforming the rule to current statute. There would be no anticipated significant 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 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*.

This repeal is proposed under Tax Code, §1.085, which provides the comptroller with the authority to prescribe a form, to

adopt rules relating to acceptable media, formats, content, and methods for the electronic delivery of communications under Tax Code, Title 1, and to adopt guidelines for tax officials to implement the form and rules.

The repeal implements Tax Code, §1.085.

§9.4037. Use of Electronic Communications for Transmittal of Property Tax Information.

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 September 23, 2024.

TRD-202404563
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 475-2220

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34 TAC §9.4037

The Comptroller of Public Accounts proposes new §9.4037, concerning electronic delivery of communications between tax officials and property owners. The new section replaces existing §9.4037, concerning use of electronic communications for transmittal of property tax information, which the comptroller is proposing to repeal. New §9.4037 implements House Bill 1228, 88th Legislature, R.S., 2023, which amended Tax Code, §1.085 (Electronic Delivery of Communication), allowing a property owner or person designated by the property owner to elect to exchange communications with a tax official electronically.

Subsection (a) describes when electronic communications are required.

Subsection (b) lists acceptable methods and formats for electronic communications.

Subsection (c) describes the required form for electing electronic communications.

Subsection (d) describes the guidelines for implementation of this section by tax officials.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed new 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.

Ms. Melnyk also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new 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 new 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.*

This section is proposed under Tax Code, §1.085 (Electronic Delivery of Communication), which provides the comptroller with the authority to prescribe by rule acceptable media, formats, content, and methods for the electronic delivery of communications, adopt guidelines for implementation and prescribe a form. The form and guidelines will not be adopted by reference, but are available for review on the comptroller's website at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

This section implements Tax Code, §1.085 (Electronic Delivery of Communication).

§9.4037. Electronic Delivery of Communications between Tax Officials and Property Owners.

(a) Electronic Delivery of Communications. A communication that is required or permitted by Tax Code, Title 1 (Property Tax Code) to be delivered between a tax official and a property owner or a person designated by a property owner under Tax Code, §1.111(f) shall be delivered electronically if the property owner or person designated by the owner elects to exchange communications with the tax official electronically under Tax Code, §1.085.

(b) Media, Formats, Content and Methods. The tax official shall implement a process for the receipt and delivery of electronic communications with property owners or persons designated by property owners using any electronic format, which may include the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), and other paperless means of communication.

(c) Request for Electronic Delivery. A property owner or person designated by a property owner under Tax Code, §1.111(f) must make the election by submitting the form prescribed by the comptroller to the applicable tax official(s) in the county where the property is located. A tax official must post on their website method(s) property owners can use to submit the form. The election remains in effect until rescinded in writing by the property owner or the person designated by the owner under Tax Code, §1.111(f).

(d) Guidelines. The Comptroller of Public Accounts will publish and periodically revise the Guidelines for Electronic Communications. Current guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division website at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

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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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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SUBCHAPTER M. LOCAL GOVERNMENT RELIEF FOR DISABLED VETERANS EXEMPTION

34 TAC §9.4323

The Comptroller of Public Accounts proposes amendments to §9.4323, concerning application. The comptroller amends the section to add an option for supporting documentation provided with applications.

The comptroller adds new subsection (b)(2)(C) to provide an option allowing an applying city or county to provide certified documentation from an internal auditor or financial officer.

Tetyana Melnyk, Director of Revenue Estimating Division, 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.

Ms. Melnyk 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.*

This amendment is proposed under Local Government Code, §140.011(i), which requires the comptroller to adopt rules necessary to implement Local Government Code, §140.011 (Local Governments Disproportionately Affected by Property Tax Relief for Disabled Veterans).

This amendment implements Local Government Code, §140.011 (Local Governments Disproportionately Affected by Property Tax Relief for Disabled Veterans).

§9.4323. Application.

(a) In order to receive payment under this subchapter, an applicant must submit a completed application. The completed application must be received no earlier than February 1 nor later than April 1 of the year following the end of a fiscal year for which the applicant is seeking a payment under this subchapter.

(b) A completed application must include the following items:

(1) A map showing that:

(A) if the applicant is a municipality, the municipality is adjacent to a United States military installation; or

(B) if the applicant is a county, a United States military installation is wholly or partly located within that county.

(2) Documentation to substantiate the sources and amounts of general fund revenues listed on the application. That documentation must be:

(A) an independent audit covering the fiscal year for which the applicant is requesting payment; [~~or~~]

(B) a comprehensive annual financial report covering the fiscal year for which the applicant is requesting payment; or [.]

(C) documentation from the applicant's internal auditor or financial officer certifying that the information submitted is true and correct to the best of their knowledge.

(3) If the documentation listed in paragraph (2)[~~(A) or (B)~~] of this subsection does not substantiate all of the sources and amounts of general fund revenues listed on the application, the applicant must submit additional documentation to substantiate the sources and amounts of general fund revenue which is certified by a city, county or independent auditor.

(4) Documentation to substantiate the exemption amount.

(5) Documentation to substantiate the property tax rate adopted by the applicant for the tax year in which the fiscal year for which the applicant is requesting payment begins.

(c) Documentation submitted with the application under subsection (b)(2) - (5) of this section must be highlighted for easy identification of the following values:

(1) the specific total for each general fund revenue source;

(2) the adopted property tax rate; and

(3) the total exemption amount.

(d) The application must be submitted on the comptroller prescribed form. The method in which the application is submitted must conform to the instructions in the comptroller prescribed form.

(e) The application must be signed by an official of the local government that is authorized to bind the local government. The local official must certify that all information in the application is true and correct.

(f) The applicant is responsible for verifying receipt by the comptroller of the completed application and any information requested under §9.4325 of this title (relating to Review by Comptroller).

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §§817.2, 817.5 and 817.6

Subchapter B. Limitations on the Employment of Children, §817.22 and §817.24

Subchapter C. Employment of Child Actors, §817.31 and §817.32

TWC proposes the following new subchapter to Chapter 817, relating to Violations and Administrative Penalties:

Subchapter D. Violations and Administrative Penalties, §§817.34 - 817.36

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 817 is to address statutory changes enacted by House Bill (HB) 2459, 88th Texas Legislature, Regular Session (2023); clarify definitions and terms under Texas Labor Code, Chapter 51; provide policy clarifications; and make other technical corrections.

Prior to the enactment of HB 2459, only employers had appeal rights relating to child labor preliminary determination orders or child labor appeal tribunal decisions. HB 2459 repealed and replaced several sections of Texas Labor Code, Chapter 51, and amended Texas Labor Code §301.0015 to establish Commission review of child labor appeal tribunal orders. The administrative hearings process in Texas Labor Code, Chapter 51, now mirrors the process in Texas Labor Code, Chapter 61. TWC is taking the opportunity to use its policy function to provide additional clarity to employers regarding how inspections and penalties operate under Texas Labor Code, Chapter 51, along with technical cleanup.

Rule Review

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to readopt Chapter 817 as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§817.2. Definitions

Section 817.2(1) adds a definition for Agency.

Section 817.2(8) adds a definition for Commission.

Section 817.2(12) modifies the definition of Employer from an entity to a person to be consistent with Texas Labor Code §51.002.

Section 817.2(14) adds a definition for Employs.

§817.5. Certificate of Age

Section 817.5(a)(1) is amended to clarify that applicants must use the TWC-provided application form.

§817.6. Appeals

Section 817.6 is amended to clarify that hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in TWC Chapter 815 Unemployment Insurance.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

TWC proposes the following amendments to Subchapter B:

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.22 is amended to clarify the roles of the Agency and Commission.

§817.24. Limitations on the Employment of Children to Solicit

Section 817.24 is amended to clarify the roles of the Agency and its Wage and Hour Department.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

TWC proposes the following amendments to Subchapter C:

§817.31. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.31 is amended to clarify the roles of the Agency and Commission.

§817.32. Application Exceptions

Section 817.32 is amended to clarify the roles of the Agency and Commission.

SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTY

The Commission proposes new Subchapter D as follows:

New Subchapter D, regarding violations and administrative penalties, provides clarification regarding TWC's interpretation of the enforcement provisions in Texas Labor Code, Chapter 51.

§817.34. Violations

New §817.34 clarifies the requirements to establish a violation under Texas Labor Code, Chapter 51, or this chapter. While an offense under Texas Labor Code, Chapter 51, includes a culpability requirement, a violation that may lead to an administrative penalty does not include a required culpability. As such, an offense will always be a violation, but a violation will not always be an offense. This section also clarifies that TWC has jurisdiction over child labor violations for the two-year period preceding the inspection, as established under Texas Labor Code §51.021, and jurisdiction over violations by a sexually oriented business for a five-year period preceding an inspection under Texas Labor Code §51.016. The new section also clarifies that TWC has jurisdiction to impose an administrative penalty for child labor violations that occurred during the two-year period even if the child is no longer working for the employer at the time the administrative penalty is imposed.

§817.35. Inspection; Collection of Information; Hinderance

New §817.35 clarifies the places that TWC may inspect by defining the basis that can be used to establish good reason to believe a violation has occurred and addresses TWC's authority to request records concerning the employment of a child. This sec-

tion also specifies what actions are considered a hinderance to an inspection and a violation under Texas Labor Code, Chapter 51, and this chapter.

§817.36. Administrative Penalty

New §817.36 provides clarification regarding TWC's interpretation of the administrative penalty factors under Texas Labor Code §51.033 and requires the Commission to adopt a penalty matrix.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement the statutory changes in HB 2459, particularly the Commission's review of child labor appeal tribunal decisions, and to clarify the TWC's enforcement of the child labor protections in Texas Labor Code, Chapter 51.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide better clarity regarding the enforcement of Texas Labor Code, Chapter 51.

PART IV. COORDINATION ACTIVITIES

HB 2459 amended Texas Labor Code, Chapter 51, to establish Commission review of child labor appeal tribunal orders. The proposed rule amendments clarify the rules and make technical corrections to align with the changes made to the Texas Labor Code. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 4, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§817.2, 817.5, 817.6

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings.

(1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system; administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended; and enforce child labor protections under Texas Labor Code, Chapter 51.

(2) [~~(1)~~] Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.

(3) [~~(2)~~] Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.

(4) [~~(3)~~] Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.

(5) [~~(4)~~] Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.

(6) [~~(5)~~] Child--An individual under 18 years of age.

(7) [~~(6)~~] Child actor--A child under the age of 14 who is to be employed as an actor or other performer.

(8) [~~(7)~~] Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.

(9) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The duties of the Commission include reviewing the decision of a child labor appeal tribunal under Subchapter D, Chapter 51, of the Texas Labor Code. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(10) [~~(8)~~] Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.

(11) [~~(9)~~] Employee--An individual who is employed by an employer for compensation.

(12) [~~(10)~~] Employer--A person [~~An entity~~] who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.

(13) [~~(11)~~] Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.

(14) Employs--To suffer or permit to work.

(15) [~~(12)~~] Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.

(16) [~~(13)~~]Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

§817.5. Certificate of Age.

(a) To request a certificate of age, an applicant must submit the following:

(1) a completed application on a form provided by the Agency [~~Commission~~];

(2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1 1/2 inches, showing a full head shot of the applicant; and

(3) proof of age. A copy of one of the following documents is required as proof of age:

(A) birth certificate;

(B) baptismal certificate showing the date of birth;

(C) life insurance policy insuring the life of the child and reflecting the date of his or her birth;

(D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or

(E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent, guardian, or person having custody of the child as to the age of the child, and [~~also~~] a certificate signed by a physician specifying his or her opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his or her opinion concerning age is based.

(b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

§817.6. Appeals.

Hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter [~~the Unemployment Insurance Rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Child Labor Rules~~] or under Texas Labor Code, Chapter 51.

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 B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §817.22, §817.24

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old [~~14 and 15 Year Old~~] Children.

(a) An applicant applying for a hardship waiver from the limitations on hours worked for 14- and 15-year-old [~~14 and 15 year old~~] children must obtain a certificate of age under the provisions of §817.5 of this chapter [~~title (relating to Certificate of Age)~~] and file a hardship application. The applicant may file both applications concurrently.

(b) A hardship application must contain:

(1) full details of the prospective employment and the proposed hours to be worked;

(2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;

(3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and

(4) a written statement from the prospective employer. The prospective employer's statement shall provide:

(A) that the child will be employed; and

(B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.

(c) A hardship application may contain any other information the applicant believes would support granting [~~the granting of~~] the waiver.

(d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.

(e) After all pertinent information has been reviewed by the Agency [~~Commission~~], the waiver will be granted or denied. If additional information is needed before a decision is made, the Agency [~~Commission~~] may gather additional facts and schedule a conference to review the merits of the application with interested persons.

(f) At any conference, the Agency [~~Commission~~] will be represented by an employee designated by the executive director, who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Agency [~~Commission~~] as soon as practicable. No appeal to the Commission [~~Commissioners~~] is authorized.

(g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

§817.24. Limitations on the Employment of Children to Solicit.

(a) A person may not begin the employment of a child to solicit as defined in Texas Labor Code §51.0145 and as described in §817.4(b) of this chapter [~~Chapter (relating to Statement of Commission Intent)~~], until the Agency's Wage and Hour [~~Commission's Labor Law~~] Department has received:

(1) a copy of the signed Parental Consent Form approved by the Agency [~~Commission~~]; and

(2) the information required by statute to be provided to the individual who gives consent.

(b) A copy of the Parental Consent Form may be obtained from the Agency's Wage and Hour [~~Commission's Labor Law~~] Department.

(c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

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

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SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

40 TAC §817.31, §817.32

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.31. Child Actor Authorization.

(a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this subchapter.

(b) Every person applying for child actor authorization must submit:

(1) an application for authorization on a form provided by the Agency [~~Commission~~] and signed by a parent, guardian, or person having custody of the child;

(2) proof of age; and

(3) a photograph that complies with §817.5 of this chapter [~~title (relating to Certificate of Age)~~].

(c) An authorization is effective when issued and expires when the child reaches 14 years of age[~~,~~] unless the Agency [~~Commission~~] establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

§817.32. Application Exceptions.

(a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:

(1) communicates with the Agency [~~Commission~~] prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;

(2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;

(3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;

(4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and

(5) submits a written post-production report to the Agency [~~Commission~~], within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this chapter [~~(relating to Child Labor)~~].

(b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:

(1) the child reaches age 14;

(2) the child receives a Child Actor Authorization;

(3) the parent, guardian, or person having custody of the child revokes consent in writing; or

(4) the child's employment on the particular project by that employer ends.

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 Workforce Commission
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SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTIES

40 TAC §§817.34 - 817.36

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

§817.34. Violations.

(a) An offense under Texas Labor Code, Chapter 51, is criminal conduct and includes a requirement of culpability per Texas Penal Code, Chapter 6.

(b) A person commits a violation by failing to adhere to a requirement or restriction of Texas Labor Code, Chapter 51, or this chapter. A person may commit a violation and an offense for the same activity. A violation under Texas Labor Code, Chapter 51, is administrative in nature and not criminal conduct and does not include a requirement of culpability.

(c) An inspection may result in multiple violations, each with a penalty amount not to exceed $10,000.

(d) The Agency has jurisdiction over violations that occurred during the five-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.016.

(e) The Agency has jurisdiction over violations that occurred during the two-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.021.

§817.35. Inspection; Collection of Information; Hinderance.

(a) The Agency has authority to inspect, request proof or records, and collect information under Texas Labor Code §51.016 and §51.021.

(b) Per §51.016(h), the Agency has good reason to believe that an individual younger than 21 years of age is employed, has been employed, or has entered into a contract for the performance of work or the provision of service with a sexually oriented business based upon complaints, observations, or information obtained from law enforcement or the attorney general.

(c) Per §51.021, during working hours, the Agency, or its designee, may inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years. The Agency may consider location, historical data, industry characteristics, complaints, trends, or observations when determining whether good reason to believe a child is or has been employed exists.

(d) Per §51.021, during working hours, the Agency, or its designee, may collect information concerning the employment of a child who works, or within the last two years has worked, at a place inspected under Texas Labor Code §51.021(a)(1). The Agency may require the person to produce any records necessary to properly administer Texas Labor Code, Chapter 51, or this chapter.

(e) A person commits a violation under §51.021(b) if the person resists, delays, or obstructs the Agency's inspection or collection of information under this section, which includes, but is not limited to, preventing access to a place, failing to timely provide to the Agency requested information, or destroying records to obscure a violation.

§817.36. Administrative Penalties.

(a) The Commission shall adopt a penalty matrix that will be used to determine the amount of an administrative penalty under Texas Labor Code §51.033.

(b) When evaluating "the seriousness of the violation" under Texas Labor Code §51.033, the Commission will consider the level of risk of injury or death to a minor.

(c) When evaluating "the history of previous violations" under Texas Labor Code §51.033, the Commission will look at an employer's pattern or practice of violations.

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 844. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

The Texas Workforce Commission (TWC) proposes new Chapter 844, relating to Prohibited Coronavirus Vaccine Mandates by Private Employer, comprising the following subchapters:

Subchapter A. General Provisions, §844.1 and §844.2

Subchapter B. Complaints, §§844.25 - 844.30

Subchapter C. Determinations, §§844.50 - 844.55

Subchapter D. Administrative Hearings and Judicial Review, §§844.75 - 844.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Chapter 844 is to establish rules as required by Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

SB 7 prohibits employers from taking adverse actions against applicants, employees, or contractors based on a refusal to be vaccinated against COVID-19. If an adverse action was taken by an employer against an applicant, employee, or contractor, the applicant, employee, or contractor can file a complaint and TWC will investigate. An employer who is determined to have taken a prohibited adverse action is subject to an administrative penalty unless the employer takes reasonable efforts to make the complainant whole. SB 7 also allows TWC to recover the reasonable cost of investigation when it is determined that the employer took a prohibited adverse action.

Chapter 844 rules address the requirements for and methods of submitting a complaint. The chapter also establishes an appeal procedure to provide parties notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes new Subchapter A, General Provisions, as follows:

§844.1. Purpose

New §844.1 defines the purpose of the Chapter 844 rules.

§844.2. Definitions

New §844.2 defines "Adverse Action," "Agency," "Complainant," "Complaint Form," "Contractor," "COVID-19," "Day," "Department," "Employee," "Employer," "Governmental Entity," "Party," and "Person." The definition of Employee would include an individual who seeks admission to or is employed under a medical residency program in Texas.

SUBCHAPTER B. COMPLAINTS

TWC proposes new Subchapter B, Complaints, as follows:

§844.25. Complaint Requirements

New §844.25 establishes the requirements and method to file a complaint. Complaints must be filed online within 90 days of the adverse action and must provide the name of the complainant, name of the employer, and the nature and description of the adverse action. The complainant must also declare that the information provided in the complaint is true and correct.

§844.26. Valid Complaints

New §844.26 addresses issues concerning the validity of a complaint. These issues include that the adverse action must have occurred after the effective date of SB 7, that the employer is not a governmental entity, and that the complaint is not duplicative of a prior complaint. All references to days in this chapter mean calendar days.

§844.27. Jurisdiction

New §844.27 defines when employers are subject to TWC's jurisdiction under this Chapter as it relates the connection of the work, complainant, and employer to Texas.

§844.28. Dismissal

New §844.28 allows TWC to dismiss complaints that are incomplete or do not meet the requirements of §844.26. Dismissed complaints can be refiled by the complainant within 30 days of the dismissal.

§844.29. Adverse Action

New §844.29 provides context to the definition of adverse action by further addressing the reasonable person standard. Examples of an adverse action include, but are not limited to, termi-

nating an employee, terminating a contractual relationship, demoting an employee, reducing pay or compensation, not hiring an employee, not offering a contract for a contract position, or a reduction in hours not related to a business need. When determining whether an employer's action was an adverse action, the Agency will consider the employer's good faith attempt to comply with a legal obligation as evidence that the employer's action would not be considered by a reasonable person to be for the purpose of punishing, alienating, or otherwise adversely affecting a complainant.

§844.30. Investigation of Complaints in Health Care

New §844.30 requires TWC to consult with the Texas Department of State Health Services (DSHS) when a complaint against a health care facility, health care provider, or physician concerns a policy that requires the use of protective medical equipment to determine if the policy is reasonable. Section 844.30 also requires TWC and DSHS to enter an MOU to facilitate coordination.

SUBCHAPTER C. DETERMINATIONS

TWC proposes new Subchapter C, Determinations, as follows:

§844.50. Preliminary Determination Order, Determination on Remedial Action, and Penalty and Cost Order

New §844.50 defines the procedures for issuing a determination after the investigation is complete. A preliminary determination order will be mailed to each party informing them whether TWC found a violation, which would require the imposition of an administrative penalty, and whether TWC will seek to recover investigative costs from the employer. SB 7 prescribes the administrative penalty amount of $50,000 for each violation and did not provide TWC with discretionary authority to adjust the penalty amount. The preliminary determination order would inform the parties of appeal rights and the employer's ability to take remedial action to avoid the administrative penalty. If an employer completes remedial action and submits proof of remedial action within 30 days of a preliminary determination order or decision, TWC will issue a determination on remedial action, which is an appealable document. Once the determination or decision is final, a penalty and cost order will be issued instructing the employer to make payment to TWC. If an employer fails to make payment in accordance with the penalty and cost order, TWC will refer the amount to the Office of the Attorney General in accordance with Texas Government Code §2107.003 as well as reporting the indebtedness to the Texas Comptroller of Public Accounts under the warrant hold provisions in Texas Government Code §403.055(f).

§844.51. Remedial Action

New §844.51 establishes how an employer may take remedial action, in accordance with Texas Health and Safety Code §81D.006, to avoid the imposition of an administrative penalty. The section also defines acceptable proof of a remedial action and the method for submitting proof of remedial action, which must be submitted within 30 days of a preliminary determination order.

§844.52. Investigative Costs

New §844.52 addresses when TWC may seek to recover the reasonable costs of an investigation.

§844.53. Corrected Determinations

New §844.53 allows TWC to issue corrected determinations or decisions to correct an error including an incorrect address for a party.

§844.54. Withdrawal of Complaint

New §844.54 allows a complainant to withdraw a complaint before the preliminary determination order becomes final.

§844.55. Appeal and Determination Finality

New §844.55 establishes that a party can file an appeal to a determination within 30 days of the mailing date of the determination by submitting a written appeal by mail, fax, or other method approved by TWC on the preliminary determination order.

SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

TWC proposes new Subchapter D, Administrative Hearings and Judicial Review, as follows:

§844.75. Administrative Hearings

New §844.75 states that an administrative hearing will be conducted by the Agency's Special Program Appeals department by electronic means.

§844.76. Parties

Under new §844.76, the parties to the hearing are the complainant, the employer and TWC.

§844.77. Hearing Scheduling and Notice

New §844.77 prescribes the procedures for scheduling and issuing a hearing notice upon the receipt of an appeal. The section states what information must be included in the hearing notice.

§844.78. Representation

New §844.78 allows parties to be represented by an attorney or other individual of their choice.

§844.79. Ex Parte Communications

New §844.79 prohibits ex parte communications without notice and an opportunity for all parties to participate.

§844.80. Hearing Procedures

New §844.80 establishes hearing procedures for the administrative hearing including general procedures and procedures for evidence, witnesses, exchange of exhibits, and maintaining the hearing record.

§844.81. Postponement and Continuance

New §844.81 addresses situations when the hearing can be postponed or continued.

§844.82. Default

New §844.82 describes the procedures when a party fails to appear for the hearing and for a non-appearing party to file a motion to set aside the default.

§844.83. Timeliness

New §844.83 establishes the timeliness guidelines for this chapter including address changes, dating of appeal documents, and the evidence required to overcome the presumption of receipt.

§844.84. Withdrawal of an Appeal

New §844.84 allows a party to withdrawal an appeal before the hearing officer's decision is final.

§844.85. Decision

New §844.85 states that the hearing officer's decision must be issued in writing as soon as possible after the hearing closes; states the information that must be included in the decision; and states that the decision must be mailed to the parties or their representatives. A decision can be reopened if the employer submits a notice to the hearing officer within 14 days of the mailing date of the decision that the employer intends to take remedial action. The employer would then have 30 days to submit proof of remedial action.

§844.86. Finality of Decision

New §844.86 states that the hearing officer's decision becomes final 14 days after the date the decision is mailed unless before that date the hearing officer reopens the decision, a party files a timely appeal, or the commission decides to remove the case to itself.

§844.87. Commission

New §844.87 sets forth the Commission's duties under this chapter, including which member of the Commission shall serve as chair when the Commission acts under this chapter.

§844.88. Removal of Order Pending Before a Hearing Officer

New §844.88 allows the Commission to remove a pending hearing to itself.

§844.89. Commission Review of Hearing Officer Order

New §844.89 establishes that the Commission may affirm, modify, or set aside a penalty order on the basis of previously submitted evidence or direct the taking of additional evidence.

§844.90. Notice of Commission Action

New §844.90 defines the issues to be addressed in a notice of Commission action and requires the Commission to enter a written order for the payment of any penalty or investigative costs the Commission has assessed.

§844.91. Finality of Commission Order

New §844.91 establishes that the Commission order is final 14 days after the date the order is mailed unless the Commission reopens the appeal or a party files a motion for rehearing.

§844.92. Judicial Review

New §844.92 sets forth the method of seeking judicial review of TWC's final decision or order.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement and interpret the provisions of Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will create or eliminate a government program;

--will require the creation or elimination of employee positions;

--will require an increase or decrease in future legislative appropriations to TWC;

--will require an increase or decrease in fees paid to TWC;

--will create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with new state law.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

SB 7 requires consultation with the Department of State Health Services.

TWC will provide notice to employers and other stakeholders to increase awareness during the public comment period.

PART V. PUBLIC COMMENTS

Comments on the proposed new rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 4, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §844.1, §844.2

PART VI.

STATUTORY AUTHORITY

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.1. Purpose.

The purpose of this chapter is to implement and interpret the provisions of Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

§844.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) "Adverse Action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Agency" shall have the meaning established under §800.2 of this title.

(3) "Applicant for employment" means a person who has submitted a formal application for an employment position for which the person meets the minimum qualifications and who has a genuine interest in the position.

(4) "Applicant for a contract position" means a person who has submitted a formal application or proposal for a contract position for which the person meets the minimum qualifications and who has a genuine interest in the contract position.

(5) "Complainant" means an employee, contractor, applicant for employment, or applicant for a contract position who files a complaint against an employer alleging an adverse action by the employer against the person in violation of Texas Health and Safety Code, Chapter 81D.

(6) "Complaint Form" means the COVID-19 Vaccine Complaint Form approved by the Agency.

(7) "Contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the employer over the manner, methods, or details of the work.

(8) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(9) "Day" means calendar day.

(10) "Department" means the Department of State Health Services.

(11) "Employee" means an individual who is employed by an employer, whether or not for compensation. The term does not include:

(A) a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(B) a contractor.

(12) "Employer" means a person, other than a governmental entity, who employs one or more employees.

(13) "Governmental Entity" means this state, an agency of this state, a local government entity, or a political subdivision of this state as defined in §821.4 of this title. This definition includes the definition of governmental entity as provided by Texas Health and Safety Code §81B.001(2).

(14) "Party" means the agency, a complainant or employer.

(15) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal 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.

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SUBCHAPTER B. COMPLAINTS

40 TAC §§844.25 - 844.30

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.25. Complaint Requirements.

(a) A complaint must be filed in writing by the complainant completing the Complaint Form.

(b) A Complaint Form may only be submitted by online submission as identified through the Agency's website page related to COVID-19 mandate complaints or by other means authorized in writing by the Agency.

(c) The complainant must provide the following information on the Complaint Form:

(1) the name of the complainant;

(2) the name of the employer;

(3) the nature and description of any alleged adverse action the employer took against the complainant; and

(4) any other information specifically requested by the Agency on the Complaint Form that is necessary to resolve the complaint.

(d) The complainant must declare that the information provided in the completed Complaint Form is true and correct.

§844.26. Valid Complaints.

(a) A complaint may only be filed for an adverse action that occurred after the effective date of Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which was February 6, 2024.

(b) The complaint must be received by the Agency within 90 days of the date of the adverse action. For adverse actions that occurred after the effective date of SB 7, and before the effective date of this chapter, a complaint must be received by the Agency within 90 days of the date this chapter becomes effective.

(c) A contractor or applicant for a contract position may only file a complaint if the contractor or applicant for a contract position was or would have been a party to the contract with the employer.

(d) A complaint must name an employer that is a non-governmental entity that satisfies the definition of employer in §844.2(12) of this chapter.

(e) A complaint may only be filed by a complainant for an adverse action that was taken against the complainant for a refusal to be vaccinated against COVID-19.

(f) A Complaint Form must be filled out completely and sufficiently to allow the Agency to attempt contact with the employer to investigate the adverse action.

(g) A complainant may not file an additional complaint for an adverse action that has already been the basis of another complaint that is still pending or resulted in the issuance of a preliminary determination order, other than a dismissal under §844.28 of this subchapter, or for a complaint that was withdrawn under §844.54 of this chapter.

(h) During the course of an investigation, a complainant or an employer may provide additional information to the Agency prior to the issuance of a preliminary determination order, which the Agency will consider in addition to evidence offered in the original complaint.

§844.27. Jurisdiction.

(a) The Agency may exercise jurisdiction over complaints under this chapter in which:

(1) the work was performed or would have been performed in Texas; and:

(2) the employer:

(A) is a resident employer; or

(B) is a non-resident employer pursuant to the Texas Civil Practice & Remedies Code, Chapter 17, Subchapter C, also known as the "Texas Long-Arm Statute," when the following are met:

(i) the employer employs the complainant in Texas at the time of the adverse action or the employer's contact with Texas is continuing and systematic; and

(ii) exercising jurisdiction is consistent with:

(I) fair play and justice as determined by the quality, nature, and extent of the employer's activities in Texas including the extent to which the employer avails itself of the benefits and protections of Texas law; and

(II) the relative convenience of the parties.

(b) The Agency shall not exercise jurisdiction over complaints based on work performed or intended to be performed outside the United States.

§844.28. Dismissal.

(a) The Agency may dismiss a complaint that is incomplete or does not meet the requirements of §844.26 of this subchapter.

(b) A dismissal under subsection (a) of this section becomes final unless a complainant refiles the complaint within the period to file a complaint or within 30 days of the mailing of the dismissal, whichever is later.

§844.29. Adverse Action.

(a) To support a finding of a violation under this chapter, the adverse action must cause a result that a reasonable person would regard as an objective and demonstrated harm to the complainant.

(b) If an adverse action was taken, the Agency will consider the reason(s) provided by an employer when determining whether the adverse action was taken due to a refusal to be vaccinated against COVID-19 in violation of Texas Health and Safety Code, Chapter 81D.

§844.30. Investigation of Complaints in Health Care.

If a complaint against a health care facility, health care provider, or physician alleges an adverse action that involved an employer policy that includes requiring the use of protective medical equipment, as described in Texas Health and Safety Code §81D.0035(b), the Agency

will consult with the Department to determine whether the policy was reasonable.

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

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SUBCHAPTER C. DETERMINATIONS

40 TAC §§844.50 - 844.55

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.50. Preliminary Determination Order, Determination on Remedial Action, and Penalty and Cost Order.

(a) After an investigation, the Agency will mail a preliminary determination order to each party stating whether the Agency determined the employer took an adverse action against the complainant for a refusal to be vaccinated against COVID-19 in violation of Texas Health and Safety Code, Chapter 81D.

(b) If the Agency determines that a violation exists, but no remedial action has occurred prior to the preliminary determination order being issued, the preliminary determination will notify the parties that:

(1) a violation has occurred;

(2) an administrative penalty will be imposed;

(3) the employer may remediate the violation;

(4) the amount of reasonable investigative costs, if any, the Agency will seek to recover from the employer; and

(5) each party has the right to file an appeal.

(c) If the Agency determines that a violation exists, and the employer has taken remedial action prior to the preliminary determination order being issued, the preliminary determination will notify the parties:

(1) that a violation has occurred;

(2) whether the remediation was sufficient to remove the administrative penalty;

(3) whether an administrative penalty will be imposed;

(4) of the amount of reasonable investigative costs, if any, the Agency will seek to recover from the employer; and

(5) that each party has the right to file an appeal.

(d) If an employer submits proof of remedial action after the preliminary determination order is issued, the Agency will issue to each party a separate determination on remedial action with separate appeal rights. An employer has 30 days to submit proof of remedial action from the mailing date of the preliminary determination order. If the employer does not submit proof of remediation within 30 days, and/or does not appeal, the Agency will not consider any proof of remediation. An employer's timely submission of proof of remedial action will be considered an employer appeal of the preliminary determination order and the appeal will be abated until the appeal period for the determination resolving the sufficiency of the remedial action has expired.

(e) If the employer files a timely appeal to the preliminary determination order, the employer may remediate at any time up until the hearing officer issues his or her decision, after which the employer must comply with the requirements of §844.85(e) of this chapter.

(f) After a preliminary determination order, a determination on remedial action, or decision becomes final, the Agency will issue a penalty and cost order to the employer detailing the final amount owed to the Agency by the employer with instructions for submitting payment.

(g) Determinations shall be mailed to each party at the best address available as required by §815.3 of this title, or at the location each party usually receives mail.

(h) A penalty and cost order shall be mailed to the employer at the best address available as required by §815.3 of this title, or at a location the employer usually receives mail.

(i) An administrative penalty under this chapter is not an award of damages to the complainant and no funds will be issued to the complainant by the Agency.

§844.51. Remedial Action.

(a) Under Texas Health and Safety Code §81D.006(a)(1) and (2), an administrative penalty will not be assessed if prescribed remedial action is taken in response to a complaint. The remedial action required to avoid a penalty depends upon the specific facts that resulted in a violation. Depending upon the circumstances of the violation, remedial action may require:

(1) if the complainant applied for an employment or contract position with the employer, and was not offered such position based upon his or her refusal to be vaccinated against COVID-19, the employer must offer the complainant the position applied for;

(2) if the complainant is currently, or was recently, an employee or contractor of the employer, the employer shall take the following remedial steps as applicable to the violation. Not all steps may be applicable to remedy the adverse action that resulted in a violation:

(A) reinstatement of the employee or contractor;

(B) providing the employee or contractor with back pay from the date the employer took the adverse action; and/or

(C) the employer must take every reasonable effort to reverse the effects of the adverse action. Reasonable efforts include, but are not limited to, reestablishing employee benefits for which the

employee or contractor otherwise would have been eligible if the adverse action had not been taken.

(b) Acceptable proof of a remedial action may include an offer or hiring letter on company letterhead, a signed new hire paperwork, a signed settlement letter, or completion of an Agency form by the complainant attesting to the remedial action.

(c) Proof of remedial action shall be submitted online as identified through the Agency's website page related to COVID-19 mandate complaints, by other means authorized in writing by the Agency, or to the assigned hearing officer in accordance with §844.85(e) of this chapter.

§844.52. Investigative Costs.

(a) If the Agency determines that the employer violated this chapter, the Agency may recover from the employer reasonable investigative costs incurred in conducting the investigation into whether the employer violated Texas Health and Safety Code, Chapter 81D, regardless of whether the employer took remedial action.

(b) The Agency may not recover from the employer investigative costs incurred in conducting an investigation into whether the employer took remedial action.

(c) The preliminary determination order will inform the employer of the investigative costs calculated by the Agency.

(d) The investigative costs may, at the discretion of the Agency, be included in the amount owed in the penalty and cost order even if the employer took remedial action.

§844.53. Corrected Determinations and Decisions.

(a) If Agency staff discover a clerical error of a non-substantive nature in connection with a determination or decision issued under this chapter, within the applicable appeal period, the Agency may reconsider and reissue the determination unless an appeal has already been filed.

(b) A reissued determination voids and replaces the determination or decision issued under this chapter requiring correction and becomes final unless an appeal is filed from the determination within 30 days of the date the reissued determination is mailed.

(c) Notwithstanding subsection (a) of this section, if a determination or decision issued under this chapter is mailed to a party's incorrect address, the Agency may reissue the determination to the party's correct address at any time.

§844.54. Withdrawal of Complaint.

(a) A complainant may withdraw a complaint at any time before the date the preliminary determination order becomes final.

(b) A complainant withdrawing a complaint shall submit a form as prescribed by the Agency.

(c) A complaint that is withdrawn may not be refiled and a new complaint cannot be filed for the same adverse action as the withdrawn complaint.

§844.55. Appeal and Determination Finality.

(a) Appealable Determinations:

(1) An employer determined to have violated this chapter may appeal the preliminary determination order, within 30 days of the mailing date of the determination, to dispute whether a violation of Texas Health and Safety Code, Chapter 81D occurred, or the amount of the assessed investigative costs.

(2) An employer determined to have not met the remedial action requirements under §844.51 of this subchapter may appeal the determination on remedial action within 30 days of the mailing date of the determination.

(3) An employer may appeal a combined determination under §844.50(c) of this subchapter to dispute any of the issues contained therein within 30 days of the mailing date of the determination.

(b) A determination becomes final unless a party files an appeal before the appeal deadline.

(c) An appeal must be filed in writing by mail, common carrier, facsimile (fax), or other method approved by the Agency on the preliminary determination order or on the determination on remedial action.

(d) A penalty and cost order is not an appealable document.

(e) A complainant may appeal any determination or decision issued under this subchapter, regardless of the finding, within 30 days of the mailing date of the determination.

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 September 18, 2024.

TRD-202404506
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 850-8356

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SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§844.75 - 844.92

The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special Session (2023), which added Texas Health and Safety Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

The rules are proposed under:

--Texas Health and Safety Code §81D.007, which provides TWC with the specific authority to adopt rules as necessary to implement and enforce Texas Health and Safety Code, Chapter 81D; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Health and Safety Code, Chapter 81D.

§844.75. Administrative Hearings.

(a) Administrative hearings shall be conducted subject to the rules and hearing procedures set out in Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter.

(b) The hearing is not subject to Texas Government Code, Chapter 2001.

(c) Hearings may be conducted by electronic means, including but not limited to telephonic hearings, unless the hearing officer determines that an in-person hearing is necessary.

(d) Accommodations may be requested, including the need for an in-person hearing or interpreters, through the hearing officer or Agency staff.

§844.76. Parties.

The parties to proceedings under this chapter are the Agency, the complainant, and the employer named in the preliminary determination order or determination on remedial action.

§844.77. Hearing Scheduling and Notice.

(a) Upon receipt of an appeal, the Agency shall assign an impartial hearing officer and mail a notice of hearing to the employer and complainant and/or their designated representatives.

(b) The notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the sections of the statutes and rules involved;

(4) a statement of the issues to be considered during the hearing; and

(5) either:

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by reference the factual matters asserted in the complaint.

(c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless all parties agree to waive this requirement.

§844.78. Representation.

Parties have the right to be represented by an attorney or other individual of their choice in accordance with §815.18(3) of this title.

§844.79. Ex Parte Communications.

(a) Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, the hearing officer may not communicate, directly or indirectly, in connection with any issue of fact or law with a party, representative of a party, witness, or individual providing testimony except on notice and opportunity for each party to participate.

(b) The hearing officer may communicate concerning the case with an Agency employee who has not participated in the hearing but may do so only for the purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§844.80. Hearing Procedures.

(a) General Procedure. The hearing shall be conducted informally and, in such manner, as to ascertain the substantive rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.

(1) Presentation of Evidence. The parties may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.

(2) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to relying on in conducting their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses under oath and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(4) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(5) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After an expulsion, the hearing officer may proceed with the hearing and render a decision.

(b) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal or state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

(4) Upon request, a party has the right to obtain one copy of the hearing record, including recordings of the hearing and file documents at no charge.

§844.81. Postponement and Continuance.

(a) On the hearing officer's own motion, or for good cause, at a party's request, the hearing officer may postpone or continue a hearing.

(b) Requests for a continuance or postponement may be made informally by a party, either orally or in writing, to the hearing officer.

(c) The hearing officer shall use his or her best judgement to determine when to grant a continuance or postponement of a hearing to secure all necessary evidence and to be fair to the parties.

(d) The notice of the hearing must indicate the times and places at which the hearing may be continued unless waived by the parties.

§844.82. Default.

If a party to whom a notice of hearing provided under this chapter fails to appear for a hearing, the hearing officer may proceed in that party's absence on a default basis. If a final decision is issued, the factual allegations listed in the notice of hearing may be deemed admitted. If a party fails to appear at a hearing, the hearing officer will issue a notice of default to that party. A party may file a motion no later than 14 days after the notice of default is mailed to set aside a default announced at the hearing and to reopen the record. If a timely motion to set aside a

default is filed, the hearing officer may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice. The hearing officer may issue a decision denying the motion to set aside a default without a hearing if the motion fails to allege a reason for the party's failure to appear or if a party has failed to appear at three or more scheduled hearings.

§844.83. Timeliness.

(a) Parties shall promptly notify, in writing or during the recorded hearing, the Agency of any change of mailing address. Determinations and decisions shall be mailed to the new address.

(1) If a party properly designates a party representative, a determination or decision must be mailed to the designated party representative for it to become final.

(2) The Agency is responsible for making an address change only if the Agency is specifically directed by the party to mail subsequent correspondence to the new address.

(3) If the Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame. However, this does not apply if the party fails to provide a current address or provides an incorrect address.

(b) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (a) of this section.

(1) A determination or decision shall not be presumed to have been delivered:

(A) if there is tangible evidence of nondelivery, such as being returned to the sender by the US Postal Service; or

(B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

(2) If a party provides the Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.

(c) The filing date for a complaint or an appeal shall be:

(1) the postmark date or the postal meter date (where there is only one or the other);

(2) the postmark date if there is both a postmark date and a postal meter date;

(3) the date the document was delivered to a common carrier, which is equivalent to the postmark date;

(4) three business days before receipt by the Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or

(7) the date of receipt by the Agency if the document was filed online or by fax.

(d) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (c) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Agency has never received, the party must present credible and persuasive evidence to support the allegation.

(e) A decision or preliminary determination order shall not be deemed final if a party shows that a representative of the Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

(f) Appeal and complaint deadlines are extended one working day following a deadline which falls on a weekend, an official state holiday, a state holiday for which minimal staffing is required or a federal holiday.

(g) There is no good cause exception to the timeliness rules.

§844.84. Withdrawal of an Appeal.

A party may request a withdrawal of its appeal at any time before the hearing officer's decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal.

§844.85. Decision.

(a) The hearing officer shall issue a written decision as soon as possible after the hearing is finally closed.

(b) The Agency shall notify each party to a contested case of any decision of the hearing officer by mailing the decision to the parties or the parties designated representative if requested.

(c) The decision shall include findings of fact and conclusions of law separately stated and a list of the individuals who appeared at the hearing. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed and any issues the parties waived notice of. The hearing officer shall rule on any contested determinations issued as a result of the complaint.

(d) If the decision rules that the employer violated Texas Health and Safety Code, Chapter 81D or this chapter and if no remediation determination has been issued prior to the hearing, the hearing officer's decision shall indicate the amount of the administrative penalty, any applicable investigative costs, and inform the employer of the ability to avoid the administrative penalty by taking remedial action and submitting proof thereof.

(e) If no decision has ruled on remedial action and the employer intends to take remedial action in response to a decision issued under subsection (d) of this section, the employer must notify the hearing officer of their intent to remedy within 14 days of the decision being issued. Notice of intent to remedy must be filed in accordance with the instructions provided in the decision. Upon notification, the hearing officer's decision will be reopened for 30 days for the employer to provide proof of remedial action to the hearing officer.

(f) The hearing officer may hold an additional hearing to consider additional evidence of remediation. After consideration of any

evidence of proof of remediation, the hearing officer shall issue a combined decision addressing all issues in front of the hearing officer resulting from the complaint.

§844.86. Finality of Decision.

The decision of the hearing officer becomes final 14 days after the date the decision is mailed unless before that date the hearing officer reopens the decision, a party files a timely appeal to the Commission, or the Commission by order removes to itself the proceedings pending before the hearing officer.

§844.87. Commission.

The duties of the Commission include reviewing the order of a hearing officer under this chapter. The member of the Commission who represents the public shall serve as chair when the Commission acts under this chapter.

§844.88. Removal of Order Pending Before a Hearing Officer.

(a) The Commission by order may remove to itself the proceedings pending before a hearing officer.

(b) The Commission promptly shall mail to the parties to the proceedings a notice of the order under subsection (a) of this section.

(c) A quorum of the Commission shall hear a proceeding removed to the Commission under subsection (a) of this section.

§844.89. Commission Review of Hearing Officer Order.

(a) The Commission may, on its own motion:

(1) affirm, modify, or set aside a decision issued under §844.85 of this subchapter on the basis of the evidence previously submitted in the case; or

(2) direct the taking of additional evidence.

(b) The Commission may permit the parties to initiate a further appeal before the Commission.

§844.90. Notice of Commission Action.

(a) The Commission shall mail to each party notice of:

(1) the Commission's decision;

(2) the violation;

(3) the amount of any penalty assessed;

(4) if applicable, the amount of any investigative costs; and

(5) the parties' right to file a motion for rehearing.

(b) The notice shall be mailed to the party's last known address, as shown by the Agency's records.

(c) The Commission shall enter a written penalty order for the payment of any penalty or investigative costs the Commission has assessed.

§844.91. Finality of Commission Order.

An order of the Commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the Commission by order reopens the appeal; or

(2) a party files a written motion for rehearing.

§844.92. Judicial Review.

(a) If a final decision or order imposes an administrative penalty or the recovery of investigative costs, a party may obtain judicial review of the decision by filing a petition in a Travis County district court against the Agency on or after the date on which the decision or order is final, and not later than the 14th day after that date.

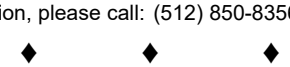
(b) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.

(c) A party may not obtain judicial review of the decision unless the party has exhausted the party's remedies as provided by this subchapter.

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

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404508
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: November 3, 2024
For further information, please call: (512) 850-8356



Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1149

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1149, concerning Exclusions and Limitations.

Section 354.1149 is adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4117). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to align Texas Medicaid coverage of vaccines for adults with federal requirements in section 11405 of the Inflation Reduction Act (IRA) of 2022 (Public Law 117-169). On June 27, 2023, the Centers for Medicare & Medicaid Services issued guidance on its interpretation of the amendments to the Social Security Act made by the IRA to require Medicaid programs to cover vaccines and their administration, provided that the vaccine is approved by the U.S. Food and Drug Administration (FDA) for use by adult populations and is administered in accordance with recommendations of the Advisory Committee on Immunization Practices (ACIP), effective October 1, 2023. States were directed to add coverage for all ACIP-recommended vaccines for adults, including vaccines solely for travel to or from foreign countries. As a result, the adopted rule removes the exclusion of all FDA-approved and ACIP-recommended vaccines used solely for travel to or from foreign countries as a Medicaid benefit for the adult population.

COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, HHSC received comments regarding the proposed rule from two individuals with The University of Texas Southwestern Medical Center. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One individual commented that the proposed rule is an opportunity to provide equitable access to necessary vaccines for adults and that expanding coverage to include all ACIP-recommended vaccines not only aligns with state and federal requirements but also addresses gaps in immunization. The commenter expressed concern about the implementation of the proposed rule and suggested that efforts should be made to increase awareness.

Response: HHSC agrees with the commenter that the proposed rule will increase access to adult vaccines. Regarding implementation of the proposed rule, HHSC publishes provider notifications to the Texas Medicaid & Healthcare Partnership website when new benefits are added. The process is and will continue to be applied to new ACIP-recommended vaccine benefits.

Comment: The second individual commented and provided support of the proposal to amend §354.1149 to align Texas Medicaid coverage of vaccines for adults with federal requirements to remove travel-based exclusions. The commenter expressed that the change is critical to ensure that all adults have access to FDA-approved and ACIP-recommended vaccines regardless of their occupation or travel plans and that vaccines prevent the spread of disease through travel to new areas and provides all Texans with the opportunity to get vaccinated and stay healthy. The commenter urges HHSC to adopt the proposed rule as the proposed rule is a common-sense change that will improve the health of Texans, save lives, and meet IRA of 2022 requirements.

Response: HHSC agrees with the commenter and thanks the commenter for their support.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404465
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 7, 2024
Proposal publication date: June 14, 2024
For further information, please call: (512) 438-4651

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification examinations. The amendment is adopted without changes to the proposed text as published in the June 28, 2024 issue of the *Texas Register* (49 TexReg 4680) and will not be republished. The adopted amendment specifies the satisfactory scores for the examinations for English Language Arts and Reading 7-12; Health Early Childhood (EC)-12; Physical Education EC-12; edTPA: Elementary Literacy; edTPA: Elementary Mathematics; edTPA: Early Childhood Education; edTPA: Elementary Education-Mathematics with Literacy Task 4; and edTPA: Career and Technical Education and remove Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(a), requires the commissioner to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination. The adopted passing standards were established by subject-matter expert stakeholder committee groups.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The adopted amendment to Figure: 19 TAC §151.1001(b)(4) introduces passing standards for the English Language Arts and Reading 7-12 examination.

The adopted amendment to Figure: 19 TAC §151.1001(b)(7) introduces passing standards for the Health EC-12 and Physical Education EC-12 examinations.

The adopted amendment to Figure: 19 TAC §151.1001(b)(14) removes Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES as a valid exam and introduces passing standards for the edTPA: Elementary Literacy; edTPA: Elementary Mathematics; edTPA: Early Childhood Education; edTPA: Elementary Education-Mathematics with Literacy Task 4; and edTPA: Career and Technical Education.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 28, 2024, and ended July 29, 2024. Following is a summary of the public comments received and agency responses.

Comment: The Texas-American Federation of Teachers and Texas State Teachers Association commented that Figure: 19 TAC §151.1001(b)(14) should reflect a numerical passing standard for all edTPA exams.

Response: The agency agrees that standard-setting activities should be completed to assign a numerical minimum passing score to each edTPA examination recently adopted by the State Board for Educator Certification. After recommended standards are established, TEA will propose changes to Figure: 19 TAC §151.1001(b)(14) to incorporate the standards.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404487
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 8, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER H. CERTIFICATION

22 TAC §511.161

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.161 concerning Qualifications for Issuance of a Certificate, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5485) and will not be republished.

An existing Board rule, §511.163, requires an applicant to complete a four-hour CPE ethics course before taking the Uniform Certified Public Accountancy Exam. That rule provision is being transferred to the section of the Board's rules that address Continuing Professional Education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404535
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 9, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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CHAPTER 520. PROVISIONS FOR THE ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.1

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.1 concerning Authority and Purpose, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5486) and will not be republished.

The amendment establishes the Examination Fee Financial Aid program to assist applicants who can demonstrate the need for assistance in paying the cost of taking the Uniform Certified Public Accountancy Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202404536
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 9, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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22 TAC §520.2

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.2 concerning Definitions, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5487) and will not be republished.

The amendment defines the terms used in the creation of the Examination Fee Financial Aid program to assist applicants in need of financial assistance in the costs to take the Uniform Certified Public Accountancy Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404537
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 9, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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22 TAC §520.3

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.3 concerning Institutions for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5488) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404538
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 9, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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22 TAC §520.4

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.4 concerning Eligible Students for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5490) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404539
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 9, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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22 TAC §520.5

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.5 concerning Award Amount and Uses for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5491) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: July 26, 2024
For further information, please call: (512) 305-7842

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22 TAC §520.6

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.6 concerning Allocations for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5492) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §520.7

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.7 concerning Disbursements to Institutions for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5493) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption. gency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §520.8

The Texas State Board of Public Accountancy (Board) adopts an amendment to §520.8 concerning Retroactive Disbursements for the Accounting Students Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5494) and will not be republished.

The amendment adds descriptive language to the title of the rule for the reader to understand that the rule applies only to the accounting students scholarship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
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For further information, please call: (512) 305-7842

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22 TAC §520.11

The Texas State Board of Public Accountancy (Board) adopts new rule §520.11 concerning Eligible Applicants for Examination Fee Financial Aid (EFFA) Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5495) and will not be republished.

The rule will establish criteria for eligibility for the financial aid.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202404544
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §520.12

The Texas State Board of Public Accountancy (Board) adopts new rule §520.12 concerning Award Amounts and Uses Through the Examination Fee Financial Aid (EFFA) Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5496) and will not be republished.

The rule makes it clear that the amount reimbursed is based upon the CPA examination fee and once the applicant has paid for the exam fee and passed the exam the reimbursed amount may be used for other legal purposes.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §520.13

The Texas State Board of Public Accountancy (Board) adopts new rule §520.13 concerning Documentation for the Examination Fee Financial Aid (EFFA) Program, without changes to the

proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5497) and will not be republished.

The applicant is required to apply to the board for the award and provide evidence of financial need.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202404546
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG SUBCHAPTER HH. LABELING OF ANALOGUE PRODUCTS

25 TAC §§229.901 - 229.903

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new Subchapter HH, §§229.901 - 229.903, concerning Labeling of Analogue Products. New §§229.901 - 229.903 are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5260). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (S.B.) 664, 88th Legislature, Regular Session, 2023, which adds Texas Health and Safety Code §431.0805. S.B. 664 defines "analogue product," "cell-cultured product," "close proximity," "egg," "egg product," "fish," "meat," "meat food product," "poultry," and "poultry product."

S.B. 664 also includes labeling requirements for an analogue meat product, a meat food product, poultry, a poultry product, an egg product, or fish.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, DSHS received a comment regarding the proposed rules from one individual. A summary of the comment and DSHS' response follows.

Comment: One commenter wrote the definition of "fish" is very general and suggested the label include the specific type of seafood or fish so it is clear to the consumer in case of allergies.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The federal definition of fish is used to capture all the products that could be an analogue product of fish. The analogue product mimics a fish product and will not contain fish. Any allergens contained within the analogue product are required to be included on the label.

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code Chapter 431, which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2024.

TRD-202404522
Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: July 19, 2024
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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §289.201, concerning General Provisions for Radioactive Material; §289.202, concerning Standards for Protection Against Radiation from Radioactive Material; §289.253, concerning Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies; §289.255, concerning Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography; §289.256, concerning Medical and Veterinary Use of Radioactive Material; §289.257, concerning Packaging and Transportation of Radioactive Material; and §289.258, concerning the Licensing and Radiation Safety Requirements for Irradiators. The amendments to §§289.202, 289.257, and 289.258 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4200), and therefore will not be republished. The amendments to §§289.201, 289.253, 289.255, and 289.256 are adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4200). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary for Texas (an Agreement State) to comply with United States Nuclear Regulatory Commission (NRC) requirements, as identified in the Review Summary Sheets for Regulation Amendments (RATS Identification). The amendments update NRC information and result from the NRC's adoption of rules related to the use of digital output personnel dosimeters as an acceptable individual monitoring device. The amendments also clarify or correct references and include a requirement to report transactions involving nationally tracked sources.

The amendments establish new definitions; qualify training requirements; and update license application processes concerning use of field stations, material storage, and approved methods for waste disposal. Amendments update Radiation Safety Committee (RSC) requirements and transportation exemptions for medical and veterinary licensees, identify conditions under which medical licensees may revise their radiation protection programs without the department's approval, and update contamination control criteria and methods. Amendments clarify record retention requirements related to the receipt, transfer, and disposal of radioactive material and devices and ensure compatibility with NRC requirements not specifically mentioned in the RATS Identification.

The amendments update, correct, improve, and clarify the rule language and incorporate plain language where appropriate.

COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, DSHS received three public comments regarding the proposed rules. A summary of the comments and responses from DSHS follows.

Comment: One commenter specified, "On page 98 (289.201(g)(2)(C)), the document states that 100 Ci is 3.7 MBq. 100 Ci is actually 3,700,000 MBq."

Response: The commenter's conversion is correct; however, the incorrect conversion was due to a known publishing error in the June 14, 2024, issue of the *Texas Register* that included an incorrect symbol for "microcuries." The June 21, 2024, issue of the *Texas Register* (49 TexReg 4624) identified and corrected this publishing error that addressed the discrepancy.

Comment: The Texas Society of Radiologic Technologists expressed their support for changes to §289.201 related to the "inclusion of 'digital output personnel dosimeter' to the definition of individual monitoring device."

Response: No additional action is necessary.

Comment: The Texas Society of Radiologic Technologists expressed their support for changes to §289.256 concerning Medical and Veterinary Use of Radioactive Material.

Response: No additional action is necessary.

DSHS made minor editorial changes to §289.201(b)(26) and §289.201(b)(42) to correct a publishing error by the *Texas Register*, which added unnecessary parentheses to the definitions.

Additional editorial or minor changes were made by DSHS to include the following:

- An editorial change was made to §289.253(s)(2)(B) to correct the reference for radiation safety officer training requirements to subsection (p).

- An editorial change was made to §289.255(u)(11)(B)(i) to correct the transposed conversions of "740 gigabecquerels" and "3.7 terabecquerels."

- An editorial change was made to §289.255(v)(2) to replace the references to "additional authorized use/storage sites" with "field stations" or "field station" as is consistent with the amendments to §289.255(c), Definitions.

- A change was made to §289.256(i)(1) to remove "as approved by the department:" DSHS believes removal will reduce licensee burden when changing RSC membership and is compatible with NRC regulation.

- Editorial changes were made to §289.256(n)(4) and §289.256(p)(11) to update the reference for establishing an RSC to subsection (i).

- A change was made to §289.256(r)(5)(C) to replace "byproduct" with "radioactive" to ensure consistency with referenced subsections (ff) and (hh), which relate to "radioactive material."

SUBCHAPTER D. GENERAL

25 TAC §289.201, §289.202

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules providing for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; Chapter 401, Subchapter J, which authorizes enforcement of the Act; Texas Government Code §531.0055; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§289.201. General Provisions for Radioactive Material.

(a) Scope. Except as otherwise specifically provided, this section applies to all persons who receive, possess, use, transfer, or acquire any radioactive material unless the person is subject to regulation by the United States Nuclear Regulatory Commission (NRC). This section does not apply to radioactive material in the possession of federal agencies. State regulation of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and NRC and to Part 150 of NRC regulations (10 Code of Federal Regulations (CFR) Part 150). A person who receives, possesses, uses, owns, transfers, or acquires radioactive material before receiving a license is subject to the requirements of this chapter.

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

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) Accelerator-produced material--Any material made radioactive by exposing it to the radiation from a particle accelerator.

(3) Access control--A system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) Act--Texas Radiation Control Act, Texas Health and Safety Code (HSC) Chapter 401.

(5) Activity--The rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(6) Adult--An individual 18 or more years of age.

(7) Aggregated--Accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(8) Agreement state--Any state with which NRC has entered into an effective agreement under Section 274 of the Atomic Energy Act of 1954, as amended.

(9) Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(10) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) over the derived air concentrations (DACs) specified in Table I, Column 3 of §289.202(ggg)(2)(F) of this subchapter (relating to Standards for Protection Against Radiation from Radioactive Materials); or

(B) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 derived air concentration-hours (DAC-hours).

(11) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access as specified in §289.252(ii)(2)-(8) of this chapter (relating to Licensing of Radioactive Material) and who has completed the training required by §289.252(ii)(10)(C) of this chapter.

(12) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed sources of radiation in the public interest.

(13) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(14) Background radiation--Radiation from cosmic sources; non-technologically enhanced, naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material; and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, contributing to background radiation and not under the control of the licensee. "Background radiation" does not include radiation from sources of radiation regulated by the department.

(15) Becquerel (Bq)--The International System of Units (SI) unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps). Commonly used multiples of the becquerel are the kBq (kilobecquerel, 10^3 Bq), MBq (megabecquerel, 10^6 Bq), GBq (gigabecquerel, 10^9 Bq), and TBq (terabecquerel, 10^{12} Bq). 1 Ci = 37 GBq.

(16) Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of this chapter, "radiobioassay" is an equivalent term.

(17) Brachytherapy--A method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(18) Byproduct material--Byproduct material is defined as:

(A) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity;

(D) any material that has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(E) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction before, on, or after August 8, 2005, for use in a commercial, medical, or research activity and that the United States NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(19) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in §289.252(jj)(9) of this chapter. This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds one, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(20) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in §289.252(jj)(9) of this chapter. This is determined by calculating the ratio of the total activity

of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds one, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(21) Certificate of registration--A form of permission to engage in regulated activities given by the department to an applicant who has met the requirements for registration or mammography system certification set out in the Act and this chapter.

(22) Certification of mammography systems (state certification)--A form of permission to engage in regulated activities given by the department to an applicant who has met the requirements for mammography system certification set out in the Act and this chapter.

(23) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(24) Commercial--Having financial profit as the primary aim.

(25) Committed dose equivalent ($H_{T,50}$) --The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(26) Committed effective dose equivalent ($H_{E,50}$)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \Sigma W_T H_{T,50}$).

(27) Consortium--An association of medical use licensees and a Positron Emission Tomography (PET) radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance costs of the PET radionuclide production facility. The PET radionuclide production facility produces radionuclides for production and noncommercial distribution of radioactive drugs among consortium members for medical use and is located at an educational institution or a medical facility.

(28) Constraint (dose constraint)--A value above which specified licensee actions are required.

(29) Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(30) Curie (Ci)--A unit of measurement of radioactivity. One curie (Ci) is the quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (mCi) and the microcurie (μCi). One mCi = 1×10^{-3} Ci = 3.7×10^{7} dps. One μCi = 1×10^{-6} Ci = 3.7×10^{4} dps. One nanocurie (nCi) = 1×10^{-9} Ci = 3.7×10^{1} dps. One picocurie (pCi) = 1×10^{-12} Ci = 3.7×10^{-2} dps.

(31) Decommission--To remove a facility or site safely from service and reduce residual radioactivity to a level that permits the following:

(A) release of the property for unrestricted use or termination of license; or

(B) release of the property under alternate requirements for license termination.

(32) Deep dose equivalent (H_d), that applies to external whole body exposure--The dose equivalent at a tissue depth of 1 centimeter (cm) (1,000 milligrams per square centimeter (mg/cm^2)).

(33) Department--The Department of State Health Services.

(34) Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(35) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site, or, in the case of structures or equipment, in similar materials using adequate measurement technology, survey, and statistical techniques.

(37) Distribution--The physical conveyance and authorized transfer of commodities from producers to consumers and any intermediate persons involved in that conveyance.

(38) Diversion--The unauthorized movement of radioactive material subject to §289.252(ii) of this chapter to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(39) Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(40) Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(41) Dose limits--The permissible upper bounds of radiation doses established as specified in this chapter. For purposes of this chapter, "limits" is an equivalent term.

(42) Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma W_T H_T$).

(43) Embryo/fetus--The developing human organism from conception until the time of birth.

(44) Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed sources of radiation. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(45) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance, at all times over an individual who is not approved for unescorted access.

(46) Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons and positrons liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(47) Exposure rate--The exposure per unit of time.

(48) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(49) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(50) Fingerprint orders--The orders issued by the NRC or the legally binding requirements issued by agreement states that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or Safeguards Information-Modified Handling files.

(51) Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(52) Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(53) High radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving a dose equivalent more than 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(54) Human use--The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and development specifically authorized by the department.

(55) Individual--Any human being.

(56) Individual monitoring--The assessment of:

(A) dose equivalent to an individual using individual monitoring devices; or

(B) committed effective dose equivalent to an individual by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.202(c) of this subchapter); or

(C) dose equivalent to an individual using survey data.

(57) Individual monitoring device--Device designed to be worn by a single individual (such as a film badge, thermoluminescent dosimeter (TLD), optically stimulated luminescence dosimeter (OSL), or digital output personnel dosimeter) used for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms.

(58) Inspection--An official examination or observation, including records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the department.

(59) Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(60) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(61) Land disposal facility--The land, buildings, and equipment that are intended to be used for the disposal of low-level radioactive waste (LLRW) into the subsurface of the land.

(62) Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm^2).

(63) License--A form of permission to engage in regulated activities given by the department to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(64) Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the department.

(65) Licensee--Any person who is licensed by the department as specified in the Act and this chapter.

(66) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(67) Lost or missing radioactive material--Radioactive material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(68) Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW includes:

(i) discarded or unwanted radioactive material not exempt by rule adopted under the Texas Radiation Control Act (Act), specifically, HSC, §401.106;

(ii) waste, as that term is defined in 10 CFR §61.2; and

(iii) radioactive material subject to:

(I) concentration limits established in 10 CFR §61.55, or compatible rules adopted by the department or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10 of the CFR or established by the department or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) byproduct material defined in HSC §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(69) Manufacture--To fabricate or mechanically produce.

(70) Member of the public--Any individual, except when that individual is receiving an occupational dose.

(71) Minor--An individual less than 18 years of age.

(72) Mobile device--A piece of equipment containing licensed radioactive material that either is mounted on a permanent base with wheels or casters, or otherwise equipped for moving while completely assembled and without dismounting; or is a portable device. Mobile devices do not include stationary equipment installed in a fixed location.

(73) Monitoring--The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(74) Movement control center--An operations center remote from the transport activity that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies, and can request and coordinate appropriate aid.

(75) Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(76) Natural radioactivity--Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(77) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(78) NRC--The United States Nuclear Regulatory Commission or its duly authorized representatives.

(79) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released as specified in this chapter, from voluntary participation in medical research programs, or as a member of the public.

(80) Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation at energies usually greater than 1 million electron volts (MeV).

(81) Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than NRC, and other than federal government agencies licensed or exempted by NRC.

(82) Personnel monitoring equipment (See definition for individual monitoring devices.)

(83) Pharmacist--An individual licensed by the Texas State Board of Pharmacy to compound and dispense drugs, prescriptions, and poisons.

(84) Physician--An individual licensed by the Texas Medical Board to practice medicine under Texas Occupations Code Chapter 155.

(85) Pocket dosimeter--A small ionization detection instrument or electronic personal dosimeter that indicates ionizing radiation exposure directly. An auxiliary charging device may be necessary.

(86) Portable device--A piece of equipment containing licensed radioactive material that is designed by the manufacturer to be hand carried during use.

(87) Positron emission tomography (PET) radionuclide production facility--A facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

(88) Principal activities--Activities authorized by the license that are essential to achieving the purposes for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(89) Public dose--The dose received by a member of the public from exposure to sources of radiation released by a licensee, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released as specified in this chapter, or from voluntary participation in medical research programs.

(90) Quality factor (Q)--The modifying factor listed in subsection (m)(1) and (2) of this section that is used to derive dose equivalent from absorbed dose.

(91) Quarter (calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(92) Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 Gy).

(93) Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(94) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent more than 0.005 rem (0.05 mSv) in one hour at 30 cm from the source of radiation or from any surface that the radiation penetrates.

(95) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(96) Radiation safety officer (RSO)--An individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection rules, standards, and practices, who is specifically authorized on a radioactive material license, and who is the primary contact with the department. Specific training and responsibilities for

an RSO are listed in §289.252 of this chapter, §289.253 of this chapter (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), §289.255 of this chapter (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), and §289.256 of this chapter (relating to Medical and Veterinary Use of Radioactive Material).

(97) Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(98) Radioactive waste--For purposes of this chapter, this term is equivalent to LLRW.

(99) Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(100) Radiobioassay--See definition for bioassay.

(101) Registrant--Any person issued a certificate of registration by the department as specified in the Act and this chapter.

(102) Regulation--See definition for rule.

(103) Regulations of the United States Department of Transportation (DOT)--The federal requirements in 49 CFR Parts 100 - 189.

(104) Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(105) Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(106) Residential location--Any area where a structure or structures are located in which people live, and the grounds on which these structures are located, including houses, apartments, condominiums, and garages.

(107) Residual radioactivity--The radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made as specified in 10 CFR Part 20.

(108) Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(109) Reviewing official--The individual who makes the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials in the possession of the licensee.

(110) Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58 x 10^{-4} C/kg of air. (See definition for exposure.)

(111) Rule (as defined in the Texas Government Code Chapter 2001)--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule and does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(112) Sabotage--The deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system protecting those materials.

(113) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for local law enforcement authorities.

(114) Sealed source--Any radioactive or byproduct material that is encased in a capsule designed to prevent leakage or escape of the material.

(115) Security zone--Any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(116) Shallow dose equivalent (H_s) (that applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 cm (7 mg/cm^2).

(117) SI--The abbreviation for the International System of Units.

(118) Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(119) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(120) Source material--Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05 percent or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(121) Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(122) Special form radioactive material--Radioactive material satisfying the following conditions:

(A) either a single solid piece or contained in a sealed capsule only opened by destroying the capsule;

(B) the piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch); and

(C) satisfies the requirements specified by NRC. A special form encapsulation designed as specified in NRC requirements in effect on June 30, 1983, and constructed before July 1, 1985, may continue to be used. A special form encapsulation designed as specified

in NRC requirements in effect on March 31, 1996, and constructed before April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.

(123) Special nuclear material--Special nuclear material is defined as:

(A) plutonium (Pu), uranium-233 (U-233), uranium enriched in the isotope 233 or in the isotope 235, and any other material that NRC, as specified in the provisions of the Atomic Energy Act of 1954, §51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(124) Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained uranium-235; uranium-233 in quantities not exceeding 200 g; plutonium in quantities not exceeding 200 g; or any combination of them as specified in the following formula.

(A) For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all kinds of special nuclear material in combination must not exceed "1" (i.e., unity).

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula.
Figure: 25 TAC §289.201(b)(124)(B) (No change.)

(125) Special units--The conventional units historically used by licensees, for example, curie (activity), rad (absorbed dose), and rem (dose equivalent).

(126) Stationary device--A piece of equipment containing licensed radioactive material that is installed in a fixed location.

(127) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such survey includes tests, physical examination of location of materials and equipment, measurements of levels of radiation or concentration of radioactive material present, and evaluation of administrative and engineered controls.

(128) Telemetric position monitoring system--A data transfer system that captures information by instrumentation or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(129) Temporary job site--A location where licensed or registered sources of radiation are used or stored other than the specific use location or locations listed on a license or certificate of registration.

(130) Termination--A release by the department of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(131) Test--A method of determining the characteristics or condition of sources of radiation or components thereof.

(132) Texas Regulations for Control of Radiation (TRCR)--All sections of 25 Texas Administrative Code (TAC) Chapter 289.

(133) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(134) Total organ dose equivalent (TODE)--The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) of this chapter.

(135) Transport index--The dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(A) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 feet).

(B) For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in mrem/hr at 1 m (3.3 feet)), or, for criticality control purposes, the number obtained as described in 10 CFR §71.59, whichever is larger.

(136) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(137) Type A quantity--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in §289.257(ee) of this chapter (relating to Packaging and Transportation of Radioactive Material) or may be determined by procedures described in §289.257(ee) of this chapter.

(138) Type B quantity--A quantity of radioactive material greater than a type A quantity.

(139) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(140) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

(141) Unrestricted area (uncontrolled area)--An area, or access to, which is neither limited nor controlled by the licensee. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(142) Very high radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving an absorbed dose more than 500 rads (5 Gy in one hour at 1 m) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, Sv, and rem.

(143) Veterinarian--An individual licensed by the Texas State Board of Veterinary Medical Examiners to practice veterinary medicine under Texas Occupations Code Chapter 801.

(144) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (18)(B) - (E) of this subsection.

(145) Week--Seven consecutive days starting on Sunday.

(146) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(147) Worker--An individual engaged in work under a license or certificate of registration issued by the department and controlled by a licensee or registrant but does not include the licensee or registrant.

(148) Working level (WL)--Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are--for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(149) Working level month (WLM)--An exposure to one working level for 170 hours--2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(150) Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee may change the starting date of the year used to determine compliance by the licensee if the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) Exemptions.

(1) General provision. The department may, upon application or its own initiative, exempt a source of radiation or a kind of use or user from the requirements of this chapter if the department determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety, and the environment. In determining such exemptions, the department considers:

(A) state of technology;

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(2) United States Department of Energy (DOE) contractors and NRC contractors. Any DOE contractor or subcontractor and any NRC contractor or subcontractor of the following categories, operating within Texas, is exempt from this chapter, except §289.204 of this subchapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), to the extent that such contractor or subcontractor under that individual's contract, receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for DOE at United States government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(B) prime contractors of DOE performing research in, or development, manufacture, storage, testing, or transportation of atomic weapons or components of atomic weapons;

(C) prime contractors of DOE using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of DOE or of NRC when Texas and NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) as specified in the terms of the contract or subcontract, there is adequate assurance that the work can be accomplished without undue risk to the public health and safety and the environment.

(d) Records.

(1) Each licensee must maintain records showing the receipt, transfer, and disposal of all non-exempt sources of radiation.

(A) Records of receipt, transfer, and disposal of sources of radiation must include, as a minimum:

(i) a unique identification of each source of radiation, including:

(I) manufacturer's name;

(II) isotope;

(III) activity; and

(IV) if available, sealed source serial number;

(ii) the date of receipt, transfer, or disposal of each source of radiation;

(iii) for the licensee transferring the source of radiation, the name of the transferee, the number of the transferee's radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferee; and

(iv) for the licensee receiving the source of radiation, the name of the transferor, the number of the transferor's radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferor.

(B) Records of receipt and transfer of radioactive material must be retained by the licensee until disposal of the records is authorized by the department. Records of radioactive material disposal must be retained by the licensee until termination of the license.

(2) Additional record requirements and retention periods are specified elsewhere in this chapter.

(3) All records required by this chapter must be accurate and factual.

(4) Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(5) Each record required by this chapter must include all pertinent information and be stored in a legible and reproducible format throughout the retention period specified by the department. The licensee must maintain adequate safeguards against tampering with and loss of records.

(e) Inspections.

(1) The department may enter public or private property at reasonable times to determine whether, in a matter under the depart-

ment's jurisdiction, there is compliance with the Act, the department's rules, license conditions, and orders issued by the department.

(2) Each licensee must afford the department, at all reasonable times, opportunity to inspect sources of radiation and the premises and facilities where sources of radiation are used or stored.

(3) Each licensee must make available to the department for inspection, upon reasonable notice, records maintained as specified in this chapter.

(f) Tests.

(1) Each licensee must perform, upon instructions from the department, or must permit the department to perform, reasonable tests the department deems appropriate or necessary, including tests of:

(A) sources of radiation;

(B) facilities where sources of radiation are used or stored;

(C) radiation detection and monitoring instruments; and

(D) other equipment and devices used in connection with utilization or storage of licensed sources of radiation.

(2) Each licensee is required to accept from the department, samples collected from its facility or from areas that are radioactive resulting from its licensed activities.

(g) Tests for leakage or contamination of sealed sources.

(1) The licensee possessing any sealed source must assure that:

(A) each sealed source, except as specified in paragraph (2) of this subsection and §289.253(j) of this chapter, is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee;

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the department, the NRC, or any agreement state after evaluation of information specified in §289.252(v) of this chapter or equivalent regulations of the NRC or any agreement state;

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the department, the NRC, or any agreement state after evaluation of information specified in §289.252(v) of this chapter, or equivalent regulations of the NRC, or any agreement state;

(D) for each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the sealed source is tested for leakage or contamination before further use;

(E) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, are capable of detecting the presence of 0.005 μCi (185 Bq) of radioactive material on a test sample. Test samples must be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted and at the nearest accessible point to the sealed source where contamination might accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position;

(F) the test for leakage for brachytherapy sources manufactured to contain radium are capable of detecting an absolute leakage rate of 0.001 μCi (37 Bq) of radon-222 in a 24-hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume, and time;

(G) tests for contamination from radium daughters are taken on the interior surface of brachytherapy source storage containers and are capable of detecting the presence of 0.005 μCi (185 Bq) of a radium daughter that has a half-life greater than four days; and

(H) tests for leakage or contamination are performed using a leak test kit or method approved by the department, the NRC, or any agreement state.

(2) A licensee need not perform tests for leakage or contamination on the following:

(A) sealed sources containing only radioactive material with a half-life of less than 30 days;

(B) sealed sources containing only radioactive material as a gas;

(C) sealed sources containing 100 μCi (3.7 MBq) or less of beta or gamma-emitting material or 10 μCi (370 kBq) or less of alpha or neutron-emitting material;

(D) sealed sources containing only hydrogen-3 (tritium);

(E) seeds of iridium-192 encased in nylon ribbon; and

(F) sealed sources, except teletherapy and brachytherapy sources, that are stored, not being used, and identified as in storage. However, the licensee must test each sealed source for leakage or contamination and receive the test results before any use or transfer, unless it has been tested for leakage or contamination in the six months before the date of use or transfer.

(3) Analysis of tests for leakage or contamination from sealed sources must be performed by persons specifically authorized by the department, the NRC, or any agreement state to perform such services.

(4) Test results must be kept in units of microcurie or becquerel and maintained for inspection by the department.

(5) The following is considered evidence that a sealed source is leaking:

(A) the presence of 0.005 μCi (185 Bq) or more of removable contamination on any test sample;

(B) leakage of 0.001 μCi (37 Bq) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium; or

(C) the presence of removable contamination resulting from the decay of 0.005 μCi (185 Bq) or more of radium.

(6) The licensee must immediately withdraw a leaking sealed source from use and must take action to prevent the spread of contamination. Within two years of the determination that a sealed source is leaking, the leaking sealed source must be repaired or transferred for disposal as specified in §289.202 of this subchapter. The licensee must check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of as specified in §289.202 of this subchapter.

(7) Reports of test results for leaking or contaminated sealed sources must be made as specified in §289.202(bbb) of this subchapter.

(h) Additional requirements. The department may, by rule, order, or condition of license or general license acknowledgment, impose upon any licensee such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or property or the environment.

(i) Violations. An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any rule or order issued thereunder. Any person who willfully violates any provision of the Act or any rule or order issued thereunder may be guilty of a misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(j) Impounding. Sources of radiation are subject to impounding as specified in §401.068 of the Act and §289.205 of this subchapter (relating to Hearing and Enforcement Procedures).

(k) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to Radiation Control, Department of State Health Services, P.O. Box 149347, Austin, Texas, 78714-9347. Communications, reports, and applications may be delivered in person to the department's office located at 1100 West 49th Street, Austin, Texas.

(2) Documents transmitted to the department will be deemed submitted on the date of the postmark or other electronic media transmission.

(l) Interpretations. Except as specifically authorized by the department in writing, no interpretation of the meaning of this chapter by any officer or employee of the department other than a written interpretation by the Office of General Counsel, Department of State Health Services, will be considered binding upon the department.

(m) Mean quality factors and absorbed dose equivalencies.

(1) As used in this chapter, the quality factors for converting absorbed dose to dose equivalent are shown in the following table:
Figure: 25 TAC §289.201(m)(1)

(2) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in paragraph (1) of this subsection, 1 rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of this section, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rad (gray) to dose equivalent in rem (Sv).
Figure: 25 TAC §289.201(m)(2)

(n) Units of activity. For purposes of this chapter, activity is expressed in the special unit of curie (Ci), becquerel (Bq), or its multiples, or disintegrations or transformations per second (dps or tps).

(1) 1 Ci = 3.7×10^{10} dps or tps = 3.7×10^{10} Bq = 2.22×10^{12} disintegrations or transformations per minute (dpm or tpm).

(2) 1 Bq = 1 dps or tps.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.253, 289.255 - 289.258

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules providing for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; Chapter 401, Subchapter J, which authorizes enforcement of the Act; Texas Government Code §531.0055; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§289.253. Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

(a) Purpose. This section establishes radiation safety requirements for persons using sources of radiation for well logging service operations, including radioactive markers, mineral exploration, and tracer studies.

(b) Scope.

(1) This section applies to all persons who use sources of radiation for well logging service operations, radioactive markers, mineral exploration, and tracer studies.

(2) In addition to the requirements of this section, persons are subject to the requirements of:

(A) §289.201 of this chapter (relating to General Provisions for Radioactive Material);

(B) §289.202 of this chapter (relating to Standards for Protection Against Radiation from Radioactive Materials);

(C) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(F) §289.226 of this chapter (relating to Registration of Radiation Machine Use and Services);

(G) §289.229 of this chapter (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices);

(H) §289.231 of this chapter (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation);

(I) §289.252 of this subchapter (relating to Licensing of Radioactive Material); and

(J) §289.257 of this subchapter (relating to Packaging and Transportation of Radioactive Material).

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

(1) Energy compensation source (ECS)--A small, sealed source with an activity not exceeding 100 microcuries (μCi) (3.7 megabecquerel (MBq)), used within a logging tool or other tool component, to provide a reference standard to maintain the tool's calibration when in use.

(2) Field station (additional authorized use/storage location)--A facility where sources of radiation may be stored or used and from which equipment is dispatched to temporary job sites.

(3) Injection tool--A device used for subsurface or downhole controlled injection of radioactive tracer material.

(4) Logging assistant (equipment operator)--Any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by subsection (bb) of this section.

(5) Logging supervisor (field engineer)--The individual who provides personal supervision of the use of sources of radiation at temporary job sites.

(6) Logging tool--A device used subsurface to perform well logging.

(7) Mineral logging--Any logging performed for the purpose of mineral exploration other than oil or gas.

(8) Personal supervision--Guidance and instruction by the supervisor, who is physically present at the job site and in such proximity that visual contact can be maintained and immediate assistance given as required.

(9) Radiation safety officer--An individual named by the licensee or registrant and listed on the license or certificate of registration having knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee or registrant, and who meets the requirements of subsection (s) of this section.

(10) Radioactive marker--Radioactive material placed subsurface or upon a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(11) Residential location--Any area where a structure or structures are located, in which people live, and the grounds on which these structures are located, including houses, apartments, condominiums, and garages.

(12) Screenout--A situation in which radioactive tracer material is reversed out of an oil or gas well (well returns).

(13) Service company--Any contracted or subcontracted company that is present at the temporary job site specifically, a company whose equipment is connected to licensee's equipment and exposed to radioactive material.

(14) Source holder--A housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(15) Storage container--A container used to secure and store radioactive sources.

(16) Temporary job site--A location where well logging or tracer studies are performed other than the specific locations listed on a license or certificate of registration.

(17) Tracer study--The release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the wellbore, at the wellhead, or adjacent formation.

(18) Transport container--A container that meets the requirements of the United States Department of Transportation (DOT) and is designed to provide radiation safety and security when sources of radiation are being transported.

(19) Tritium neutron generator target source--A tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

(20) Uranium sinker bar--A weight containing depleted uranium used to aid in the descent of a logging tool down toward the bottom of a wellbore.

(21) Wellbore--A drilled hole in which wireline service operations are performed.

(22) Well logging--All operations involving the lowering and raising of measuring devices or logging tools (that may or may not contain sources of radiation) into wellbores or cavities for the purpose of obtaining information about the well or adjacent formations.

(23) Wireline--An armored steel cable, containing one or more electrical conductors, used to lower and raise logging tools in the wellbore.

(24) Wireline service operation--Any mechanical or electronic service that is performed in the wellbore using devices that are lowered into the well on a wireline for purposes of evaluation.

(d) Specific licenses for well logging.

(1) The applicant must satisfy the general requirements specified in this subsection and in §289.252(e) of this subchapter.

(2) The applicant must develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies:

(A) initial training;

(B) on-the-job training;

(C) annual safety reviews provided by the licensee;

(D) how the applicant will demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(E) how the applicant will demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

(3) The applicant must submit to the department written operating and emergency procedures as described in subsection (ee)(4) of this section.

(4) The applicant must establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure the department's regulations, license requirements, and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after each annual internal inspection.

(5) The applicant must submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

(6) If an applicant wants to perform leak testing of sealed sources, the applicant must identify the manufacturers and the model numbers of the leak test kits used. If the applicant wants to analyze its own wipe samples, the applicant must establish procedures to follow and submit a description of these procedures to the department. The description must include the:

(A) instruments used;

(B) methods of performing the analysis; and

(C) pertinent experience of the person who will analyze the wipe samples.

(e) Prohibitions.

(1) Licensees must not perform well logging service operations with a sealed source in any well or wellbore unless, before commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land owner, that specifies who will be responsible for ensuring:

(A) a reasonable effort at recovery will be made in the event a sealed source is lost or lodged downhole;

(B) a person does not attempt to recover a sealed source in a manner that, in the licensee's opinion, could result in a source rupture;

(C) if the environment, any equipment, or personnel are contaminated with radioactive material, decontamination to levels specified in §289.202(f), (n), and (eee) of this chapter are performed; and

(D) the requirements of subsection (dd)(4) of this section are met if a decision is made to abandon the sealed source downhole.

(2) Licensees must not perform tracer study operations with a substance tagged with radioactive material in any well or wellbore unless, before commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land owner, and the service company to which the licensee's equipment is connected, as applicable, specifying who is responsible for ensuring:

(A) in the event the service company's personnel or equipment are contaminated with radioactive material, they will be decontaminated as specified in §289.202(n) or (ddd) of this chapter before release from the job site or release for unrestricted use, respectively;

(B) in the event the well head or job site is contaminated with radioactive material, it will be decontaminated as specified in §289.202(ddd) of this chapter; and

(C) in the event radioactive material is reversed from the well or the well screens out, the licensee will have established procedures and equipment or facilities to:

(i) reverse material into a preconstructed steel or lined pit that is specifically established in the event of a screen out; or

(ii) reverse material into a suitable transport container or containers in the event of a screen out.

(3) The licensee must maintain, as specified in subsection (ee)(5) of this section, a copy of the written agreement specified in paragraph (1) or (2) of this subsection.

(f) Limits on levels of radiation. Sources of radiation must be used, stored, and transported in such a manner that the requirements of §289.202 of this chapter, §289.231 of this chapter, and §289.257 of this subchapter, as applicable, are met.

(g) Storage precautions.

(1) Each source of radiation, except accelerators, must be provided with a storage or transport container. Each container must have a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(2) Each area or room in which sources of radiation are stored must be posted as specified in §289.202(aa)(5) or §289.231(x) of this chapter, as applicable.

(3) Sources of radiation, except accelerators, must be stored downhole or in a bunker to minimize the danger from explosion or fire.

(4) Sources of radiation may not be stored in residential locations unless specifically authorized by the department.

(5) Sources of radiation in storage must be secured to prevent tampering or removal by unauthorized individuals.

(h) Transport precautions. Transport containers must be locked and physically secured to the transporting vehicle to prevent shifting during transport, accidental loss, tampering, or unauthorized removal.

(i) Radiation survey instruments.

(1) The licensee or registrant must maintain a sufficient number of calibrated and operable radiation survey instruments capable of detecting beta and gamma radiation at each location where sources of radiation are stored or used to make physical radiation surveys, as required by this section and by §289.202(p) or §289.231(s) of this chapter, as applicable. Instrumentation must be capable of measuring 0.1 milliroentgen per hour (mR/hr) (1 microsievert per hour (μSv/hr)) through at least 50 mR/hr (500 μSv/hr). (Instrumentation capable of measuring 0.1 mR/hr (1 μSv/hr) through 50 mR/hr (500 μSv/hr) may not be sufficient to determine compliance with DOT requirements.)

(2) A licensee using tracer material must have available at each additional authorized use/storage location and temporary job site, additional calibrated and operable radiation survey instruments sensitive enough to detect the radioactive surface contamination limits specified in §289.202(eee) of this chapter.

(3) Each radiation survey instrument required under paragraph (1) of this subsection must be calibrated:

(A) by a person specifically licensed or registered by the department, another agreement state, or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed six months and after each survey instrument repair;

(C) for the types of radiation used and at energies appropriate for use; and

(D) at an accuracy within plus or minus 20 percent of the true radiation level at each calibration point.

(4) The licensee or registrant must maintain calibration records as specified in subsection (ee)(5) of this section.

(j) Leak testing of sealed sources.

(1) Testing and record keeping. Sealed sources must be tested for leakage and contamination as specified in this section and §289.201(g) of this chapter. The licensee must maintain records of leak tests as specified in subsection (ee)(5) of this section.

(2) Each energy compensation source that is not exempt from testing as specified in §289.201(g)(2) of this chapter must be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the energy compensation source must not be used until tested as specified in §289.201(g) of this chapter.

(3) If a sealed source is found to be leaking as specified in §289.201(g) of this chapter, the licensee must check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by persons specifically authorized by the department, the NRC, or an agreement state, to perform such services.

(k) Quarterly inventory. Each licensee or registrant must conduct a physical inventory to account for all sources of radiation received or possessed at intervals not to exceed three months. The licensee or registrant must make and maintain records of inventories as specified in subsection (ee)(5) of this section and must include:

(1) the quantities and kinds of sources of radiation;

(2) the location where sources of radiation are assigned;

(3) the unique identification of each source of radiation;

(4) the date of the inventory; and

(5) the name of the individual conducting the inventory.

(l) Utilization records. For each source of radiation, utilization records must be maintained by each licensee or registrant as specified in subsection (ee)(5) of this section and must include:

(1) identification of each source of radiation, including:

(A) the make and model number or serial number (or if absent, a description) of each sealed source used; or

(B) the radionuclide and activity of tracer materials and radioactive markers used at a particular well site and the disposition of any unused tracer materials.

(2) the identity of the logging supervisor or individual who is responsible for receiving sources of radiation, to whom assigned; and

(3) the locations where used and dates of use.

(m) Design and performance criteria for sealed sources used in well logging operations.

(1) Each sealed source used in well logging applications must meet the following minimum criteria.

(A) The sealed source is of doubly encapsulated construction.

(B) The sealed source contains radioactive material with a chemical/physical form as insoluble and non-dispersible as practicable.

(C) The sealed source meets one of the following requirements:

(i) for a sealed source manufactured on or before July 14, 1989, the requirements from the United States of America Standards Institute (USASI) N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in clause (ii) or (iii) of this subparagraph;

(ii) for a sealed source manufactured after July 14, 1989, the oil-well logging requirements from the American National Standards Institute/Health Physics Society (ANSI/HPS) N43.6-1997, "Sealed Radioactive Sources-Classification;" or

(iii) for a sealed source manufactured after July 14, 1989, the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(I) Temperature. The test source must be held at negative 40 degrees Celsius for 20 minutes, 600 degrees Celsius for one hour, and then be subjected to a thermal shock test with a temperature drop from 600 degrees Celsius to 20 degrees Celsius within 15 seconds.

(II) Impact. A 5 kilogram (kg) steel hammer, 2.5 centimeters (cm) in diameter, must be dropped from a height of 1 meter (m) onto the test source.

(III) Vibration. The test source must be subjected to a vibration from 25 Hertz (Hz) to 500 Hz with a peak amplitude of five times the acceleration of gravity for 30 minutes.

(IV) Puncture. A 1 gram (g) hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(V) Pressure. The test source must be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascals) without leakage.

(2) The requirements in paragraph (1) of this subsection do not apply to sealed sources containing radioactive material in gaseous form.

(3) The requirements in this subsection do not apply to energy compensation sources.

(n) Labeling.

(1) Each source, source holder, or logging tool containing radioactive material in other than an exempt quantity must bear a durable, legible, and clearly visible marking or label, including, as a minimum, the standard radiation caution symbol with no color requirement, and the wording DANGER (or CAUTION), RADIOACTIVE--DO NOT HANDLE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(2) The labeling specified in paragraph (1) of this subsection must be on the smallest component, source, source holder, or logging tool that is transported as a separate piece of equipment.

(3) Each transport container must have permanently attached a durable, legible, and clearly visible label having, as a minimum, the standard radiation caution symbol and the wording DANGER (or CAUTION), RADIOACTIVE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(4) Each transport container must have attached a durable, legible, and clearly visible label having, at a minimum, the licensee's

name, address, and telephone number, the radionuclide, its activity, and assay date.

(o) Inspection and maintenance.

(1) Each licensee or registrant must conduct, at intervals not to exceed six months, a program of visual inspection and maintenance of source holders (or sealed source, if there is no source holder), logging tools, source handling tools, storage containers, transport containers, and injection tools to assure proper labeling and physical condition. The inspection program may be performed concurrently with routine leak testing of sealed sources. Records of inspection and maintenance must be made and maintained by the licensee or registrant as specified in subsection (ee)(5) of this section.

(2) If any inspection conducted as specified in paragraph (1) of this subsection reveals damage to labeling or components critical to radiation safety, the device must be removed from service at the time the damage is discovered and until repairs have been made.

(3) Any operation, such as drilling, cutting, or chiseling on a source holder containing a sealed source, must be performed on the source holder only by persons specifically licensed to do so by the department, another agreement state, or the NRC. The provisions of this paragraph do not apply to logging tool recovery (fishing) operations conducted as specified in the provisions of subsection (dd)(4) of this section.

(4) The repair, opening, or modification of any sealed source must be performed only by persons specifically licensed to do so by the department, another agreement state, or the NRC.

(p) Training requirements.

(1) Licensees or registrants must not permit any individual to act as a logging supervisor until such individual has:

(A) completed a course including at least 24 hours of formal training in the subjects outlined in subsection (ee)(1) of this section;

(B) received copies of and instruction in:

(i) the requirements contained in this section and the applicable subsections of §§289.201, 289.202, 289.203, and 289.231 of this chapter or their equivalent;

(ii) the conditions of the appropriate license or certificate of registration; and

(iii) the licensee's or registrant's operating, safety, and emergency procedures;

(C) demonstrated understanding of the requirements in subparagraphs (A) and (B) of this paragraph by successfully completing a written examination administered by the licensee or registrant;

(D) completed two months of on-the-job training under the supervision of a logging supervisor; and

(E) demonstrated, through a field evaluation, competence in the use of sources of radiation, related handling tools, and the type of radiation survey instruments that will be used in the job assignment.

(2) Licensees or registrants must not permit any individual to act as a logging assistant until such individual has:

(A) received copies of and instruction in the applicable subsections of §§289.201, 289.202, 289.203, and 289.231 of this chapter or their equivalent, and the licensee's or registrant's operating, safety, and emergency procedures;

(B) demonstrated understanding of the requirements in subparagraph (A) of this paragraph by successfully completing a written examination administered by the licensee or registrant; and

(C) demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments used in the job assignment.

(3) The licensee or registrant must provide an annual radiation safety review for logging supervisors and logging assistants.

(4) Each licensee or registrant must maintain records documenting the requirements of paragraphs (1) - (3) of this subsection are met. Such records must be maintained as specified in subsection (ee)(5) of this section.

(q) Operating, safety, and emergency procedures. The licensee or registrant must maintain written operating, safety, and emergency procedures that include descriptions of and directions in at least the items listed in subsection (ee)(4) of this section.

(r) Personnel monitoring.

(1) In addition to the requirements of §289.202(p)(4) and (q) of this chapter or §289.231(n) and (s)(3) of this chapter, as applicable, no licensee or registrant may permit any individual to act as a logging supervisor or logging assistant unless that individual wears an individual monitoring device at all times during well logging service operations or tracer studies utilizing sources of radiation. Each individual monitoring device must be assigned to and worn by only one individual. Film badges must be replaced at least monthly. Other individual monitoring devices requiring replacement must be replaced at least quarterly. After replacement, each individual monitoring device requiring processing must be returned to the supplier for processing within 14 calendar days or as soon as practicable. All individual monitoring devices must be evaluated at least quarterly or promptly after replacement, whichever is more frequent. Circumstances preventing meeting these time limits must be documented, and those records must be available for review by the department.

(2) When necessary to aid in determining the extent of an individual's intake of radioactive material, the department may require a licensee or registrant to make available to the individual, appropriate bioassay services and to furnish a copy of the reports of such services to the department.

(3) Personnel monitoring records must be maintained by the licensee or registrant as specified in subsection (ee)(5) of this section.

(s) Radiation safety officer.

(1) A radiation safety officer (RSO) must be designated for every license and certificate of registration issued by the department.

(2) The RSO's documented qualifications must include:

(A) possession of a high school diploma or a certificate of high school equivalency based on the General Education Development (GED) test;

(B) completion of the training and testing requirements of subsection (p)(1) of this section; and

(C) two years of experience as a logging supervisor, including knowledge of well logging service operations and tracer studies.

(3) The duties of the RSO include:

(A) establishing and overseeing operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and reviewing them regularly to ensure the procedures are current and conform with this chapter;

(B) overseeing and approving all phases of the training program for well logging service operations and tracer studies personnel so that appropriate and effective radiation protection practices are taught;

(C) ensuring required radiation surveys and leak tests are performed and documented as specified in this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) ensuring personnel monitoring is used properly by occupationally exposed personnel, records are kept of the monitoring results, and timely notifications are made, as required by §289.203 of this chapter;

(E) investigating and reporting to the department each known or suspected case of radiation exposure to an individual or radiation level detected over the limits established by this chapter and each theft or loss of each source of radiation, determining the cause, and taking steps to prevent its recurrence;

(F) having a thorough knowledge of management policies and administrative procedures of the licensee or registrant;

(G) assuming control and having the authority to institute corrective actions including shutdown of operations, when necessary in emergency situations or unsafe conditions;

(H) maintaining records as required by this chapter (see subsection (ee)(5) of this section);

(I) ensuring the proper storing, labeling, transport, and use of sources of radiation, storage, and transport containers;

(J) ensuring inventories are performed as specified in subsection (k) of this section;

(K) ensuring personnel are complying with this chapter, the conditions of the license or the registration, and the operating, safety, and emergency procedures of the licensee or registrant; and

(L) serving as the primary contact with the department.

(t) Security.

(1) A logging supervisor must be physically present at a temporary job site whenever radioactive material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site to obtain assistance if a sealed source becomes lodged in a well.

(2) During well logging, except when sealed sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor must maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in §289.201(b) of this chapter, or §289.231(c) of this chapter, as applicable.

(u) Handling tools. The licensee must provide and require the use of tools that assure remote handling of sealed sources, other than low activity calibration sources.

(v) Tracer studies.

(1) Appropriate protective clothing and equipment must be used by all personnel handling radioactive tracer material. Precautions must be taken to avoid ingestion or inhalation of radioactive material and to avoid contamination of field stations, temporary job sites, vehicles, associated equipment, and clothing.

(2) Licensees may not permit the injection of radioactive material into usable quality groundwater (3,000 parts per million (ppm) total dissolved solids or less) without prior written authorization from the department.

(3) The well operator must contact the licensee when a decision is made to reverse the radioactive tracer material out of a well. The licensee must be onsite and present at the well when radioactive tracer material is reversed out of a well.

(w) Particle accelerators. Licensees or registrants must not permit above-ground testing of particle accelerators that results in the production of radiation except in areas or facilities controlled or shielded to meet the requirements of §289.202(f) or (n) of this chapter, or §289.231(m) or (o) of this chapter, as applicable.

(x) Radioactive markers. The licensee may use radioactive markers in wells only if the individual markers contain quantities of radioactive material not exceeding the quantities specified in §289.251(l)(2) of this subchapter (relating to Exemptions, General Licenses, and General License Acknowledgements). The use of markers is subject only to the provisions of this subsection and subsection (k) of this section.

(y) Uranium sinker bars. The licensee may use a depleted uranium sinker bar in well logging service operations only if it is legibly impressed with the wording "DANGER (or CAUTION), RADIOACTIVE-DEPLETED URANIUM, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY) IF FOUND."

(z) Energy compensation source (ECS).

(1) The licensee may use an ECS that is contained within a logging tool or other tool components.

(2) For well logging applications with a surface casing for protecting freshwater aquifers, use of the ECS is only subject to the requirements of subsections (j), (k), and (l) of this section.

(3) For well logging applications without a surface casing for protecting freshwater aquifers, use of the ECS is only subject to the requirements of subsections (e), (j), (k), (l), (dd), and (ee)(4)(A) of this section.

(aa) Tritium neutron generator target source.

(1) Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (Ci) (1,110 gigabecquerels (GBq)) and in a well with a surface casing to protect freshwater aquifers, is subject to the requirements of this section, except subsections (e), (m), and (dd) of this section.

(2) Use of a tritium neutron generator target source, containing quantities exceeding 30 Ci (1,110 GBq) or in a well without a surface casing to protect freshwater aquifers, is subject to the requirements of this section, except subsection (m) of this section.

(bb) Radiation surveys.

(1) Radiation surveys (and calculations for neutron sources) must be made and recorded for each area where radioactive materials are stored.

(2) Radiation surveys (and calculations for neutron sources) of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials must be made and recorded. Such surveys (and calculations for neutron sources) must include all sources of radiation transported in the vehicle.

(3) If the sealed source assembly is removed from the logging tool before departing the job site, a survey of the tool to verify that the logging tool is free of contamination must be made and recorded.

(4) If the encapsulation of the sealed source has been damaged by an operation or is likely to have been damaged by an operation, the licensee must immediately conduct a radiation survey and make a record of that survey, including a contamination survey, during and after the operation.

(5) Radiation surveys must be made and recorded at the job site and well head for each tracer operation except for those utilizing hydrogen-3, carbon-14, sulfur-35, or krypton-85. These surveys must include measurements of radiation levels before and after the operation.

(6) Records required as specified in paragraphs (1) - (5) of this subsection must include the dates, the identification of personnel making the survey, the unique identification of survey instruments used, radiation measurements in milliroentgen per hour (mR/hr), calculations in millirem per hour (mrem/hr) or microsievert per hour (μSv/hr), and an exact description of the location of the survey. Each licensee or registrant must make and maintain records of these surveys as specified in subsection (ee)(5) of this section.

(cc) Records/documents for inspection by the department.

(1) Each licensee or registrant must maintain the records/documents specified in subsection (ee)(5) of this section.

(2) Each licensee or registrant maintaining additional authorized use/storage locations from which well logging service operations are conducted must have copies of the records/documents specified in subsection (ee)(5)(B) - (E) and (G) - (O) of this section that are specific to the site, available at each site.

(3) Records/documents required as specified in paragraph (2) of this subsection must be maintained as specified in subsection (ee)(5) of this section.

(4) Each licensee or registrant conducting well logging service operations at a temporary job site must have copies of the records/documents specified in subsection (ee)(5)(B), (C), (I), (K), (L), and (N) of this section available at that site.

(5) Records/documents required by paragraph (4) of this subsection must be maintained at the temporary job site for the period of operation at that site.

(dd) Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(1) Notification of incidents and sources lost in other than downhole well logging operations must be made as specified in appropriate provisions of §289.202 of this chapter, or §289.231 of this chapter, as applicable.

(2) Whenever a sealed source or a device containing radioactive material has been ruptured or is likely to have been ruptured, the licensee must notify the department immediately by telephone and submit written notification within 30 days. The written notification must designate:

(A) the well or other location;

(B) the magnitude and extent of the escape of radioactive material;

(C) the consequences of the rupture; and

(D) the efforts planned or being taken to mitigate these consequences.

(3) Whenever a sealed source is separated from the logging tool and is lost downhole, the licensee must notify the department immediately by telephone before beginning source recovery operations.

(4) Whenever a sealed source or device containing radioactive material is lost downhole, the licensee must:

(A) consult with the well operator, well owner, drilling contractor, or landowner regarding methods to retrieve the source or device that may reduce the likelihood that the source or device will be damaged or ruptured during the logging tool recovery (fishing) operations;

(B) continuously monitor the circulating fluids from the well, if any, during logging tool recovery (fishing) operations to check for contamination resulting from damage to the sealed source with an appropriate radiation detection instrument or a logging tool with a radiation detector; and

(C) notify the department immediately by telephone and submit written notification within 30 days if radioactive contamination is detected at the surface or if the source appears to be damaged.

(5) When efforts to recover the radioactive source are not successful, the licensee must:

(A) notify the department by telephone of the circumstances that resulted in the inability to retrieve the source and obtain approval from the department to implement abandonment procedures, or that the licensee implemented abandonment before receiving approval from the department because the licensee believed there was an immediate threat to public health and safety; and

(B) advise the well operator of the Railroad Commission of Texas requirements regarding abandonment and an appropriate method of abandonment, that includes:

(i) the immobilization and sealing in place of the radioactive source with a cement plug;

(ii) a means to prevent inadvertent intrusion on the source, such as the setting of a whipstock or other deflection device, unless the source is not accessible to any subsequent drilling operations; and

(iii) the mounting of a permanent identification plaque, containing information required by paragraph (6) of this subsection, at the surface of the well;

(C) notify the department by telephone, giving the circumstances of the loss; and

(D) file a written report with the department within 30 days of the abandonment, providing:

(i) the date of occurrence;

(ii) a description of the radioactive source involved, including radionuclide, activity, chemical and physical form, and manufacturer, model number and serial number;

(iii) the surface location and identification of the well;

(iv) the results of efforts to immobilize and seal the source in place;

(v) the depth of the radioactive source;

(vi) the depth of the top of the cement plug;

(vii) the depth of the well; and

(viii) the information contained on the permanent identification plaque.

(6) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee must provide a permanent plaque (an example of a suggested plaque is shown in subsection (ee)(3) of this section) for posting on the well or wellbore. This plaque must:

(A) be constructed of long-lasting material such as stainless steel, brass, bronze, or monel. The size of the plaque should be convenient for use on active or inactive wells; for example, a 7-inch (17 cm) square. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information; for example, 1/2 inch (1.27 cm) and 1/4 inch (0.63 cm) letter size, respectively; and

(B) contain the following engraved information on its face:

(i) the word "CAUTION;"

(ii) the radiation symbol (color not required);

(iii) the date of abandonment;

(iv) the name of the well operator or well owner;

(v) the well name and well identification number or other designation;

(vi) radionuclides and activities of the sources;

(vii) the source depth and the plug back depth (depth to the top of the plug); and

(viii) an appropriate warning, depending on the specific circumstances of each abandonment, such as:

(I) "Do not drill below plug back depth;"

(II) "Do not enlarge casing;" or

(III) "Do not re-enter hole before contacting Radiation Control, Texas Department of State Health Services."

(7) The licensee must immediately notify the department by telephone and confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source. Such notice must designate well location and describe the magnitude and extent of loss of radioactive material, consequences of such loss, and efforts taken or planned to mitigate these consequences.

(8) In the event of an uncontrolled release of radioactive tracer material to the environment, the licensee must notify the department by telephone within 24 hours and submit written notification within 30 days.

(ee) Appendices.

(1) Subjects to be included in training courses for well logging service operations and tracer studies are as follows:

(A) fundamentals of radiation safety that include:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity;

(iii) significance of radiation dose specifying radiation protection standards and biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose specifying time, distance, and shielding;

(vi) radiation safety practices, specifying prevention of contamination and methods of decontamination; and

(vii) discussion of ingestion and inhalation pathways;

(B) radiation detection instrumentation to be used that includes:

(i) use of radiation survey instruments specifying operation, calibration, and limitations;

(ii) survey techniques; and

(iii) use of individual monitoring devices;

(C) equipment to be used that specifies;

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) pertinent federal and state requirements;

(E) the licensee's or registrant's written operating, safety, and emergency procedures;

(F) the licensee's or registrant's record keeping procedures; and

(G) case histories and potential consequences of accidents in well logging service operations and tracer studies.

(2) In addition to the subjects for training courses required in paragraph (1) of this subsection, individuals performing tracer studies must also complete training in the following subjects:

(A) sources of contamination;

(B) contamination detection and control;

(C) decontamination techniques and limits;

(D) survey techniques for tracer materials; and

(E) packaging requirements for transportation of radioactive materials, especially residual materials from tracer studies.

(3) The following is an example of a plaque for identifying wells containing sealed sources of radioactive material abandoned downhole:
Figure: 25 TAC §289.253(ee)(3) (No change.)

(4) The licensee's or registrant's operating, safety, and emergency procedures must include descriptions of and instructions in:

(A) the handling and use of sources of radiation in wells without surface casing for protecting freshwater aquifers, if appropriate;

(B) the handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses over the limits established in §289.202 of this chapter, or §289.231 of this chapter, as applicable. Every reasonable effort must be made to keep radiation exposures and releases of radioactive material in soils and effluents to unrestricted areas as low as is reasonably achievable;

(C) methods and occasions for conducting radiation surveys;

(D) methods and occasions for locking and securing sources of radiation;

(E) personnel monitoring, including bioassays, and the use of individual monitoring devices;

(F) removing radioactive material from storage, transporting radioactive material to field locations and temporary job sites, including packaging of sources of radiation in the vehicles, placarding of vehicles, securing sources of radiation during transportation, and returning to storage;

(G) minimizing exposure of individuals during routine use and in the event of an accident;

(H) notifying proper personnel in the event of an accident or well excursion;

(I) maintaining records;

(J) using, inspecting, and maintaining source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

(K) actions to be taken if a sealed source is lost or lodged downhole;

(L) picking up, receiving, handling, and opening packages containing radioactive material;

(M) surveying temporary job sites and equipment, and decontamination of vehicles, associated equipment, and clothing following tracer studies;

(N) storing and disposing of radioactive waste;

(O) laundering contaminated clothing, if applicable;

(P) the licensee's or registrant's management structure;

(Q) posting of radiation areas and labeling radioactive material containers;

(R) actions to be taken if there is an uncontrolled release of radioactive tracer material to the environment; and

(S) actions to be taken if a sealed source is ruptured, including actions preventing the spread of contamination and minimizing inhalation and ingestion of radioactive material, and actions to obtain suitable radiation survey instruments as required by subsection (i) of this section.

(5) The following records/documents must be maintained by the licensee or registrant for inspection by the department.
Figure: 25 TAC §289.253(ee)(5)

§289.255. Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography.

(a) Purpose.

(1) The requirements in this section establish radiation safety requirements and licensing and registration procedures for using sources of radiation for industrial radiography and for certification of industrial radiographers.

(2) The requirements in this section apply to licensees and registrants who possess sources of radiation for industrial radiography, including radiation machines, accelerators, and sealed radioactive sources.

(3) Each licensee and registrant is responsible for ensuring compliance with this chapter, license and registration conditions, and orders of the department.

(4) Each licensee and registrant is responsible for ensuring radiographic personnel performing activities under a license or registration comply with this chapter, license and registration conditions, and orders of the department.

(b) Scope.

(1) The requirements of this section are in addition to and not in substitution for other applicable requirements of this chapter.

(2) The requirements of the following sections of this chapter apply to all licensed industrial radiographic operations:

(A) §289.201 of this chapter (relating to General Provisions for Radioactive Material);

(B) §289.202 of this chapter (relating to Standards for Protection Against Radiation from Radioactive Materials);

(C) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(F) §289.251 of this subchapter (relating to Exemptions, General Licenses, and General License Acknowledgements);

(G) §289.252 of this subchapter (relating to Licensing of Radioactive Material); and

(H) §289.257 of this subchapter (relating to Packaging and Transportation of Radioactive Material).

(3) The requirements of the following sections of this chapter apply to all registered industrial radiographic operations:

(A) §289.203 of this chapter;

(B) §289.204 of this chapter;

(C) §289.205 of this chapter;

(D) §289.226 of this chapter (relating to Registration of Radiation Machine Use and Services); and

(E) §289.231 of this chapter (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(4) The requirements of §289.228 of this chapter (relating to Radiation Safety Requirements for Industrial Radiation Machines) apply to persons using analytical and other industrial radiation machines subject to this section.

(5) The requirements of §289.229 of this chapter (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators and Electronic Brachytherapy Devices) apply to persons using accelerators subject to this section.

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

(1) ANSI--American National Standards Institute.

(2) Annual refresher safety training--A review conducted or provided by the licensee or registrant for its employees on radia-

tion safety aspects of industrial radiography. The review may include, as appropriate, the results of internal audits, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions.

(3) Associated equipment--Equipment, used in conjunction with a radiographic exposure device used to make radiographic exposures, that drives, guides, or comes in contact with the source, (such as, guide tube, control tube, control cable (drive cable), removable source stop, "J" tube, and collimator when it is used as an exposure head).

(4) Cabinet x-ray system--An x-ray system with the x-ray tube installed in an enclosure independent of existing architectural structures except the floor on which it may be placed. An x-ray tube used within a shielded part of a building, or x-ray equipment that may temporarily or occasionally incorporate portable shielding, is not considered a cabinet x-ray system. The cabinet x-ray system is intended to:

(A) contain at least that portion of a material being irradiated;

(B) provide radiation attenuation; and

(C) exclude personnel from its interior during generation of radiation.

(5) Certifiable cabinet x-ray system--An existing uncertified x-ray system modified to meet the certification requirements specified in 21 Code of Federal Regulations (CFR) §1020.40.

(6) Certification identification (ID) card--The document issued by the department to individuals who have completed the requirements stated in subsection (e)(2)(A) of this section.

(7) Certified cabinet x-ray system--An x-ray system that has been certified as specified in 21 CFR §1010.2 as being manufactured and assembled on or after April 10, 1975, as specified in the provisions of 21 CFR §1020.40.

(8) Certifying entity--An entity that is:

(A) an independent certifying organization;

(B) an Agreement State whose industrial radiographer certification program meets the applicable parts of 10 CFR Part 34, Appendix A, Parts II and III for radioactive material; or

(C) a radiation control agency whose x-ray or combination certification requirements are found to be equivalent to criteria established by the Conference of Radiation Control Program Directors, Inc..

(9) Collimator--A radiation shield placed on the end of a guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

(10) Conference of Radiation Control Program Directors, Inc. (CRCPD)--A 501(c)(3) nonprofit, non-governmental, professional organization dedicated to radiation protection to serve as a common forum for the many governmental radiation protection agencies to communicate with each other and to promote uniform radiation protection regulations and activities.

(11) Control cable (drive cable)--The cable connected to the source assembly and used to drive the source from and return it to the shielded position.

(12) Control mechanism (drive mechanism)--A device enabling the source assembly to be moved from and returned to the shielded position. A drive mechanism is also known as a crank assembly.

(13) Control tube--A protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

(14) Crank-out device--The control cable, control tube, and drive mechanism used to move the sealed source to and from the shielded position to make an industrial radiographic exposure.

(15) Exposure head--A device that locates the gamma radiography sealed source in the selected working position. An exposure head is also known as a source stop.

(16) Field station--A facility where licensed material or radiation machines are stored or used and from which equipment is dispatched to temporary job sites.

(17) Guide tube--A flexible or rigid tube, such as a "J" tube, for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

(18) Independent certifying organization--An independent organization meeting the criteria of 10 CFR Part 34, Appendix A, for radioactive material, or comparable standards for x-ray machines.

(19) Industrial radiography (radiography)--A non-destructive testing method using ionizing radiation, such as gamma rays or x-rays, to make radiographic images for the purpose of detecting flaws in objects without destroying them.

(20) Lay-barge radiography--Industrial radiography performed on any water vessel used for laying pipe.

(21) Lock-out survey--A radiation survey performed to determine a sealed source is in its fully shielded position before moving the radiographic exposure device or source changer to a different temporary job site or before securing the radiographic exposure device or source changer against unauthorized removal.

(22) Offshore--Within the territorial waters of the State of Texas. The territorial waters of Texas extend to the three marine league line or nine nautical miles from the Texas coast.

(23) On-the-job training (hands-on experience)--Experience in all areas considered to be directly involved in the radiography process. The hours of on-the-job training do not include safety meetings, classroom training, travel, darkroom activities, film development and interpretation, or use of a cabinet x-ray unit.

(24) Permanent radiographic installation--An enclosed shielded room, cell, or vault, not located at a temporary job site, in which radiography is performed and meets the criteria of subsection (n) of this section.

(25) Personal supervision--Guidance and instruction provided to a radiographer trainee by a radiographer trainer present at the site, in visual contact with the trainee while the trainee is using sources of radiation, associated equipment, and survey meters, and in such proximity that immediate assistance can be given, if required.

(26) Pipeliners--A directional beam radiographic exposure device.

(27) Platform radiography--Industrial radiography performed on an offshore platform or other structure over a body of water.

(28) Practical examination--A demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures.

(29) Radiation safety officer (RSO)--An individual named by the licensee or registrant and listed on the license or certificate of registration having a knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee or registrant and who meets the requirements of subsection (e)(4) of this section.

(30) Radiographer--Any individual who has successfully completed the requirements of subsection (e)(2)(A) of this section, performs industrial radiographic operations, or provides visual surveillance of industrial radiographic operations while in attendance during transport or at the site where the sealed source or sources are being used, and is responsible to the licensee or registrant for assuring compliance with the requirements of the department's regulations and conditions of the license or certificate of registration. These individuals may be referred to as certified industrial radiographers or certified radiographers.

(31) Radiographer certification--Written approval received from a certifying entity stating an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

(32) Radiographer trainee--Any individual who has successfully completed the training and documentation requirements of subsection (e)(1)(A) of this section and uses sources of radiation and associated equipment or radiation survey instruments under the personal supervision of a radiographer trainer.

(33) Radiographer trainer--A radiographer who instructs and supervises radiographer trainees during on-the-job training and meets the requirements of subsection (e)(3) of this section.

(34) Radiographic exposure device--Any instrument containing a sealed source fastened or contained therein, where the sealed source or shielding may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure (e.g., camera).

(35) Radiographic operations--All activities associated with the presence of x-ray machines or radioactive sources in a radiographic exposure device during the use of the machine or device or transport (except when being transported by a common or contract transport). Radiographic operations include surveys to confirm the adequacy of boundaries, setting up equipment, and any activity inside restricted area boundaries.

(36) Radiographic personnel--Any radiographer, radiographer trainer, or radiographer trainee.

(37) Residential location--Any area where a structure or structures are located, in which people live, and the grounds on which these structures are located, including houses, apartments, condominiums, and garages.

(38) S-tube--A tube through which the radioactive source travels when inside a radiographic exposure device.

(39) Shielded position--The location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

(40) Shielded-room radiography--Industrial radiography conducted in a room shielded so radiation levels at every location on the exterior meet the limitations specified in §289.202(n) of this chapter or §289.231(o) of this chapter, as applicable. A shielded room is also known as a bay or bunker.

(41) Source assembly (pigtail)--An assembly consisting of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a ball stop used to secure the source in the shielded position.

(42) Source changer--A device designed and used to replace sealed sources in radiographic exposure devices, including those used to transport and store sealed sources.

(43) Storage area--Any location, facility, or vehicle used to store and secure a radiation machine, radiographic exposure device, a storage container, or a sealed source when it is not in use. Storage areas are locked or have a physical barrier to prevent accidental exposure, tampering, or unauthorized removal of the machine, device, container, or source.

(44) Storage container--A device in which the sealed source is secured and stored.

(45) Temporary job site--A location where radiographic operations are conducted and where licensed or registered sources of radiation may be stored other than the specific use location or locations listed on a license or certificate of registration.

(46) Trainee status card--The document issued by the department following completion of the requirements of subsection (e)(1)(A) of this section.

(47) Transport container--A package that is designed to provide radiation safety and security when sealed sources are transported and meets all applicable requirements of the United States Department of Transportation (DOT).

(48) Underwater radiography--Industrial radiography performed when the radiographic exposure device or related equipment are beneath the surface of the water.

(d) Exemptions.

(1) Uses of certified and certifiable cabinet x-ray systems are exempt from the requirements of this section except for the requirements of subsections (a), (b)(3), (c), and (t)(8) of this section.

(2) Industrial uses of hand-held light intensified imaging devices are exempt from the requirements in this section if the exposure rate 18 inches from the source of radiation to any individual does not exceed 2 millirem per hour (mrem/hr) (0.02 millisievert per hour (mSv/hr)). Devices with exposure rates that exceed the 2 mrem/hr (0.02 mSv/hr) level must meet the applicable requirements of this section and §289.252 of this subchapter or §289.226 of this chapter, as applicable. This exemption will apply only to those radiation machines that do not allow a person or body part to be exposed to the radiation beam.

(3) Radiation machines determined by the department to constitute a minimal threat to human health and safety as specified in §289.231(ll)(3) of this chapter are exempt from the requirements in this section except for the requirements of paragraph (1) of this subsection.

(4) Facilities that utilize radiation machines for industrial radiography only at permanent radiographic installations are exempt from the requirements of this section except for the requirements of subsections (a), (b)(1), (b)(3) - (5), (c), (e), (j), (k), (n), (o), (t)(1), (t)(2), (t)(5), and (t)(7).

(e) Requirements for qualifications of radiographic personnel.

(1) Radiographer trainee. Licensees or registrants must not permit any individual to act as a radiographer trainee until the individual possesses the original or a copy of a department-issued trainee status card or certification ID card.

(A) To obtain a department-issued trainee status card, the licensee, registrant, or the individual must document to the department on RC Form 255-E, or equivalent, that such individual has successfully completed a course of at least 40 hours on the applicable subjects outlined in subsection (x)(1) of this section.

(B) The trainee must carry a copy of the completed RC Form 255-E in the interim period after submitting documentation to the department and before receiving a trainee status card. The copy of the completed RC Form 255-E submitted to the department may be used in lieu of the trainee status card for a period of 30 days from the date recorded by the trainee on the documentation.

(C) The individual must notify the department, in writing, of the need for a replacement trainee status card. The individual must carry a copy of documentation of the request while performing industrial radiographic operations until a replacement trainee status card is received from the department.

(D) Records required by subparagraph (A) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(E) Each licensee and registrant must maintain, for inspection by the department, clear and legible records demonstrating all the applicable requirements of this paragraph are met. A copy of the trainee status card will satisfy the documentation requirements of this paragraph.

(2) Radiographer. Licensees or registrants must not permit any individual to act as a radiographer until the individual possesses a valid radiographer certification.

(A) To obtain a radiographer certification, an individual must submit the fee as prescribed in subsection (h)(1) of this section and:

(i) complete the requirements of paragraph (1)(A) of this subsection;

(ii) document to the department on RC Form 255-R completion of on-the-job training as a radiographer trainee supervised by a radiographer trainer who meets the requirements of subsection (e)(3) of this section;

(I) The radiographer trainee must carry a legible trainee status card as specified in paragraph (1) of this subsection while obtaining the on-the-job training specified in subclauses (II) - (VII) of this clause.

(II) The on-the-job training must include at least 200 hours of active participation in radioactive materials industrial radiographic operations or 120 hours of active participation in x-ray industrial radiographic operations, as applicable.

(III) Individuals performing industrial radiography utilizing radioactive materials and x-ray machines must complete both segments (320 hours) of on-the-job training.

(IV) The hours of on-the-job training do not include safety meetings, classroom training, travel, darkroom activities, film development and interpretation, or use of a cabinet x-ray unit.

(V) One year of documented experience of on-the-job training as authorized by another agreement state or the United States Nuclear Regulatory Commission (NRC) may be substituted for the requirements of subclauses (II) or (III) of this clause. The documentation must be submitted to the department on RC Form 255-OS or equivalent.

(VI) The trainee must be under the personal supervision of a radiographer trainer whenever a radiographer trainee:

(-a-) uses radiation machines, radiographic exposure devices, or associated equipment; or

(-b-) performs radiation surveys required by:

(-1-) subsection (t)(6) of this section to determine the radiation machine has stopped producing radiation; or

(-2-) subsection (u)(9) of this section to determine the sealed source has returned to the shielded position after an exposure.

(VII) The personal supervision must include:

(-a-) the radiographer trainer's physical presence at the site where the sources of radiation are being used;

(-b-) the availability of the radiographer trainer to give immediate assistance if required; and

(-c-) the radiographer trainer's direct observation of the trainee's performance of the operations referred to in this section.

(iii) successfully complete within the last five years the appropriate department-administered examination prescribed in subsection (g)(2) of this section or the appropriate examination of another certifying entity that affords the same or comparable certification standards as those afforded by this clause and clauses (i) and (ii) of this subparagraph; and

(iv) possesses a current certification ID card issued as specified in subsection (h)(2) of this section or by another certifying entity affording the same or comparable certification standards as those afforded by this clause or clauses (i) - (iii) of this subparagraph.

(B) Reciprocal recognition by the department of an individual radiographer certification may be granted as specified in subsection (h)(5)(A) and (B) of this section.

(C) Once an individual has completed the requirements of paragraph (2)(A)(iv) of this subsection, the licensee or registrant is not required to submit the documentation referenced in paragraph (2)(A)(i) and (ii) of this subsection for renewal of a radiographer certification.

(D) Records required by subparagraph (A) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(E) Each licensee and registrant must maintain for inspection by the department, clear and legible records demonstrating the applicable requirements of this paragraph are met for all industrial radiographic personnel. A copy of the certification ID card will satisfy the documentation requirements of this paragraph.

(3) Radiographer trainer.

(A) Licensees or registrants must not permit any individual to act as a radiographer trainer until:

(i) it has been documented to the department on RC Form 255-T or equivalent the individual has:

(I) met the radiographer certification requirements of paragraph (2)(A) of this subsection; and

(II) documented 2000 hours of direct experience as a certified radiographer.

(ii) the individual is in receipt of a valid trainer certification ID card issued by the department and under which the individual is acting as a radiographer trainer; and

(iii) determination is made by the department the individual is not currently under order from the department prohibiting the individual from acting as a radiographer trainer.

(B) The specific duties of the radiographer trainer include:

(i) providing personal supervision to any radiographer trainee at the site where the sources of radiation are being used; and

(ii) preventing any unauthorized use of a source of radiation by a radiographer trainee.

(4) RSO for industrial radiography. An RSO must be designated on every industrial radiography license and certificate of registration issued by the department. The RSO's qualifications must be submitted to the department. A single individual may be designated as RSO for more than one license or certificate of registration if authorized by the department.

(A) The minimum qualifications for industrial radiography RSOs are:

(i) completion of requirements for a radiographer trainer of subsection (e)(3)(A) of this section; and

(ii) formal training in the establishment and maintenance of a radiation protection program.

(B) The department considers alternatives when the RSO has appropriate training and experience in the field of ionizing radiation and has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

(C) The specific duties of the RSO include:

(i) establishing and overseeing operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them regularly to ensure that the procedures are current and conform with the requirements of this chapter;

(ii) overseeing and approving all phases of the training program for radiographic personnel so that appropriate and effective radiation protection practices are taught;

(iii) ensuring required radiation surveys and leak tests are performed and documented as specified in this chapter, including any corrective measures when levels of radiation exceed established limits;

(iv) ensuring personnel monitoring devices are calibrated and used properly by occupationally exposed personnel;

(v) ensuring timely notifications to employees are made as specified in §289.203 of this chapter;

(vi) ensuring timely notifications to the department are made as specified in this section and §289.202 of this chapter or §289.231 of this chapter, as applicable;

(vii) ensuring any required interlock switches and warning signals are functioning and radiation signs, ropes, and barriers are properly posted and positioned;

(viii) investigating, determining the cause, taking steps to prevent the recurrence, and reporting to the department each:

(I) known or suspected case of radiation exposure to an individual or radiation level detected over the limits established by this chapter; and

(II) theft or loss of sources of radiation;

(ix) having a thorough knowledge of management policies and administrative procedures of the licensee or registrant;

(x) assuming control and having the authority to institute corrective actions, including shutdown of operations, when necessary, in emergency situations or unsafe conditions;

(xi) maintaining records as specified in subsection (v)(1) of this section;

(xii) ensuring the proper storing, labeling, transport, and use of exposure devices and sources of radiation;

(xiii) ensuring inventory and inspection and maintenance programs are performed as specified in subsections (k) and (m) of this section;

(xiv) ensuring personnel are complying with the requirements of this chapter and the conditions of the license or the certificate of registration; and

(xv) ensuring the operating, safety, and emergency procedures of the licensee or registrant are met as specified in subsections (t)(5)(A) - (C) and (G) and (u)(8)(A) - (C) and (I) of this section.

(f) Additional requirements.

(1) Licensees or registrants must not permit any individual to act as a radiographer trainee, radiographer, radiographer trainer, or RSO until the individual has met the certification requirements as specified in subsection (e) of this section, as applicable, and has:

(A) received copies of and demonstrated an understanding of the following by successful completion of a written or oral examination administered by the licensee or registrant covering this material:

(i) the requirements contained in this section and the applicable requirements of §289.201 of this chapter, §289.202 of this chapter, §289.203 of this chapter, §289.231 of this chapter, and §289.257 of this subchapter;

(ii) the appropriate license and certificate of registration conditions;

(iii) the licensee's or registrant's operating, safety, and emergency procedures; and

(B) demonstrated competence in the use of sources of radiation, radiographic exposure devices, associated equipment, related handling tools, and radiation survey instruments that may be employed in industrial radiographic assignments by successful completion of a practical examination administered by the licensee or registrant covering such use.

(2) A radiographer and radiographer trainer must ensure radiographic operations to which the individual is assigned are conducted as specified in the requirements of this section.

(3) Records of the administration of and the examinations required by paragraph (1) of this subsection must be made and maintained as specified in subsection (v)(1) of this section. Records must include:

(A) copies of written tests administered by the licensee or registrant;

(B) dates of oral and practical examinations and names of individuals conducting and receiving the oral and practical examinations; and

(C) a list of items tested and the results of the oral and practical examinations.

(g) Application and fee for radiographer certification examinations.

(1) Application.

(A) An application for taking the examination must be on forms prescribed and furnished by the department.

(B) The non-refundable and non-transferable application fee for examination is $120.

(C) The appropriate fee must be submitted with the application for examination.

(D) The application and the non-refundable and non-transferable fee must be submitted to the department on or before the dates specified by the department.

(E) Applicants who fail to appear at a scheduled exam and do not reschedule 48 hours before their assigned exam session must apply for a future exam session and submit the appropriate fee, as specified in subparagraphs (A) - (D) of this paragraph.

(2) Examination. The examination must be given for the purpose of determining the qualifications of applicants.

(A) The scope of the examination and the methods of procedure, including determination of the passing score, are prescribed by the department. The examination assesses the applicant's knowledge to safely use sources of radiation and related equipment and the applicant's knowledge of this section, and the applicable requirements of §289.201 of this chapter, §289.202 of this chapter, and §289.231 of this chapter.

(B) The examination is administered by the department or persons authorized by the department.

(C) A candidate failing an examination may apply for re-examination as specified in paragraph (1) of this subsection. A candidate may not retake the same version of the department-administered examination.

(D) The examination is normally offered once each month. Times, dates, and locations of the examination are furnished by the department.

(E) The examination is in the English language.

(F) To take the examination, an individual must present a government-issued photo identification card, such as a driver's license, at the time of the examination.

(G) Calculators will be permitted during the examination. Calculators or computers with preprogrammed data or formulas, including exposure calculators, are not permitted during the examination.

(H) The examination is a "closed-book" examination.

(I) Any individual observed by a department proctor compromising the integrity of the examination will be required to surrender the examination, the answer sheet, and all scratch paper. The individual is not allowed to complete the examination, forfeits the examination fee, and leaves the examination site to avoid disturbing other examinees. The individual must wait 90 days before taking a new examination and must resubmit a new application and a $120 non-refundable and non-transferable examination fee.

(J) Examination material must be returned to the department at the end of the examination. No photographic or other copying of examination questions or materials is permitted. Disclosure by any individual of the contents of any examination before its administration is prohibited.

(K) The names and scores of individuals taking the examination are a public record.

(h) Radiographer certification.

(1) An application for radiographer certification must be on RC Form 255-R, RC Form 255-OS, or equivalent.

(A) The non-refundable fee for radiographer certification is $110.

(B) The appropriate fee must be submitted with the application for radiographer certification when filing with the department.

(2) A certification ID card will be issued to each individual successfully completing the requirements of subsection (e)(2)(A)(i) - (iii) of this section.

(A) Each individual's certification ID card contains the individual's photograph. The department takes the photograph at the time the examination is administered.

(B) The certification ID card remains the property of the department and may be revoked or suspended under the provisions of paragraph (4) of this subsection.

(C) Any individual who needs to replace a certification ID card must submit to the department a written request for a replacement certification ID card, stating the reason a replacement certification ID card is needed. A non-refundable fee of $35 must be paid to the department for each replacement of a certification ID card. The prescribed fee must be submitted with the written request for a replacement certification ID card. The individual must carry a copy of the request while performing industrial radiographic operations until a replacement certification ID card is received from the department.

(D) Each certification ID card is valid for a period of five years, unless revoked or suspended as specified in paragraph (4) of this subsection. Each certification ID card expires at the end of the calendar day, in the month and year stated on the certification ID card.

(3) Renewal of a radiographer certification.

(A) Applications for examination to renew a radiographer certification must be filed as specified in subsection (g)(1) of this section.

(B) The examination for renewal of a radiographer certification must be administered as specified in subsection (g)(2) of this section.

(C) A renewal certification ID card will be issued as specified in paragraph (2) of this subsection.

(4) Suspension or revocation of a radiographer certification.

(A) Any radiographer violating the requirements of this chapter, or providing any material false statement in the application or any statement of fact required by this chapter, may be required to show cause at a formal hearing why the radiographer certification should not be suspended or revoked as specified in §289.205 of this chapter.

(B) When a department order has been issued for an industrial radiographer to cease and desist from the use of sources of radiation or the department suspends or revokes the individual's radiographer certification, the radiographer must surrender the certification ID card to the department until the order is changed or the suspension expires.

(C) An individual whose radiographer certification has been suspended or revoked by the department or another certifying entity must comply with the process and conditions of the suspension or

revocation orders before certification is reinstated or the individual is permitted to apply for a new certification.

(5) Reciprocity of a radiographer certification.

(A) Reciprocal recognition by the department of an individual radiographer certification is granted if:

(i) the individual holds a valid certification in the appropriate category and class issued by a certifying entity, as defined in subsection (c) of this section;

(ii) the requirements and procedures of the certifying entity issuing the certification afford the same or comparable certification standards as those afforded by subsection (e)(2)(A)(i) - (iii) of this section; and

(iii) the individual submits a legible copy of the certification to the department before conducting radiographic operations in Texas.

(B) Enforcement actions with the department, another agreement state, or the NRC or sanctions by an independent certifying entity are considered when reviewing a request for reciprocal recognition from a licensee, registrant, or certified radiographer.

(C) Certified radiographers granted reciprocity by the department must maintain the certification upon which the reciprocal recognition was granted, or before the expiration of such certification, must meet the requirements of paragraph (3) of this subsection.

(i) Receipt, transfer, and disposal of industrial radiography sealed sources and radiography exposure devices using depleted uranium (DU) for shielding.

(1) Each licensee and registrant must make and maintain records as specified in subsection (v)(1) of this section, showing the receipt, transfer, and disposal of industrial radiography sealed sources and radiography exposure devices using DU for shielding.

(2) These records must include, as appropriate:

(A) date of receipt, transfer, or disposal;

(B) name of the individual making the record;

(C) radionuclide;

(D) number of curies (becquerels) or mass (for DU);

(E) manufacturer, model, and serial number of each source of radiation or device;

(F) for the person transferring the source of radiation, the name of the transferee, the number of the transferee's radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferee; and

(G) for the person receiving the source of radiation, the name of the transferor, the number of the transferor's radioactive material license authorizing possession of the material, and the regulatory agency issuing the license to the transferor.

(j) Radiation survey instruments.

(1) Each licensee and registrant must have a sufficient number of calibrated, appropriate, and operable radiation survey instruments at each location where sources of radiation are present to perform the radiation surveys required by this section and §289.202(p)(1) and (3) of this chapter and §289.231(s)(1) and (2) of this chapter, as applicable. These radiation survey instruments must be capable of measuring a range from 2 mrem/hr (0.002 mSv/hr) through 1 rem per hour (rem/hr) (0.01 sievert per hour (Sv/hr)).

(2) Each radiation survey instrument must be calibrated:

(A) by a person licensed or registered by the department, another agreement state, or the NRC to perform such service;

(B) at energies appropriate for the licensee's or registrant's use;

(C) at intervals not to exceed six months and after each instrument servicing other than battery replacement;

(D) at two points located approximately one-third and two-thirds of full-scale on each scale for linear scale instruments; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at three points between 2 and 1,000 mrem/hr (0.02 and 10 mSv/hr); and

(E) to demonstrate an accuracy within plus or minus 20 percent of the true radiation level at each point checked.

(3) Each radiation survey instrument must be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is operating properly.

(4) Records of the calibrations required by paragraph (2) of this subsection must be maintained as specified in subsection (v)(1) of this section.

(k) Inventory.

(1) Each licensee and registrant must perform a physical inventory at intervals not to exceed three months to account for all sources of radiation and for devices containing DU received or possessed except for radiation machines utilized for industrial radiography at permanent radiographic installations. Each registrant utilizing radiation machines for industrial radiography at permanent radiographic installations must perform physical inventories and maintain inventory records as required by §289.226(m)(9) of this chapter.

(2) Records of the quarterly inventories required by paragraph (1) of this subsection must be made and maintained as specified in subsection (v)(1) of this section.

(3) The record must include, for each source of radiation, as appropriate:

(A) manufacturer, model, and serial number;

(B) radionuclide;

(C) number of curies (except for DU);

(D) location of each source of radiation;

(E) date of the inventory; and

(F) name of the individual making the inventory.

(l) Utilization logs.

(1) Each licensee and registrant must make and maintain current logs of the use, removal, and return to storage of each source of radiation. The information must be recorded in the log when the source is removed from and returned to storage. The logs must include:

(A) a unique identification, for example, make, model, and serial number, of:

(i) each radiation machine;

(ii) each radiographic exposure device containing a sealed source or transport and storage container in which the sealed source is located; and

(iii) each sealed source;

(B) the name and signature of the radiographer using the source of radiation;

(C) the locations and dates where each source of radiation is used; and

(D) the dates each source of radiation is removed from storage and returned to storage.

(2) Utilization logs must be kept on clear legible records containing all the information required by paragraph (1) of this subsection.

(3) Records of utilization logs must be made and maintained as specified in subsection (v)(1) of this section.

(m) Inspection and maintenance of radiation machines, radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments.

(1) Each day before using equipment, the radiographer must:

(A) perform visual and operational checks on radiation machines, survey instruments, radiographic exposure devices, transport and storage containers, associated equipment, and source changers to ensure:

(i) the equipment is in good working condition;

(ii) the sources are adequately shielded in radiographic exposure devices; and

(iii) required labeling is present and legible;

(B) determine the survey instrument is responding using check sources or other appropriate means; and

(C) remove the equipment from service until repaired if equipment problems are found.

(2) Each licensee and registrant must perform and must have written procedures for the following:

(A) inspection and routine maintenance of radiation machines, radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three months to ensure the proper functioning of components important to safety. All appropriate components must be maintained as specified in manufacturers' specifications. Radiation machines, radiographic exposure devices, transport containers, and source changers being stored are exempted from this requirement provided each radiation machine, radiographic exposure device, transport container, or source changer is inspected and repaired before being returned to service. This inspection and maintenance program must cover, at a minimum, the items listed in subsection (x)(2) of this section; and

(B) inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive material. The inspection and maintenance program must include procedures to assure Type B packages are shipped and maintained as specified in the certificate of compliance or other approval.

(3) Records of daily checks of equipment, equipment problems found in daily checks and quarterly inspections, and of any maintenance performed as specified in paragraph (1) of this subsection must be made and maintained as specified in subsection (v)(1) of this section.

(4) The record must include:

(A) date of check or inspection;

(B) name of inspector;

(C) equipment involved;

(D) any problems found; and

(E) what repairs or maintenance, if any, were done.

(n) Permanent radiographic installations.

(1) Permanent radiographic installations must have high radiation area entrance controls (for example, a control device that energizes a conspicuous visible and audible alarm signal or continuous direct or electronic surveillance) as described in §289.202(s)(1) - (4) of this chapter or §289.231(t)(1) - (4) of this chapter, or, if applicable, §289.229 of this chapter.

(2) The entrance controls must be tested for proper operation at the beginning of each day of equipment use.

(3) The alarm system must be tested for proper operation with a source of radiation each day before the installation is used for radiographic operations. The test must include a check for the visible and audible signals.

(4) Entrance control devices reducing the radiation level upon entry (designated in paragraph (1) of this subsection) must be tested monthly.

(5) If an entrance control device or alarm is operating improperly, it must be immediately labeled as defective and repaired within seven calendar days. The facility may continue to be used during this seven-day period, provided the licensee or registrant implements the continuous surveillance requirements of subsection (q) of this section, ensures radiographic personnel use an alarming ratemeter, and complies with the requirements of subsection (u)(8)(G) of this section.

(6) Records of alarm systems and entrance control tests and repairs required by this subsection must be made and maintained as specified in subsection (v)(1) of this section.

(o) Notifications.

(1) The department must be notified of the loss or theft of sources of radiation, overexposures, and excessive levels as specified in §289.202(ww) - (yy) and (bbb) of this chapter or §289.231(gg) - (jj) of this chapter, as applicable.

(2) In addition, whenever one of the following events occurs, each licensee or registrant must make the initial notification report by telephone to the department within 24 hours and submit a written report to the department within 30 days:

(A) a source assembly cannot be returned to the fully shielded position and properly secured;

(B) the source assembly becomes unintentionally disconnected from the control cable;

(C) any component critical to safe operation of the radiographic exposure device fails to properly perform its intended function;

(D) an indicator on a radiation machine fails to show that radiation is being produced;

(E) an exposure switch on a radiation machine fails to terminate production of radiation when turned to the off position; or

(F) a safety interlock fails to terminate x-ray production.

(3) As specified in paragraph (2) of this subsection, the licensee or registrant must include in each report submitted:

(A) a description of the equipment problem;

(B) the cause of each incident, if known;

(C) the manufacturer and model and serial number of equipment involved in the incident;

(D) the location, time, and date of the incident;

(E) the action taken to establish normal operations;

(F) the corrective action taken or planned to prevent recurrence; and

(G) the names of personnel involved in the incident.

(4) Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period more than 180 days in a calendar year must notify the department before exceeding the 180 days.

(5) Any registrant conducting radiographic operations or storing radiation machines at any location not listed on the certificate of registration for a period more than 90 days in a calendar year must notify the department before exceeding the 90 days.

(p) Individual monitoring.

(1) The individual monitoring program must meet the applicable requirements of §289.202 of this chapter or §289.231 of this chapter.

(2) During industrial radiographic operations, the following applies:

(A) Licensees or registrants must not permit an individual to act as a radiographer, radiographer trainer, or radiographer trainee unless each individual wears, on the trunk of the body at all times during radiographic operations:

(i) an individual monitoring device meeting the applicable requirements of §289.202(p)(4) and (5), (q), and (r) of this chapter or §289.231(s)(3) of this chapter;

(ii) a direct-reading pocket dosimeter or an electronic personal dosimeter; and

(iii) an operable alarming ratemeter.

(B) For permanent radiographic installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(C) Pocket dosimeters must meet the criteria in ANSI 13.5-1972 at the time of manufacture and must have a range of zero to 200 mrem (2 mSv). Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(D) Pocket dosimeters must be recharged at the start of each work shift.

(E) As a minimum, direct-reading pocket dosimeters must be recharged and electronic personal dosimeters reset, and "start" readings recorded:

(i) immediately before checking out any source of radiation from an authorized use or storage site for the purposes of conducting industrial radiographic operations; and

(ii) before beginning radiographic operations on any subsequent calendar day (if the source of radiation has not been checked back into an authorized use or storage site).

(F) Whenever radiographic operations are concluded for the day, the "end" readings on pocket dosimeters or electronic personal dosimeters must be recorded and the accumulated occupational doses for that day determined and recorded.

(G) If an individual's pocket dosimeter is discharged beyond its range (for example, goes "off-scale"), or if an individual's electronic personal dosimeter reads greater than 200 mrem (2 mSv) and the possibility of radiation exposure cannot be ruled out as the cause, industrial radiographic operations by that individual must cease and the individual's monitoring device requiring processing must be sent for processing immediately. The individual's monitoring device not requiring processing must be evaluated immediately. The individual must not return to work with sources of radiation until a determination of the radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the records maintained as specified in paragraphs (5) and (6) of this subsection and subsection (v)(1) of this section.

(H) Each individual monitoring device must be assigned to and worn by only one individual.

(I) Film badges must be replaced at periods not to exceed one month and all other individual monitoring devices requiring replacement must be replaced at least quarterly. After replacement, each individual monitoring device requiring processing must be returned to the supplier for processing within 14 calendar days of the exchange date specified by the supplier or as soon as practicable. All individual monitoring devices must be evaluated at least quarterly or promptly after replacement, whichever is more frequent. Circumstances preventing meeting these time limits must be documented, and those records must be available for review by the department.

(J) If an individual monitoring device is lost or damaged, the worker must cease work immediately until a replacement individual monitoring device is provided and the exposure is calculated for the time period from issuance to loss or damage of the individual monitoring device. The results of the calculated exposure and the time period for which the individual monitoring device was lost or damaged must be included in the records maintained as specified in paragraph (6) of this subsection and subsection (v)(1) of this section.

(3) Pocket dosimeters or electronic personal dosimeters must be checked for correct response to radiation at periods not to exceed one year. Acceptable dosimeters must read within plus or minus 20 percent of the true radiation exposure.

(4) Each alarming ratemeter must:

(A) be checked without being exposed to radiation before use at the start of each work shift, to ensure the audible alarm is functioning properly;

(B) be set to give an alarm signal at a preset dose rate of 500 mrem/hr (5 mSv/hr) or lower with an accuracy of plus or minus 20 percent of the true radiation dose rate;

(C) require special means to change the preset alarm function;

(D) be calibrated for correct response to radiation at intervals not to exceed one year; and

(E) have an audible alarm sufficient to be heard by the individual wearing the alarming ratemeter in a work environment or have other visual or physical notification of alarming conditions.

(5) The following records required by this subsection must be made and maintained by the licensee or registrant for inspection

by the department as specified in the following time requirements and subsection (v)(1) of this section.

(A) Records of pocket dosimeter or electronic personal dosimeter readings and yearly operational response checks must be maintained for three years. If the dosimeter readings were used to determine external radiation dose (for example, no individual monitoring device exposure records exist), the records must be maintained for department inspection until disposal is authorized by the department.

(B) Records of pocket dosimeter and electronic personal dosimeter readings of personnel exposures must be maintained for three years.

(C) Records of estimates of exposures resulting from off-scale personal direct-reading dosimeters or lost or damaged individual monitoring devices must be maintained until disposal is authorized by the department.

(6) The following records required by this subsection must be maintained as specified in the following time requirements and subsection (v)(1) of this section.

(A) Records of alarming ratemeter calibrations must be maintained for three years.

(B) Records of individual monitoring device results must be maintained until disposal is authorized by the department.

(q) Access control.

(1) During each industrial radiographic operation, radiographic personnel must maintain continuous visual surveillance of the operation to protect against unauthorized entry into a radiation area or high radiation area, except at permanent radiographic installations where all entryways are locked and the requirements of subsection (n) of this section are met.

(2) Radiographic exposure devices must not be left unattended except when in storage or physically secured against unauthorized removal or tampering.

(r) Posting. All areas where industrial radiography is being performed must be posted conspicuously as specified in §289.202 of this chapter or §289.231 of this chapter, as applicable, including the following.

(1) Radiation areas. Each radiation area must be posted conspicuously with a sign or signs displaying the radiation caution symbol and the words "CAUTION, RADIATION AREA" or "DANGER, RADIATION AREA."

(2) High radiation area. Each high radiation area must be posted conspicuously with a sign or signs displaying the radiation caution symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Whenever practicable, ropes or barriers must be used in addition to appropriate signs to designate areas as specified in §289.202(n)(1) of this chapter or §289.231(o)(1) of this chapter, as applicable, and to help prevent unauthorized entry.

(4) During pipeline industrial radiographic operations, sufficient radiation signs and other barriers must be posted to prevent unmonitored individuals from entering the area as specified in §289.202(n)(1) of this chapter or §289.231(o)(1) of this chapter, as applicable.

(5) In lieu of the requirements of subsection (r)(1) and (2) of this section, a restricted area may be established as specified in §289.202(n)(1) of this chapter or §289.231(o)(1) of this chapter, as applicable, and be posted as specified in subsection (r)(1) and (2) of this section; for example, both signs may be posted at the same location at the boundary of the restricted area.

(6) Exceptions listed in §289.202(bb) of this chapter or §289.231(y) of this chapter, as applicable, do not apply to industrial radiographic operations.

(s) Specific requirements for radiographic personnel performing industrial radiography.

(1) At a job site, the following must be supplied by the licensee or registrant:

(A) at least one operable, calibrated survey instrument for each exposure device or radiation machine in use;

(B) an individual monitoring device that meets the requirements of §289.202(p)(4) and (5), (q), and (r) of this chapter or §289.231(s)(3) of this chapter, as applicable, for each worker;

(C) an operable, calibrated pocket dosimeter or electronic personal dosimeter with a range of zero to 200 mrem (2 mSv) for each worker;

(D) an operable, calibrated, alarming ratemeter for each worker; and

(E) the appropriate barrier ropes and signs.

(2) Each radiographer at a job site must carry a valid certification ID card issued by the department or another certifying entity whose certification offers the same or comparable certification standards.

(3) Each radiographer trainee at a job site must carry a trainee status card issued by the department or equivalent documentation as specified in subsection (e)(1) of this section.

(4) Radiographic personnel must not perform radiographic operations if any of the items in paragraphs (1) - (3) of this subsection are not available at the job site or are inoperable. Radiographic personnel must ensure the items listed in paragraph (1) of this subsection, radiographic exposure devices, and radiation machines are used as specified in the requirements of this section.

(5) During an inspection by the department, a department inspector may terminate an operation if any of the items in paragraphs (1) - (3) of this subsection are not available and operable or if the required number of radiographic personnel are not present. Operations must not resume until all required conditions are met.

(t) Radiation safety and registration requirements for the use of radiation machines.

(1) Registration requirements for industrial radiographic operations.

(A) Radiation machines used in industrial radiographic operations must be registered as specified in §289.226 of this chapter.

(B) In addition to the registration requirements in §289.226(e) and (i) of this chapter, an application for a certificate of registration must include:

(i) a schedule or description of the program for training radiographic personnel that specifies:

(I) initial training;

(II) annual refresher training;

(III) on-the-job training;

(IV) procedures for administering the oral and written examination to determine the knowledge, understanding, and

ability of radiographic personnel to comply with the requirements of this chapter, the conditions of the certificate of registration, and the registrant's operating, safety, and emergency procedures; and

(V) procedures for administering the practical examination to demonstrate competence in the use of sources of radiation and radiation survey instruments employed in industrial radiographic assignments.

(ii) written operating, safety, and emergency procedures available to each individual operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular x-ray system;

(I) The registrant must document that each individual operating a radiation machine has read the operating and safety procedures and must maintain this documentation for inspection by the department. The documentation must include:

(-a-) name and signature of the individual;

(-b-) date the individual read the operating and safety procedures; and

(-c-) initials of the RSO;

(II) The operating and safety procedures must include the items listed in subsection (x)(3) of this section;

(iii) a description of the internal audit program to ensure radiographic personnel follow the requirements of this chapter, the conditions of the certificate of registration, and the registrant's operating, safety, and emergency procedures at intervals not to exceed six months;

(iv) a list and description of all field stations and permanent radiographic installations

(v) a description of the organization of the industrial radiographic program, including delegations of authority and responsibility for operation of the radiation safety program; and

(vi) procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(C) A certificate of registration is issued if the requirements of this paragraph of this subsection and §289.226(e) and (i) of this chapter are met.

(2) Locking of radiation machines. The control panel of each radiation machine must be equipped with a locking device preventing the unauthorized use of an x-ray system or the accidental production of radiation. The radiation machine must be kept locked and the key removed except when under the direct visual surveillance of a radiographer.

(3) Permanent storage precautions for the use of radiation machines. Radiation machines must be secured while in storage to prevent tampering or removal by unauthorized individuals.

(4) Requirements for radiation machines used in industrial radiographic operations.

(A) Equipment used in industrial radiographic operations involving radiation machines manufactured after October 1, 1987 must be certified at the time of manufacture to meet the criteria set forth by ANSI N43.5 (relating to Radiological Safety Standards for the Design of Radiographic and Industrial X-Ray Equipment), except accelerators used in industrial radiography.

(B) The registrant's name and city or town of an authorized use site listed on the certificate of registration must be prominently displayed with a durable, legible, clearly visible label on both sides of all vehicles used to transport radiation machines for temporary job site use.

(5) Operating and internal audit requirements for the use of radiation machines.

(A) Each registrant must conduct an internal audit program to ensure the requirements of this chapter, the conditions of the certificate of registration, and the registrant's operating, safety, and emergency procedures are followed by radiographic personnel.

(B) Each radiographer's and radiographer trainee's performance during an actual radiographic operation must be audited and documented at intervals not to exceed six months.

(C) If a radiographer or a radiographer trainee has not participated in a radiographic operation during the six months since the last audit, the radiographer or the radiographer trainee must demonstrate knowledge of the training requirements of subsection (f)(1) of this section by an oral or written and practical examination administered by the registrant before the individual can next participate in a radiographic operation.

(D) The department may consider alternatives in those situations where the individual serves as both radiographer and RSO.

(E) In those operations where a single individual serves as both radiographer and RSO and performs all radiography operations, an audit program is not required.

(F) The registrant must provide annual refresher safety training, as defined in subsection (c) of this section, for each radiographer trainee, radiographer, or radiographer trainer at intervals not to exceed 12 months.

(G) Individuals, other than a radiographer or a radiographer trainee, under the personal supervision of a radiographer trainer, must not manipulate controls or operate radiation machines used in industrial radiographic operations. Only one radiographer is required to operate radiation machines during industrial radiography.

(H) Radiographic operations must not be conducted at storage sites unless specifically authorized by the certificate of registration.

(I) Records of annual refresher training and audits of job performance specified in this subsection must be made and maintained as specified in subsection (v)(1) of this section.

(J) Records of annual refresher safety training and audits of job performance made as specified in this subsection must include:

(i) list of the topics discussed during the refresher safety training;

(ii) dates the annual refresher safety training was conducted;

(iii) names of the instructors and attendees; and

(iv) for audits of job performance, records must include a list showing the items checked and any non-compliance observed by the RSO or designee.

(6) Radiation surveys for the use of radiation machines.

(A) Industrial radiographic operations must not be conducted unless at least one calibrated and operable radiation survey instrument, as described in subsection (j) of this section, is used for each radiation machine energized.

(B) A physical radiation survey must be made after each radiographic exposure using radiation machines to determine the machine is "off."

(C) All potential radiation areas where industrial radiographic operations are performed must be posted as specified in subsection (r) of this section, based on estimated dose rates, before industrial radiographic operations begin. An area survey must be performed during the first radiographic exposure to confirm the requirements of subsection (r) of this section have been met and unrestricted areas do not have radiation levels over the limits specified in §289.231(o)(1)(B) of this chapter.

(D) Records of the surveys required by subparagraph (C) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section. If a survey was used to determine an individual's exposure due to loss of personnel monitoring data, the records of the survey must be maintained for inspection by the department until disposal is authorized by the department.

(7) Requirements for radiation machines in shielded rooms.

(A) Radiation machines in shielded rooms must comply with all applicable requirements of this section.

(B) Radiation machines in shielded rooms must be evaluated at intervals not to exceed one year to ensure compliance with the applicable requirements of this section and §289.231(o)(1) - (3) of this chapter.

(C) Records of the annual evaluation of radiation machines in shielded rooms required by subparagraph (B) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(8) Requirements for certified and certifiable cabinet x-ray systems.

(A) Certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals, are exempt from the requirements of this section except:

(i) Registrants must not permit any individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

(ii) Tests for proper operation of interlocks must be conducted and recorded at intervals not to exceed 12 months.

(iii) The registrant must perform an evaluation to determine compliance with §289.231(o)(1) - (3) of this chapter and 21 CFR §1020.40 at intervals not to exceed one year.

(B) Records of operating instructions in cabinet x-ray systems required by subparagraph (A)(i) of this paragraph and interlock tests required by subparagraph (A)(ii) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(C) Records of the evaluation of certified cabinet x-ray systems required by subparagraph (A)(iii) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(9) All reciprocal recognition of certificates of registration by the department are granted as specified in §289.226(s) of this chapter.

(u) Radiation safety and licensing requirements for the use of sealed sources.

(1) Licensing requirements for industrial radiographic operations.

(A) Sealed sources used in industrial radiographic operations must be licensed as specified in §289.252 of this subchapter.

(B) In addition to the licensing requirements in §289.252 of this subchapter, an application for a license must include.

(i) A schedule or description of the program for training radiographic personnel specifying:

(I) initial training;

(II) annual refresher training;

(III) on-the-job training;

(IV) procedures for administering the oral and written examinations to determine the knowledge, understanding, and ability of radiographic personnel to comply with the requirements of this chapter, the conditions of the license, and the licensee's operating, safety, and emergency procedures; and

(V) procedures for administering the practical examination to demonstrate competence in the use of sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments employed in industrial radiographic assignments.

(ii) Written operating, safety, and emergency procedures are made available to each individual operating a sealed source in radiographic operations, including any restrictions of the operating technique required for the safe operation of the particular sealed source.

(I) The licensee must document each individual operating a sealed source in radiographic operations has read the operating and safety procedures and must maintain this documentation for inspection by the department. The documentation must include:

(-a-) name and signature of the individual;

(-b-) date the individual read the operating and safety procedures; and

(-c-) initials of the RSO.

(II) The operating and safety procedures must include the items listed in subsection (x)(3) of this section.

(iii) A description of the internal audit program to ensure radiographic personnel follow the requirements of this chapter, the conditions of the license, and the licensee's operating, safety, and emergency procedures at intervals not to exceed six months.

(iv) A list and description of all field stations and permanent radiographic installations.

(v) A description of the organization of the industrial radiographic program, including delegations of authority and responsibility for operation of the radiation safety program.

(vi) A description of the program for inspection and maintenance of radiographic exposure devices and transport and storage containers, including items in subsection (x)(2) of this section and the applicable items in subsection (m) of this section.

(vii) If a license application includes underwater radiography, as a minimum, a description of:

(I) radiation safety procedures and radiographer responsibilities unique to the performance of underwater radiography;

(II) radiographic equipment and radiation safety equipment unique to underwater radiography; and

(III) methods for gas-tight encapsulation of equipment.

(viii) If a license application includes offshore platform or lay-barge radiography, as a minimum, a description of:

(I) transport procedures for radioactive material to be used in industrial radiographic operations;

(II) storage areas for radioactive material; and

(III) methods for restricting access to radiation areas.

(ix) Procedures verifying and documenting the certification status of radiographers and ensuring that the certification of individuals acting as radiographers remains valid.

(x) If the applicant intends to perform leak testing of sealed sources or exposure devices containing DU shielding, the applicant must describe the procedures for performing the leak test and the qualifications of the person authorized to do the leak test.

(xi) If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include:

(I) instruments to be used;

(II) methods of performing the analysis; and

(III) pertinent experience of the individual or individuals analyzing the wipe samples.

(xii) If the applicant intends to perform "in-house" calibrations of survey instruments, the applicant must describe methods to be used and the relevant experience of the individual or individuals performing the calibrations. All calibrations must be performed as specified in subsection (j) of this section.

(C) A license is issued if the requirements of this paragraph and §289.252 of this subchapter are met.

(2) Limits on external radiation levels from storage containers and source changers. The maximum exposure rate limits for storage containers and source changers are 200 mrem/hr (2 mSv/hr) at any exterior surface, and 10 mrem/hr (0.1 mSv/hr) at 1 meter from any exterior surface with the sealed source in the shielded position.

(3) Locking of radiographic exposure devices, storage containers, and source changers.

(A) Each radiographic exposure device, storage container, and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal or exposure of a sealed source. Each exposure device and source changer must be kept locked and, if a keyed lock, the key removed except when under the direct visual surveillance of a radiographer or an individual specifically authorized by the department, except at a permanent radiographic installation.

(B) Each radiographic exposure device, storage container, and source changer must be locked and the key removed from any keyed lock before being transported from one location to another and before being stored at a given location.

(4) Permanent storage precautions for the use of sealed sources.

(A) Radiographic exposure devices, source changers, and transport containers containing sealed sources must be secured while in storage to prevent tampering or removal by unauthorized individuals.

(B) Radiographic exposure devices, source changers, or transport containers containing radioactive material must not be stored in residential locations unless specifically authorized by the department.

(5) Performance requirements for industrial radiography equipment. Equipment used in industrial radiographic operations must meet the following minimum criteria.

(A) Each radiographic exposure device, source assembly, sealed source, and associated equipment must meet the criteria set forth by ANSI N432-1980. This publication is available online at http://pbadupws.nrc.gov/docs/ML0508/ML050840139.pdf and may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; Telephone (212) 642-4900.

(i) All newly manufactured radiographic exposure devices and associated equipment acquired by licensees after September 1, 1993, must comply with the requirements of this section.

(ii) All radiographic exposure devices and associated equipment in use after January 1, 1996, must comply with the requirements of this section.

(iii) In lieu of subparagraph (A) of this paragraph, equipment used in industrial radiographic operations need not comply with §8.9.2(c) of the Endurance Test in ANSI N432-1980, if the prototype equipment has been tested using a torque value representative of the torque an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

(B) Engineering analysis may be submitted by a licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the department may find this an acceptable alternative to actual testing of the component as specified in subparagraph (A) of this paragraph.

(C) In addition to the requirements specified in subparagraph (A) of this paragraph the following requirements apply to radiographic exposure devices, source changers, source assemblies, and sealed sources.

(i) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of §289.257 of this subchapter.

(ii) Modification of radiographic exposure devices, source changers, source assemblies, and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls, or guide tubes does not compromise the design safety features of the system.

(D) In addition to the requirements specified in subparagraphs (A) - (C) of this paragraph, radiographic exposure devices, source assemblies, and associated equipment allowing the source to move outside the device must meet the following criteria.

(i) The source assembly must be designed so the source does not become disconnected if cranked outside the guide tube. The source assembly cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(ii) The control cable must be positively connected to the source assembly before the source assembly can be driven out of the fully shielded position in a radiographic exposure device or source changer.

(iii) The radiographic exposure device must automatically secure the source assembly when it is cranked back into the fully shielded position within the radiographic exposure device. This

securing system may only be released by means of a deliberate operation on the radiographic exposure device.

(iv) The outlet nipple, lock box, and control cable fittings of each radiographic exposure device must be equipped with safety plugs or covers installed during storage and transportation to protect the source assembly from damage and from other foreign matter, such as water, mud, or sand.

(v) Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words "DANGER. RADIOACTIVE." The label may not interfere with the safe operation of the exposure device or associated equipment.

(vi) Guide tubes must be used when moving the source out of the radiographic exposure device.

(vii) Guide tubes must be able to withstand a crushing test closely approximating the crushing forces likely to be encountered during use, and be able to withstand a kinking resistance test closely approximating the kinking forces likely to be encountered during use.

(viii) An exposure head, endcap, or similar device designed to prevent the source assembly from extending beyond the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(ix) The guide tube exposure head connection must be able to withstand the tensile test for control units as specified in ANSI N432-1980.

(x) Source changers must provide a system for ensuring the source is not accidentally withdrawn from the changer when connecting or disconnecting the control cable to or from a source assembly.

(6) Leak testing, repair, opening, and replacement of sealed sources and devices. Leak testing, repair, opening, and replacement of sealed sources and devices must be performed according to the following criteria.

(A) Leak testing of sealed sources must be done as specified in §289.201(g) of this chapter, except records of leak tests must be maintained as specified in subsection (v)(1) of this section.

(B) The replacement, leak testing analysis, repair, opening, or any modification of a sealed source must be performed only by persons specifically authorized to do so by the department, the NRC, or another agreement state.

(C) Each exposure device using DU shielding and an "S" tube configuration must be tested for DU contamination.

(i) Tests for DU contamination must be performed at intervals not to exceed 12 months.

(ii) The analysis must be capable of detecting the presence of 0.005 microcuries (185 becquerels (Bq)) of radioactive material on the test sample and must be performed by a person specifically authorized by the department, the NRC, or an agreement state to perform the analysis.

(iii) Should such testing reveal the presence of DU contamination, the exposure device must be removed from use until an evaluation of the wear of the S-tube has been made.

(iv) Should the evaluation reveal the S-tube is worn through, the device may not be used again.

(v) DU-shielded devices do not have to be tested for DU contamination while in storage and not in use.

(vi) The device must be tested for DU contamination before using or transferring the device, if the interval of storage exceeds 12 months.

(D) A record of the DU leak test must be made and maintained as specified in subsection (v)(1) of this section.

(7) Labeling and storage.

(A) Each transport container must have permanently attached to it a durable, legible, clearly visible label having, at a minimum, the standard trefoil radiation caution symbol conventional colors (for example, magenta, purple, or black on a yellow background), having a minimum diameter of 25 millimeters, and the following wording: "CAUTION. RADIOACTIVE MATERIAL. NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY)" or "DANGER. RADIOACTIVE MATERIAL. NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY)." In addition, transport containers must meet applicable requirements of the DOT.

(B) Radiographic exposure devices, source changers, and storage containers must be physically secured to prevent tampering or removal by unauthorized personnel. The licensee must store radioactive material in a manner that will minimize danger from explosion or fire.

(C) The licensee must lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

(D) The licensee's name and city or town of an authorized use site listed on the license must be prominently displayed with a durable, legible, and clearly visible label on both sides of all vehicles used to transport radioactive material for temporary job site use.

(E) The licensee must ensure each radiographic exposure device has attached to it a durable, legible, and clearly visible label bearing:

(i) the chemical symbol and mass number of the radionuclide in the device;

(ii) the activity and the date on which this activity was last measured;

(iii) the manufacturer, model, and serial number of the sealed source;

(iv) the licensee's name, address, and telephone number; and

(v) at a minimum, the standard radiation caution symbol as defined in §289.202 of this chapter, and the following wording: "CAUTION. RADIOACTIVE MATERIAL--DO NOT HANDLE. NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY)" or "DANGER. RADIOACTIVE MATERIAL--DO NOT HANDLE. NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY)."

(F) Each radiographic exposure device must have a permanently stamped, legible, and clearly visible unique serial number.

(8) Operating and internal audit requirements for the use of sealed sources of radiation.

(A) Each licensee must conduct an internal audit program to ensure the requirements of this chapter, the conditions of the license, and the licensee's operating, safety, and emergency procedures are followed by radiographic personnel.

(B) Each radiographer's and radiographer trainee's performance during an actual radiographic operation must be audited and documented at intervals not to exceed six months.

(C) If a radiographer or a radiographer trainee has not participated in a radiographic operation during the six months since the last audit, the radiographer or the radiographer trainee must demonstrate knowledge of the training requirements of subsection (f)(1) of this section by an oral or written and practical examination administered by the licensee before these individuals can next participate in a radiographic operation.

(D) The department may consider alternatives in those situations where the individual serves as both radiographer and RSO.

(E) In those operations where a single individual serves as both radiographer and RSO, and performs all radiography operations, an audit program is not required.

(F) Each licensee must provide annual refresher safety training, as defined in subsection (c) of this section, for each radiographer and radiographer trainee at intervals not to exceed 12 months.

(G) Whenever radiographic operations are performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has, at minimum, met the requirements of subsection (e)(1) of this section. The additional qualified individual must observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiographic operations must not be performed if only one qualified individual is present.

(H) Collimators must be used in industrial radiographic operations using crank-out devices except when physically impossible.

(I) Individuals other than a radiographer or a radiographer trainee, under the personal supervision of a radiographer trainer, must not manipulate controls or operate radiographic exposure devices and associated equipment used in industrial radiographic operations.

(J) All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the department.

(K) Records of annual refresher training and audits of job performance specified in this subsection must be made and maintained as specified in subsection (v)(1) of this section.

(L) Records of annual refresher safety training and audits of job performance made as specified in this subsection must include:

(i) list of the topics discussed during the refresher safety training;

(ii) dates the annual refresher safety training was conducted;

(iii) names of the instructors and attendees; and

(iv) for audits of job performance, the records must also include a list showing the items checked and any non-compliance observed by the RSO or designee.

(9) Radiation surveys for the use of sealed sources of radiation.

(A) Industrial radiographic operations must not be conducted unless at least one calibrated and operable radiation survey instrument, as described in subsection (j) of this section, is used at each site where radiographic exposures are made.

(B) A survey with a radiation survey instrument meeting the requirements of subsection (j)(1) - (3) of this section must be made after each radiographic exposure to determine the sealed source has been returned to its fully shielded position, and before exchanging films, repositioning the exposure head, or dismantling equipment. The entire circumference of the radiographic exposure device must be surveyed. If the radiographic exposure device has a source guide tube, the survey must also include the source guide tube and any collimator.

(C) All potential radiation areas where industrial radiographic operations are performed must be posted as specified in subsection (r) of this section, based on calculated dose rates, before industrial radiographic operations begin. An area survey must be performed during the first radiographic exposure (for example, with the sealed source in the exposed position) to confirm the requirements of subsection (r) of this section have been met.

(D) Each time re-establishment of the restricted area is required, the requirements of subparagraph (C) of this paragraph must be met.

(E) The requirements of subparagraph (D) of this paragraph do not apply to pipeline industrial radiographic operations when the conditions of exposure, including the radiographic exposure device, duration of exposure, source strength, pipe size, and pipe thickness, remain constant.

(F) A lock-out survey, in which all accessible surfaces of the radiographic exposure device or source changer are surveyed, must be performed.

(G) Surveys must be performed in the storage area to ensure radiation levels do not exceed the limits specified in §289.202(n)(1) of this chapter. These surveys must be performed initially with the maximum amount of radioactive material present in the storage area and thereafter at the time of the quarterly inventory and whenever storage conditions change.

(H) A survey meeting the requirements of subparagraph (B) of this paragraph must be performed on the radiographic exposure device and the source changer after every sealed source exchange.

(I) Records of the surveys required by subparagraphs (C), (D), and (F) - (H) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section. If a survey was used to determine an individual's exposure due to loss of personnel monitoring data, the records of the survey must be maintained for inspection by the department until disposal is authorized by the department.

(10) Requirements for shielded rooms containing sealed sources.

(A) Shielded rooms containing sealed sources must comply with all applicable requirements of this section.

(B) Shielded rooms containing sealed sources must be evaluated at intervals not to exceed one year to ensure compliance with the applicable requirements of this section and §289.202(n)(1) - (3) of this chapter.

(C) Tests for proper operation of interlocks must be conducted and recorded as specified in subsection (n) of this section.

(D) Records of evaluations required by subparagraph (B) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(E) Records of interlock tests required by subparagraph (C) of this paragraph must be made and maintained as specified in subsection (v)(1) of this section.

(11) Underwater, offshore platform, and lay-barge radiography.

(A) Underwater, offshore platform, and lay-barge radiography must not be performed unless specifically authorized in a license issued by the department as specified in paragraph (1) of this subsection.

(B) In addition to the other requirements of this section, the following requirements apply to the performance of offshore platform or lay-barge radiography.

(i) Cobalt-60 sources with activities more than 20 curies (Ci) (nominal) (740 gigabecquerels) and iridium-192 sources with activities more than 100 Ci (nominal) (3.7 terabecquerels) must not be used in the performance of offshore platform or lay-barge radiography.

(ii) Collimators must be used for all industrial radiographic operations performed on offshore platforms or lay-barges.

(12) Prohibitions.

(A) Industrial radiography performed with a sealed source not fastened to or contained in a radiographic exposure device (fishpole technique) is prohibited unless specifically authorized in a license issued by the department.

(B) Retrieval of disconnected sources or sources that cannot be returned by normal means to a fully shielded position or automatically secured in the radiographic exposure device must not be performed unless specifically authorized by a license condition.

(13) All reciprocal recognition of licenses by the department are granted as specified in §289.252(ee) of this subchapter.

(v) Record/document requirements. Each licensee and registrant must maintain the following records/documents at each site at the time intervals specified and make them available to the department for inspection.

(1) Time requirements for record keeping. The following are time requirements for record keeping.
Figure: 25 TAC §289.255(v)(1)

(2) Records and documents required at field stations .

(A) Each licensee or registrant maintaining field stations where industrial radiography operations are performed must maintain copies of the following records and documents specific to that site available at each site for inspection by the department for a period of three years:

(i) a copy of the appropriate license or certificate of registration authorizing the use of licensed or registered sources of radiation;

(ii) operating, safety, and emergency procedures as specified in subsection (x)(3) of this section;

(iii) applicable sections of this chapter as listed in the license or certificate of registration;

(iv) records of receipt, transfer, and disposal of sources of radiation and devices using DU for shielding at the additional site as specified in subsection (i) of this section;

(v) records of the latest survey instrument calibrations in use at the site as specified in subsection (j) of this section;

(vi) records of the latest calibrations of alarming ratemeters and operational checks of pocket dosimeters and electronic personal dosimeters as specified in subsection (p) of this section;

(vii) inventories as specified in subsection (k) of this section;

(viii) utilization records for each radiographic exposure device and radiation machine dispatched from that location as specified in subsection (l) of this section;

(ix) records of equipment problems identified in daily checks of equipment as specified in subsection (m) of this section, if applicable;

(x) records of alarm systems and entrance control checks as specified in subsection (n) of this section;

(xi) training records as specified in subsection (f) of this section;

(xii) records of direct-reading dosimeter readings as specified in subsection (p) of this section;

(xiii) audits as specified in subsections (t)(5)(A) - (C) and (u)(8)(A) - (C) of this section;

(xiv) latest radiation survey records as specified in subsections (t)(6)(D) and (u)(9)(I) of this section;

(xv) records of interlock testing as specified in subsections (t)(8)(A)(ii) and (u)(10)(C) of this section;

(xvi) records of annual evaluation of cabinet x-ray systems as specified in subsection (t)(7)(C) of this section;

(xvii) records of leak tests for specific devices and sources at the additional site as specified in subsection (u)(6) of this section;

(xviii) shipping papers for the transportation of sources of radiation as specified in §289.257 of this subchapter;

(xix) a copy of the NRC license, agreement state license, or state certificate of registration authorizing the use of sources of radiation, when operating under reciprocity as specified in §289.226 of this chapter and §289.252 of this subchapter; and

(xx) individual monitoring records as specified in subsection (p) of this section.

(B) The following records required for each field station as specified in this subsection must also be maintained at the main authorized site:

(i) records of receipt, transfer, and disposal of sources of radiation and devices using DU for shielding at the additional site as specified in subsection (i) of this section;

(ii) inventories as specified in subsection (k) of this section; and

(iii) individual monitoring records as specified in subsection (p) of this section.

(3) Records required at temporary job sites. Each licensee and registrant conducting industrial radiography at a temporary job site must have the following records available at that site for inspection by the department:

(A) a copy of the appropriate license or certificate of registration or equivalent document authorizing the use of sources of radiation;

(B) operating, safety, and emergency procedures as specified in subsection (x)(3) of this section;

(C) applicable sections of this chapter as listed in the license or certificate of registration;

(D) latest radiation survey records required as specified in subsections (t)(6)(D) and (u)(9)(I) of this section for the period of operation at the site;

(E) the daily pocket dosimeter records for the period of operation at the site;

(F) utilization records for each radiographic exposure device or radiation machine used at that location as specified in subsection (l) of this section;

(G) the latest instrument calibration and leak test records for devices at the site. Acceptable records include tags or labels attached to the devices or survey instruments and decay charts for sources manufactured within the last six months; and

(H) a copy of the NRC license, agreement state license, or state certificate of registration authorizing the use of sources of radiation, when operating under reciprocity as specified in §289.226 of this chapter or §289.252 of this subchapter.

(w) Form of records. Each record required by this chapter must include all pertinent information and be stored in a legible and reproducible format throughout the specified retention period. The licensee or registrant must maintain adequate safeguards against tampering with and loss of records.

(x) Appendices.

(1) Subjects to be included in training courses for radiographer trainees. Training provided to qualify individuals as radiographer trainees in compliance with subsection (e)(1)(A) of this section must be presented on a formal basis. The training must include the following subjects.

(A) Fundamentals of radiation safety, including:

(i) characteristics of radiation;

(ii) units of radiation dose in rem (sieverts) and quantity of radioactivity in curies (becquerels);

(iii) significance of radiation dose, including:

(I) radiation protection standards;

(II) biological effects of radiation dose;

(III) hazards of exposure to radiation; and

(IV) case histories of radiography accidents;

(iv) levels of radiation from sources of radiation; and

(v) methods of controlling radiation dose, including:

(I) working time;

(II) working distances; and

(III) shielding.

(B) Radiation detection instrumentation, including:

(i) use, operation, calibration, and limitations of radiation survey instruments;

(ii) survey techniques; and

(iii) use of individual monitoring devices.

(C) Radiographic equipment to be used, including:

(i) remote handling equipment;

(ii) operation and control of radiographic exposure devices and sealed sources, including pictures or models of source assemblies (pigtails);

(iii) storage and transport containers, source changers;

(iv) operation and control of x-ray equipment;

(v) collimators;

(vi) storage, control, and disposal of radioactive material; and

(vii) inspection and maintenance of equipment.

(D) Requirements of pertinent federal and state regulations.

(E) Generic written operating, safety, and emergency procedures (see subsection (x)(3) of this section).

(2) General requirements for inspection of industrial radiographic equipment.

(A) Radiographic exposure devices must be inspected for:

(i) abnormal surface radiation levels anywhere on camera, collimator, or guide tube;

(ii) condition of safety plugs;

(iii) proper operation of locking mechanism;

(iv) condition of pigtail connector;

(v) condition of carrying device (straps, handle, etc.); and

(vi) proper and legible labeling.

(B) Guide tubes must be inspected for:

(i) rust, dirt, or sludge buildup inside the guide tube;

(ii) condition of guide tube connector;

(iii) condition of source stop; and

(iv) kinks or damage that could prevent proper operation.

(C) Control cables and drive mechanisms must be inspected for:

(i) proper drive mechanism with camera, as appropriate;

(ii) changes in general operating characteristics;

(iii) condition of connector on control cable;

(iv) control cable flexibility, wear, and rust;

(v) excessive wear or damage to crank-out devices;

(vi) damage to control cable conduit that could prevent the cable from moving freely;

(vii) proper connector mating between the control cable and the pigtail; and

(viii) proper operation of source position indicator, if applicable.

(D) Pipeliners must be inspected for:

(i) abnormal surface radiation;

(ii) changes in the general operating characteristics of the unit;

(iii) proper operation of shutter mechanism;

(iv) chafing or binding of shutter mechanism;

(v) damage to the device that might impair its operation;

(vi) proper operation of locking mechanism;

(vii) proper drive mechanism with camera, as appropriate;

(viii) condition of carrying device (strap, handle, etc.); and

(ix) proper and legible labeling.

(E) X-ray equipment must be inspected for:

(i) change in the general operating characteristics of the unit;

(ii) wear of electrical cables and connectors;

(iii) proper and legible labeling of console;

(iv) proper console with machine, as appropriate;

(v) proper operation of locking mechanism;

(vi) proper operation of timer run-down cutoff; and

(vii) damage to tube head housing that might result in excessive radiation levels.

(3) Operating, safety, and emergency procedures. The licensee's or registrant's operating, safety, and emergency procedures must include instructions in:

(A) handling and use of sources of radiation for industrial radiography so no individual is likely to be exposed to radiation doses more than the limits established in §289.202 of this chapter;

(B) methods and occasions for conducting radiation surveys, including lock-out survey requirements;

(C) methods for controlling access to industrial radiography areas;

(D) methods and occasions for locking and securing sources of radiation;

(E) personnel monitoring and the use of personnel monitoring equipment, including steps to be taken immediately, by industrial radiographic personnel, in the event a pocket dosimeter is found to be off-scale (see subsection (p)(2)(G) of this section);

(F) methods of transporting equipment to field locations, including packing of sources of radiation in the vehicles, placarding of vehicles, and controlling of sources of radiation during transportation, including applicable DOT requirements;

(G) methods for minimizing exposure of individuals in the event of an accident, including procedures for a disconnect accident, a transportation accident, and loss of a sealed source;

(H) notifying proper personnel in the event of an accident;

(I) specific posting requirements;

(J) maintenance of records (see subsection (v)(1) of this section);

(K) inspection, maintenance, and operational checks of radiographic exposure devices, source changers, storage containers, transport containers, source guide tubes, crank-out devices, and radiation machines;

(L) method of testing and training as specified in subsections (e) and (f) of this section; and

(M) source recovery if the licensee is authorized to perform source recovery.

§289.256. Medical and Veterinary Use of Radioactive Material.

(a) Purpose.

(1) This section establishes requirements for medical and veterinary use of radioactive material and the issuance of specific licenses authorizing medical and veterinary use of radioactive material. Unless otherwise exempted, persons must not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material for medical or veterinary use except as authorized in a license issued as specified in this section.

(2) A person who manufactures, produces, receives, possesses, uses, transfers, owns, or acquires radioactive material before receiving a license is subject to the requirements of this chapter.

(3) A specific license is not needed for a person who:

(A) receives, possesses, uses, or transfers radioactive material as specified in this chapter under the supervision of an authorized user as provided in subsection (s) of this section, unless prohibited by license condition; or

(B) prepares unsealed radioactive material for medical or veterinary use as specified in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in subsection (s) of this section, unless prohibited by license condition.

(b) Scope.

(1) In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of:

(A) §289.201 of this chapter (relating to General Provisions for Radioactive Material);

(B) §289.202 of this chapter (relating to Standards for Protection Against Radiation from Radioactive Materials);

(C) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(F) §289.252 of this subchapter (relating to Licensing of Radioactive Material); and

(G) §289.257 of this subchapter (relating to Packaging and Transportation of Radioactive Material).

(2) Veterinarians who receive, possess, use, transfer, own, or acquire radioactive material in the practice of veterinary medicine must comply with the requirements of this section except for subsections (d), (dd), and (uuu) of this section.

(3) An entity that is a "covered entity" as that term is defined in HIPAA (the Health Insurance Portability and Accountability Act of 1996, 45 Code of Federal Regulations (CFR) Parts 160 and 164) may be subject to privacy standards governing how information identifying a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

(4) In accordance with the requirements of the Texas Medical Board, 22 Texas Administrative Code (TAC) Chapter 160, medical licensees must use the services of a licensed medical physicist for activities falling within the medical physicist scope of practice as identified in 22 TAC §160.17 unless exempted under 22 TAC §160.5.

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

(1) Address of use--The building or buildings identified on the license where radioactive material may be prepared, received, used, or stored.

(2) Area of use--A portion of an address of use set aside for the purpose of preparing, receiving, using, or storing radioactive material.

(3) Associate radiation safety officer (ARSO)--An individual who:

(A) meets the requirements in subsections (h) and (m) of this section; and

(B) is currently identified as an ARSO for the types of use of radioactive material for which the individual has been assigned duties and tasks by the radiation safety officer (RSO) on:

(i) a specific medical or veterinary use license issued by the department, the United States Nuclear Regulatory Commission (NRC), or an agreement state; or

(ii) a medical use permit issued by an NRC master material licensee.

(4) Authorized medical physicist--An individual who:

(A) meets the requirements in subsections (j) and (m) of this section; or

(B) is identified as an authorized medical physicist or teletherapy physicist on:

(i) a specific medical or veterinary use license issued by the department, the NRC, or an agreement state;

(ii) a medical use permit issued by an NRC master material licensee;

(iii) a permit issued by an NRC or agreement state broad scope medical use licensee; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee; and

(C) holds a current Texas license under the Medical Physics Practice Act, Texas Occupations Code Chapter 602, in therapeutic radiological physics for uses in subsections (rr) and (ddd) of this section.

(5) Authorized nuclear pharmacist--A pharmacist who:

(A) meets the requirements in subsections (k) and (m) of this section; or

(B) is identified as an authorized nuclear pharmacist on:

(i) a specific license issued by the department, the NRC, or an agreement state authorizing medical use or the practice of nuclear pharmacy;

(ii) a permit issued by an NRC master material licensee authorizing medical use or the practice of nuclear pharmacy;

(iii) a permit issued by the department, the NRC, or an agreement state licensee of broad scope authorizing medical use or the practice of nuclear pharmacy; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee authorizing medical use or the practice of nuclear pharmacy; or

(C) is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy authorized to identify authorized nuclear pharmacists; or

(D) is designated as an authorized nuclear pharmacist as specified in §289.252(r) of this subchapter; and

(E) holds a current Texas license under the Texas Pharmacy Act, Texas Occupations Code Chapters 551 - 566, 568, and 569, as amended, and who is certified as an authorized nuclear pharmacist by the Texas State Board of Pharmacy.

(6) Authorized user--An authorized user is defined as follows:

(A) for human use, a physician licensed by the Texas Medical Board; or a dentist licensed by the Texas State Board of Dental Examiners; or a podiatrist licensed by the Texas State Board of Podiatric Medicine who:

(i) meets the requirements in subsection (m) and subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc), or (ttt) of this section; or

(ii) is identified as an authorized user on:

(I) a department, NRC, or agreement state license authorizing the medical use of radioactive material;

(II) a permit issued by an NRC master material licensee authorizing the medical use of radioactive material;

(III) a permit issued by a specific licensee of broad scope issued by the department, the NRC, or an agreement state authorizing the medical use of radioactive material; or

(IV) a permit issued by an NRC master material licensee of broad scope authorizing the medical use of radioactive material.

(B) for veterinary use, an individual who is a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners; and

(i) is certified by the American College of Veterinary Radiology for the use of radioactive materials in veterinary medicine; or

(ii) has received training as specified in subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc), and (ttt) of this section as applicable; or

(iii) is identified as an authorized user on:

(I) a department, NRC, or agreement state license authorizing the veterinary use of radioactive material;

(II) a permit issued by an NRC master material licensee authorizing the medical use of radioactive material;

(III) a permit issued by a specific licensee of broad scope issued by the department, the NRC, or an agreement state authorizing the medical or veterinary use of radioactive material; or

(IV) a permit issued by an NRC master material licensee of broad scope authorizing the medical use of radioactive material.

(7) Brachytherapy--A method of radiation therapy in which plated, embedded, activated, or sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, intraluminal, or interstitial application.

(8) Brachytherapy sealed source--A sealed source or a manufacturer-assembled source train or a combination of these sources designed to deliver a therapeutic dose within a distance of a few centimeters.

(9) High dose-rate remote afterloader--A device remotely delivering a dose rate more than 1200 rads (12 gray (Gy)) per hour at the point or surface where the dose is prescribed.

(10) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution and approved by the United States Food and Drug Administration (FDA) to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(11) Low dose-rate remote afterloader--A device remotely delivering a dose rate of less than or equal to 200 rads (2 Gy) per hour at the point or surface where the dose is prescribed.

(12) Management--The chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(13) Manual brachytherapy--A type of brachytherapy in which the sealed sources, for example, seeds and ribbons, are manually inserted either into the body cavities in close proximity to a treatment site or directly in the tissue volume.

(14) Medical event--An event meeting the criteria in subsection (uuu)(1) of this section.

(15) Medical institution--An organization in which several medical disciplines are practiced.

(16) Medical use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to patients or human research subjects under the supervision of an authorized user.

(17) Medium dose-rate afterloader--A device remotely delivering a dose rate greater than 200 rads (2 Gy) and less than or equal to 1200 rads (12 Gy) per hour at the point or surface where the dose is prescribed.

(18) Mobile nuclear medicine service--A licensed service authorized to transport radioactive material to, and medical or veterinary use of the material at, the client's address. Services transporting calibration sources only are not considered mobile nuclear medicine licensees.

(19) Ophthalmic physicist--An individual who:

(A) meets the requirements in subsections (m) and (xx)(1)(B) of this section; and

(B) is identified as an ophthalmic physicist on:

(i) a specific medical use license issued by the department, the NRC, or an agreement state;

(ii) a permit issued by a department, NRC, or agreement state broad scope medical use licensee;

(iii) a medical use permit issued by an NRC master material licensee; or

(iv) a permit issued by an NRC master material licensee broad scope medical use permittee.

(20) Output--The exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit, a brachytherapy source, a remote afterloader unit, or a gamma stereotactic radiosurgery unit, for a specified set of exposure conditions.

(21) Patient--A human or animal under medical care and treatment.

(22) Patient intervention--Actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

(23) Permanent facility--A building or buildings identified on the license within the State of Texas and where radioactive material may be prepared, received, used, or stored. This may also include an area or areas where administrative activities related to the license are performed.

(24) Preceptor--An individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, an RSO, or an ARSO.

(25) Prescribed dosage--The specified activity or range of activity of unsealed radioactive material as documented in a written directive or specified in the directions of the authorized user for procedures in subsections (ff) and (hh) of this section.

(26) Prescribed dose--Prescribed dose means:

(A) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(B) for teletherapy, the total dose and dose per fraction as documented in the written directive;

(C) for brachytherapy, either the total sealed source strength and exposure time, or the total dose, as documented in the written directive; or

(D) for remote afterloaders, the total dose and dose per fraction as documented in the written directive.

(27) Pulsed dose-rate remote afterloader--A special type of remote afterloading device using a single sealed source capable of delivering dose rates greater than 1200 rads (12 Gy) per hour, but is approximately one-tenth of the activity of typical high dose-rate remote afterloader sealed sources and is used to simulate the radiobiology of a low dose-rate remote afterloader treatment by inserting the sealed source for a given fraction of each hour.

(28) Radiation safety officer (RSO)--For purposes of this section, an individual who:

(A) meets the requirements in subsections (h) and (m) of this section; or

(B) is identified as an RSO on:

(i) a specific license issued by the department, the NRC, or an agreement state authorizing the medical or veterinary use of radioactive material; or

(ii) a permit issued by an NRC master material licensee authorizing the medical or veterinary use of radioactive material.

(29) Sealed source and device registry--The national registry containing all registration certificates, generated by both the NRC and agreement states, summarizing the radiation safety information for sealed sources and devices and describing the licensing and use conditions approved for the product.

(30) Stereotactic radiosurgery--The use of external radiation in conjunction with a guidance device to very precisely deliver a dose to a tissue volume using three-dimensional coordinates.

(31) Technologist--A person (nuclear medicine technologist) skilled in the performance of nuclear medicine procedures under the supervision of a physician.

(32) Teletherapy--Therapeutic irradiation in which the sealed source is at a distance from the patient or human or animal research subject.

(33) Therapeutic dosage--The specified activity or range of activity of radioactive material intended to deliver a radiation dose to a patient or human or animal research subject for palliative or curative treatment.

(34) Therapeutic dose--A radiation dose delivered from a sealed source containing radioactive material to a patient or human or animal research subject for palliative or curative treatment.

(35) Treatment site--The anatomical description of tissue intended to receive a radiation dose, as described in a written directive.

(36) Type of use--Use of radioactive material as specified under:

(A) uptake, dilution, and excretion studies in subsection (ff) of this section;

(B) imaging and localization studies in subsection (hh) of this section;

(C) therapy with unsealed radioactive material in subsection (kk) of this section;

(D) manual brachytherapy with sealed sources in subsection (rr) of this section;

(E) sealed sources for diagnosis in subsection (bbb) of this section;

(F) sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit in subsection (ddd) of this section; or

(G) other medical or veterinary uses of radioactive material or a radiation source approved for medical or veterinary use in subsection (q) of this section.

(37) Unit dosage--A dosage prepared for medical or veterinary use for administration as a single dosage to a patient or human or animal research subject without any further modification of the dosage after it is initially prepared.

(38) Veterinary use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to animal patients under the supervision of an authorized user.

(39) Written directive--An authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in subsection (t) of this section.

(d) Provisions for research involving human subjects.

(1) A licensee may conduct research involving human subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

(2) The licensee may conduct research specified in paragraph (1) of this subsection provided:

(A) the research is conducted, funded, supported, or regulated by a federal agency implementing the Federal Policy for the Protection of Human Subjects as required by 10 CFR §35.6 (Federal Policy); or

(B) the licensee has applied for and received approval of a specific amendment to its license before conducting the research.

(3) Before conducting research as specified in paragraph (1) of this subsection, the licensee must obtain:

(A) "informed consent," as defined and described in the Federal Policy, from the human research subjects; and

(B) review and approval of the research from an Institutional Review Board (IRB) as required by 45 CFR Part 46, and 21 CFR Part 56, and in accordance with the Federal Policy.

(4) Nothing in this subsection relieves licensees from complying with the other requirements of this chapter.

(e) Implementation.

(1) If a license condition exempted a licensee from a provision of this section or §289.252 of this subchapter on the effective date of this rule, then the license condition continues to exempt the licensee from the requirements in the corresponding provision until there is a license amendment or license renewal modifying or removing the license condition.

(2) When a requirement in this section differs from the requirement in an existing license condition, the requirement in this section governs.

(3) Licensees must continue to comply with any license condition requiring implementation of procedures required by subsections (ggg) and (mmm) - (ooo) of this section until there is a license amendment or renewal modifying the license condition.

(f) Specific requirements for the issuance of licenses. In addition to the requirements in §289.252(e) of this subchapter and subsections (n) - (q) of this section, as applicable, a license is issued if the department determines:

(1) the applicant satisfies any applicable special requirement in this section;

(2) qualifications of the designated RSO as specified in subsection (h) of this section are adequate for the purpose requested in the application; and

(3) the information submitted by the applicant is approved, including:

(A) an operating, safety, and emergency procedures manual to include specific information on:

(i) radiation safety precautions and instructions;

(ii) methodology for measurement of dosages or doses to be administered to patients or human or animal research subjects;

(iii) calibration, maintenance, and repair of instruments and equipment necessary for radiation safety; and

(iv) waste disposal procedures; and

(B) any additional information required by this chapter requested by the department to assist in its review of the application; and

(C) qualifications of the:

(i) RSO as specified in subsection (c)(28) of this section;

(ii) authorized users as specified in subsection (c)(6) of this section as applicable to the uses being requested;

(iii) authorized medical physicist as specified in subsection (c)(4) of this section, if applicable;

(iv) authorized nuclear pharmacist as specified in subsection (c)(5) of this section, if applicable;

(v) ophthalmic physicist as specified in subsection (c)(19) of this section, if applicable;

(vi) Radiation Safety Committee (RSC), as specified in subsection (i) of this section, if applicable; and

(vii) ARSO as specified in subsection (c)(3) of this section, if applicable; and

(4) the applicant's permanent facility is located in Texas.

(g) Authority and responsibilities for the radiation protection program.

(1) In addition to the radiation protection program requirements of §289.202(e) of this chapter, a licensee's management must approve in writing:

(A) requests for a license application, renewal, or amendment before submittal to the department; and

(B) any individual before being allowed to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist.

(2) A licensee's management must appoint an RSO who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the RSO, must ensure radiation safety activities are being performed according to licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more ARSO to support the RSO. The RSO, with written agreement of the licensee's management, must assign the specific duties and tasks to each ARSO. These duties and tasks are restricted to the types of use for which the ARSO is listed on a license. The RSO may delegate duties and tasks to the ARSO but must not delegate the authority or responsibilities for implementing the radiation protection program.

(3) Every licensee must establish in writing the authority, duties, and responsibilities of the RSO and ensure the RSO is provided sufficient authority, organizational freedom, time, resources, and management prerogative to perform the following duties:

(A) establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure procedures are current and conform with this chapter;

(B) ensure required radiation surveys and leak tests are performed and documented as specified in this chapter, including any corrective measures when levels of radiation exceed established limits;

(C) ensure individual monitoring devices are used properly by occupationally exposed personnel, records are kept of the monitoring results, and timely notifications are made as specified in §289.203 of this chapter;

(D) investigate and report an individual or radiation level detected over the limits established by this chapter and each theft or loss of sources of radiation, to determine the causes, and take steps to prevent a recurrence;

(E) investigate and report to the department for each known or suspected case of release of radioactive material to the environment over the limits established by this chapter;

(F) have a thorough knowledge of management policies and administrative procedures of the licensee;

(G) identify radiation safety problems;

(H) assume control and initiate, recommend, or provide corrective actions, including shutdown of operations when necessary, in emergency situations or unsafe conditions;

(I) verify implementation of corrective actions;

(J) ensure records are maintained as required by this chapter;

(K) ensure proper storing, labeling, transport, use, and disposal of sources of radiation, storage, and transport containers;

(L) ensure inventories are performed in accordance with the activities for which the license application is submitted;

(M) ensure personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(N) serve as the primary contact with the department.

(4) The RSO must ensure duties listed in paragraph (3)(A) - (N) of this subsection are performed.

(5) The RSO must be onsite periodically, commensurate with the scope of licensed activities, to satisfy the requirements of paragraphs (3) and (4) of this subsection.

(6) The RSO, or staff designated by the RSO, must be capable of physically arriving at the licensee's authorized use sites within a reasonable time of being notified of an emergency situation or unsafe condition.

(7) For up to 60 days each calendar year, a licensee may permit an authorized user or an individual qualified to be an RSO, under subsections (h) and (m) of this section, to function as a temporary RSO and to perform the duties of an RSO as specified in paragraph (3) of this subsection, provided the licensee takes the actions required in paragraphs (2), (3), and (9) of this subsection, and notifies the department as specified in subsection (r)(5) of this section. Records of qualifications and dates of service must be maintained as specified in subsection (xxx) of this section for inspection by the department.

(8) A licensee may simultaneously appoint more than one temporary RSO as specified in paragraph (7) of this subsection, if needed to ensure the licensee has a temporary RSO satisfying the requirements to be an RSO for each of the different types of uses of radioactive material permitted by the license.

(9) The licensee must maintain records, as specified in subsection (xxx) of this section, as follows.

(A) A licensee must retain a record of actions taken by the licensee's management as specified in paragraph (1) of this subsection. The record must include a summary of the actions taken and a signature of licensee management.

(B) The authority, duties, and responsibilities of the RSO as required by paragraph (3) of this subsection, and a signed copy of each RSO's agreement to be responsible for implementing the radiation safety program, as required by paragraph (2) of this subsection. The records must include the signature of the RSO and licensee management.

(C) A copy of the written document appointing the ARSO, for each ARSO appointed under paragraph (2) of this subsection. The record must include the signature of licensee management.

(h) Training for an RSO and ARSO. Except as provided in subsection (l) of this section, the licensee must require the individual fulfilling the responsibilities of an RSO or an individual assigned duties and tasks as an ARSO as specified in subsection (g) of this section for licenses for medical or veterinary use of radioactive material, to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the department, the NRC, or an agreement state and who meets the requirements in paragraph (4) of this subsection. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page.

(A) To have its certification process recognized, a specialty board must require all candidates for certification to:

(i) hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(ii) have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(iii) pass an examination, administered by diplomates of the specialty board evaluating knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(B) to have its certification process recognized, a specialty board must require all candidates for certification to:

(i) hold a master's or doctoral degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) have two years of full-time practical training or supervised experience in medical physics as follows:

(I) under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the department, the NRC, or an agreement state; or

(II) in clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in subsections (l), (jj), or (nn) of this section; and

(iii) pass an examination, administered by diplomates of the specialty board, assessing knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(2) has:

(A) completed a structured educational program consisting of both:

(i) 200 hours of classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) radiation biology; and

(V) radiation dosimetry; and

(ii) one year of full-time radiation safety experience under the supervision of the individual identified as the RSO on a department, NRC, or agreement state license or on a permit issued by an NRC master material licensee authorizing similar types of use of radioactive material. An ARSO may provide supervision for those areas for which the ARSO is authorized on a department, NRC, or an agreement state license or a permit issued by an NRC master material licensee. The full-time radiation safety experience must involve:

(I) shipping, receiving, and performing related radiation surveys;

(II) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(III) securing and controlling radioactive material;

(IV) using administrative controls to avoid mistakes in the administration of radioactive material;

(V) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(VI) using emergency procedures to control radioactive material; and

(VII) disposing of radioactive material; and

(B) obtained written attestation, signed by a preceptor RSO or ARSO experienced with the radiation safety aspects of similar types of use of radioactive material for which the individual is seeking approval as an RSO or an ARSO. The written attestation must state the individual has satisfactorily completed the requirements in paragraphs (2)(A) and (4) of this subsection, and is able to independently fulfill the radiation safety-related duties as an RSO or as an ARSO for a medical or veterinary use license; or

(3) meets one of the following:

(A) is a medical physicist certified by a specialty board whose certification process has been recognized by the department, the NRC, or an agreement state as specified in subsection (j)(1) of this section, has experience with the radiation safety aspects of similar types of use of radioactive material for which the licensee is seeking approval of the individual as the RSO or ARSO, and meets the requirements in paragraph (4) of this subsection;

(B) is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on a department, NRC, or another agreement state's license; a permit issued by an NRC master material licensee; a permit issued by the department, the NRC, or another agreement state licensee of broad scope; or a permit issued by an NRC master material license broad scope permittee, has experience with the radiation safety aspects of similar types of use of radioactive material for which the licensee is seeking the approval of the individual as the RSO or ARSO, and who meets the requirements in paragraph (4) of this subsection; or

(C) has experience with the radiation safety aspects of the types of use of radioactive material for which the individual is seeking simultaneous approval both as the RSO and the authorized user on the same new medical or veterinary use license or new medical use permit issued by an NRC master material licensee. The individual must also meet the requirements in paragraph (4) of this subsection; and

(4) has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval, and this training requirement may be satisfied by completing training supervised by an RSO, an ARSO, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the types of use for which the licensee is seeking approval.

(i) Radiation safety committee (RSC). Licensees of broad scope and licensees who are authorized for two or more different types of uses of radioactive material requiring a written directive under subsections (q), (kk), (rr), and (ddd) of this section, or two or more types of therapeutic units under subsections (q) and (ddd) of this section, must establish an RSC to oversee all uses of radioactive material permitted by the license.

(1) The RSC must be composed of the following individuals:

(A) an authorized user of each type of use permitted by the license;

(B) the RSO;

(C) a representative of the nursing service, if applicable;

(D) a representative of management who is neither an authorized user nor the RSO; and

(E) other members as the licensee deems appropriate.

(2) Duties and responsibilities of the RSC.

(A) For licensees without broad scope authorization, the duties and responsibilities of the RSC include:

(i) meeting as often as necessary to conduct business but no less than three times a year;

(ii) reviewing summaries of information presented by the RSO, including:

(I) doses over the occupational or public limits;

(II) significant incidents, including spills, contamination, or medical events; and

(III) items of non-compliance following an inspection;

(iii) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA; and

(iv) reviewing the audit of the radiation safety program and acting upon the findings.

(B) For licensees of broad scope, the duties and responsibilities of the RSC include the items in subparagraph (A) of this paragraph and:

(i) reviewing the overall compliance status for authorized users;

(ii) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(iii) developing criteria to evaluate training and experience of new authorized user applicants;

(iv) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility; and

(v) reviewing and approving permitted program and procedural changes before implementation.

(3) Records documenting the RSC meetings must be made and maintained for inspection by the department as specified in subsection (xxx) of this section. The record must include the date, names of individuals in attendance, minutes of the meeting, and any actions taken.

(j) Training for an authorized medical physicist. Except as provided in subsection (l) of this section, the licensee must require the authorized medical physicist to be:

(1) an individual certified by a specialty board whose certification process has been recognized by the department, the NRC, or an agreement state and who meets the requirements in paragraph (3) of this subsection. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board must require all candidates to:

(A) hold a master's or doctoral degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(B) complete two years of full-time practical training or supervised experience in medical physics as follows:

(i) under the supervision of a medical physicist who is certified in medical physics by a specialty board whose certification process has been recognized by the department, the NRC, or an agreement state; or

(ii) in clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians meeting the requirements for authorized users in subsections (l), (zz), or (ttt) of this section; and

(C) pass an examination, administered by diplomates of the specialty board, assessing knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2) an individual who:

(A) holds a post graduate degree and experience, including:

(i) a master's or doctoral degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and

(ii) completion of one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual meeting the requirements for an authorized medical physicist for the types of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

(I) performing sealed source leak tests and inventories;

(II) performing decay corrections;

(III) performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(IV) conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(B) has obtained written attestation the individual has satisfactorily completed the requirements in paragraphs (2)(A) and (3) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist meeting the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) an individual trained for the types of use for which authorization is sought, including hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the types of use for which the individual is seeking authorization.

(k) Training for an authorized nuclear pharmacist. Except as provided in subsection (l) of this section, the licensee must require the authorized nuclear pharmacist to be a pharmacist who:

(1) is certified by a specialty board whose certification process has been recognized by the department, the NRC, or an agreement state. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board must require all candidates for certification to:

(A) have graduated from a pharmacy program accredited by the Accreditation Council for Pharmacy Education or have passed the Foreign Pharmacy Graduate Examination Committee examination;

(B) hold a current, active license to practice pharmacy in the State of Texas;

(C) provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

(D) pass an examination in nuclear pharmacy, administered by diplomates of the specialty board, assessing knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, and research and development; or

(2) has:

(A) completed a 700-hour structured educational program, including both:

(i) 200 hours of classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical use; and

(V) radiation biology; and

(ii) supervised practical experience in a nuclear pharmacy involving:

(I) shipping, receiving, and performing related radiation surveys;

(II) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(III) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(IV) using administrative controls to avoid medical events in the administration of radioactive material; and

(V) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(B) obtained written attestation, signed by a preceptor authorized nuclear pharmacist, the individual has satisfactorily completed the requirements in paragraph (2)(A) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized nuclear pharmacist.

(l) Training for experienced RSO, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

(1) An individual identified on a department, NRC, or an agreement state license or a permit issued by the department, the NRC, or an agreement state broad scope licensee or master material license permit, or by a master material license permittee of broad scope as an RSO, a teletherapy or medical physicist, an authorized medical physicist, a nuclear pharmacist, or an authorized nuclear pharmacist on or before January 14, 2019, need not comply with the training requirements of subsections (h), (j), and (k) of this section, respectively, except the RSO and authorized medical physicists identified in this paragraph must meet the training requirements in subsections (h)(4) or (j)(3) of this section, as appropriate, for any material or uses for which they were not authorized before this date.

(2) Any individual certified by the American Board of Health Physics in Comprehensive Health Physics; American Board of Radiology; American Board of Nuclear Medicine; American Board of Science in Nuclear Medicine; Board of Pharmaceutical Specialties in Nuclear Pharmacy; American Board of Medical Physics in radiation oncology physics; Royal College of Physicians and Surgeons of Canada in nuclear medicine; American Osteopathic Board of Radiology; or American Osteopathic Board of Nuclear Medicine on or before October 24, 2005, need not comply with the training requirements of subsection (h) of this section to be identified as an RSO or as an ARSO on a department, NRC, or agreement state license or NRC master material license permit for those materials and uses these individuals performed on or before October 24, 2005.

(3) Any individual certified by the American Board of Radiology in therapeutic radiological physics, Roentgen ray and gamma ray physics, x-ray and radium physics, or radiological physics, or certified by the American Board of Medical Physics in radiation oncology physics, on or before October 24, 2005, need not comply with the training requirements for an authorized medical physicist described in subsection (j) of this section, for those materials and uses these individuals performed on or before October 24, 2005.

(4) An RSO, a medical physicist, or a nuclear pharmacist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical or veterinary uses or in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of subsections (h), (j), or (k) of this section, respectively, when performing the same uses. A nuclear pharmacist who prepared only radioactive drugs containing accelerator-produced radioactive materials, or a medical physicist who used only accelerator-produced radioactive materials, at the locations and during the time period identified in this paragraph, qualifies as an authorized nuclear pharmacist or an authorized medical physicist, respectively, for those materials and uses performed before these dates, for the purposes of this chapter.

(5) An individual identified as a physician, dentist, podiatrist, or veterinarian authorized for the medical or veterinary use of radioactive material.

(A) Physicians, dentists, podiatrists, or veterinarians identified as authorized users for the medical or veterinary use of radioactive material on a license issued by the department, the NRC, or an agreement state; a permit issued by an NRC master material licensee; a permit issued by the department, the NRC, or an agreement state broad scope licensee; or a permit issued by an NRC master material license broad scope permittee on or before January 14, 2019, who perform only those medical or veterinary uses for which they were authorized on or before that date need not comply with the training requirements of subsections (gg) through (ttt) of this section.

(B) Physicians, dentists, podiatrists, or veterinarians identified as authorized users for the medical or veterinary use of radioactive material on a license issued by the department, the NRC, or an agreement state; a permit issued by an NRC master material licensee; a permit issued by the department, the NRC, or an agreement state broad scope licensee; or a permit issued under an NRC master material broad scope license on or before October 24, 2005, need not comply with the training requirements of subsections (gg) through (ttt) of this section for those materials and uses these individuals performed on or before October 24, 2005, as follows:

(i) for uses authorized under subsections (ff) or (hh) of this section, or oral administration of sodium iodide I-131 requiring a written directive for imaging and localization purposes, a physician who was certified on or before October 24, 2005, in nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology by the American Board of Radiology; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(ii) for uses authorized under subsection (kk) of this section, a physician who was certified on or before October 24, 2005, by the American Board of Nuclear Medicine; the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or the American Osteopathic Board of Radiology after 1984;

(iii) for uses authorized under subsections (rr) or (ddd) of this section, a physician who was certified on or before October 24, 2005, in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; radiation oncology by the American Osteopathic Board of Radiology; radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; and

(iv) for uses authorized under subsection (bbb) of this section, a physician who was certified on or before October 24, 2005, in radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

(C) Physicians, dentists, podiatrists, or veterinarians who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical or veterinary uses performed at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of subsections (gg) through (ttt) of this section when performing the same medical or veterinary uses. A physician, dentist, podiatrist, or veterinarian who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical or veterinary uses at the locations and time period identified in this paragraph, qualifies as an authorized user for those materials and uses performed before these dates, for the purposes of this chapter.

(6) Individuals who need not comply with training requirements in this subsection may serve as preceptors for, and supervisors of, applicants seeking authorization on a department, NRC, or agreement state license for the same uses for which these individuals are authorized.

(m) Recentness of training. The training and experience specified in subsections (h), (j), and (gg) - (ttt) of this section for medical and veterinary use must have been obtained within the seven years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

(n) Licenses for medical and veterinary uses of radioactive material without broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical and veterinary use of radioactive material as described in the applicable subsections (ff), (hh), (kk), (rr), (bbb), and (ddd) of this section is issued if the department approves documentation showing:

(1) the physicians or veterinarians designated on the application as the authorized users are qualified as specified in subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc), and (ttt) of this section, as applicable;

(2) the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses; and

(4) an RSC has been established as specified in subsection (i) of this section, if applicable.

(o) License for medical and veterinary uses of radioactive material with broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical or veterinary use of radioactive material with broad scope authorization is issued if the department approves documentation showing:

(1) the review of authorized user qualifications by the RSC is as specified in subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc), and (ttt) of this section, as applicable;

(2) the application is for a license authorizing unspecified forms or multiple types of radioactive material for medical research, diagnosis, and therapy;

(3) the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(4) the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(5) staff has substantial experience in the use of a variety of radioactive material for a variety of human and animal uses;

(6) the full-time RSO meets the requirements of subsection (h) of this section; and

(7) an RSC has been established as specified in subsection (i)(1) of this section.

(p) License for the use of remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units. In addition to the requirements of subsection (f) of this section, a license for the use of remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units is issued if the department approves documentation showing:

(1) the physicians designated on the application as the authorized users are qualified as specified in subsection (ttt) of this section;

(2) the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(4) the radioactive isotopes to be possessed;

(5) the sealed source manufacturer names and the model numbers of the sealed sources to be installed;

(6) the maximum number of sealed sources of each isotope to be possessed, including the activity of each sealed source;

(7) the manufacturer and model designation of the following units, as applicable:

(A) remote afterloader unit;

(B) teletherapy unit; or

(C) gamma stereotactic radiosurgery unit;

(8) the authorized medical physicist designated on the application is qualified as specified in subsection (j) of this section;

(9) the safety procedures and instructions as required by subsection (ggg) of this section;

(10) the spot check procedures as required by subsections (mmm) - (ooo) of this section, as applicable; and

(11) an RSC has been established as specified in subsection (i) of this section, if applicable.

(q) License for other medical or veterinary uses of radioactive material or a radiation source approved for medical or veterinary use not specifically addressed in this section. In addition to the requirements of subsection (f) of this section, a licensee may use radioactive material or a radiation source approved for medical or veterinary use not specifically addressed in this section if:

(1) the department approves the following documentation submitted by the applicant:

(A) any additional aspects of the medical or veterinary use of the material applicable to radiation safety not addressed in, or different from, requirements in this section;

(B) identification of and commitment to follow the applicable radiation safety program requirements in this section appropriate for the specific medical or veterinary use;

(C) any additional specific information on:

(i) radiation safety precautions and instructions;

(ii) methodology for measurement of dosages or doses to be administered to patients or human or animal research subjects; and

(iii) calibration, maintenance, and repair of instruments and equipment necessary for radiation safety; and

(D) any other information requested by the department in its review of the application; and

(2) the applicant or licensee has received written approval from the department in a license or license amendment and the licensee uses the material in accordance with the regulations and specific conditions the department considers necessary for the medical or veterinary use of the material.

(r) License amendments and notifications.

(1) Requests for amendment of a license or deletion of an authorized use site must be filed as specified in §289.252(aa) of this subchapter.

(2) A licensee must apply for and must receive a license amendment before:

(A) receiving or using radioactive material for a type of use authorized by this section, but not authorized on their current license issued under this section;

(B) permitting anyone to work as an authorized user, authorized nuclear pharmacist, authorized medical physicist, or ophthalmic physicist under the license except an individual who is identified as an authorized user, an authorized nuclear pharmacist, authorized medical physicist, or an ophthalmic physicist:

(i) on a department, NRC, or agreement state license or other equivalent permit or license recognized by the department authorizing the use of radioactive material in medical or veterinary use or in the practice of nuclear pharmacy;

(ii) on a permit issued by a department, NRC, or agreement state specific license of broad scope authorized to permit the use of radioactive material in medical or veterinary use or in the practice of nuclear pharmacy;

(iii) on a permit issued by an NRC master material licensee authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

(iv) by a commercial nuclear pharmacy authorized to identify authorized nuclear pharmacists.

(C) changing RSOs, except as provided in subsection (g)(7) of this section;

(D) receiving radioactive material more than the amount or in a different form, or receiving a different radionuclide than authorized on the license;

(E) adding or changing the areas where radioactive material is used or stored and identified in the application or on the license, including areas used as specified in subsection (ff) or (hh) of this section if the change includes addition or relocation of either an area where positron emission tomography (PET) radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area. Other areas of use where radioactive material is used only as specified in either subsection (ff) or (hh) of this section, are exempt;

(F) changing the addresses of use identified in the application or on the license;

(G) changing operating, safety, and emergency procedures; however, a licensee may revise its radiation protection program without the department's approval if the revision does not require a license amendment under the other provisions of this paragraph; and

(i) the revision does not reduce the safety of an affected facility;

(ii) the revision is in compliance with the rules in this chapter and the license;

(iii) the revision has been reviewed and approved by the RSO and licensee management;

(iv) the affected individuals are instructed on the revised program before the changes are implemented;

(v) all changes to the radiation protection program are submitted to the department after the provisions of this subparagraph are completed; and

(vi) the licensee retains a record of each change to the radiation protection program as specified in §289.202(mm) of this chapter.

(H) before permitting anyone to work as an ARSO, or before the RSO assigns duties and tasks to an ARSO differing from those for which this individual is authorized on the license; and

(I) before receiving a sealed source from a different manufacturer or of a different model number than authorized by its license unless the sealed source is used for manual brachytherapy, is listed in the Sealed Source and Device Registry, and is in a quantity and for an isotope authorized by the license.

(3) A licensee possessing a Type A specific license of broad scope for medical or veterinary use, issued under §289.252(h)(2) of this subchapter, is exempt from:

(A) the provisions of subsection (q)(1) of this section regarding the need to file an amendment to the license for medical or veterinary use of radioactive material;

(B) the provisions of paragraph (2)(B) of this subsection;

(C) the provisions of paragraph (2)(E) of this subsection regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(D) the provisions of paragraph (4) of this subsection;

(E) the provisions of paragraph (5)(A) of this subsection for an authorized user, an authorized nuclear pharmacist, an authorized medical physicist, or an ophthalmic physicist;

(F) the provisions of paragraph (5)(C) of this subsection; and

(G) the provisions of subsection (u)(1) of this section.

(4) A licensee must notify the department in the form of a license amendment request no later than 30 days after the date that the licensee permits an individual to work under the provisions of this subsection as an authorized user, authorized medical physicist, ophthalmic physicist, or authorized nuclear pharmacist providing the individual is authorized on a license for the same use. A licensee includes with the notification the following documentation:

(A) a copy of the department, NRC, or agreement state license;

(B) the permit issued by an NRC master material licensee;

(C) the permit issued by the department, the NRC, or an agreement state licensee of broad scope; or

(D) the permit issued by an NRC master material license broad scope permittee.

(5) A licensee must notify the department in the form of a license amendment request no later than 30 days after:

(A) an authorized user, an authorized nuclear pharmacist, an RSO, an ARSO, an authorized medical physicist, or an ophthalmic physicist permanently discontinues performance of duties under the license or has a name change;

(B) the licensee permits an individual qualified to be an RSO under subsections (h) and (m) of this section to function as a temporary RSO and to perform the functions of an RSO as specified in subsection (g)(6) of this section;

(C) the licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used as specified in either subsection (ff) or (hh) of this section, if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; or

(D) the licensee obtains a sealed source for use in manual brachytherapy from a different manufacturer or with a different model number than authorized by its license for which it did not require a license amendment as provided in paragraph (1) of this subsection. The notification must include the manufacturer and model number of the sealed source, the isotope, and the quantity per sealed source.

(s) Supervision. A licensee may permit the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, unless prohibited by license condition.

(1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user must:

(A) instruct the supervised individual in the licensee's written operating, safety, and emergency procedures, written directive procedures, requirements of this chapter, and license conditions with respect to the use of radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user for medical or veterinary uses of radioactive material, written operating, safety, and emergency procedures established by the licensee, written directive procedures, requirements of this chapter, and license conditions with respect to the medical or veterinary use of radioactive material.

(2) A licensee who permits the preparation of radioactive material for medical or veterinary use by an individual under the supervision of an authorized nuclear pharmacist or authorized user must:

(A) instruct the supervised individual in the preparation of radioactive material for medical or veterinary use, as appropriate to that individual's involvement with radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical or veterinary use, the written operating, safety, and emergency procedures established by the licensee, the requirements of this chapter, and license conditions.

(3) A licensee who permits supervised activities as specified in paragraphs (1) and (2) of this subsection is responsible for the acts and omissions of the supervised individual.

(4) Only an authorized user may authorize the medical or veterinary use of radioactive material.

(t) Written directives.

(1) A written directive must be dated and signed by an authorized user before any administration of sodium iodide I-131 greater than 30 microcuries (μCi) (1.11 megabequerels (MBq)), administration of any therapeutic dosage of unsealed radioactive material, or administration of any therapeutic dose of radiation from radioactive material. If, because of the emergent nature of the patient's condition, a delay to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive must be documented in writing as soon as possible in the patient's record. A written directive must be prepared and signed by the authorized user within 48 hours of the oral directive.

(2) The written directive must contain the patient or human research subject's name and the following information for each application.

(A) For any administration of quantities greater than 30 μCi (1.11 MBq) of sodium iodide I-131: the dosage.

(B) For an administration of a therapeutic dosage of a radiopharmaceutical other than sodium iodide I-131: the radiopharmaceutical, the dosage, and the route of administration.

(C) For gamma stereotactic radiosurgery: the total dose, the treatment site, and the values for the target coordinate settings per treatment for each anatomically distinct treatment site.

(D) For teletherapy: the total dose, the dose per fraction, the number of fractions, and the treatment site.

(E) For high-dose rate remote afterloading brachytherapy: the radionuclide, the treatment site, the dose per fraction, the number of fractions, and the total dose.

(F) For permanent implant brachytherapy:

(i) before implantation: the treatment site, the radionuclide, and the total source strength; and

(ii) after implantation but before the patient leaves the post-treatment recovery area: the treatment site, the number of sources implanted, the total source strength implanted, and the date.

(G) For all other brachytherapy, including low, medium, and pulsed rate afterloaders:

(i) before implantation: the treatment site, the radionuclide, and the dose;

(ii) after implantation but before completion of the procedure: the radionuclide, the treatment site, the number of sealed sources, the total sealed source strength, exposure time (or the total dose), and the date.

(3) A written revision to an existing written directive.

(A) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(B) If, because of the patient's condition, a delay to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within 48 hours of the oral revision.

(4) The licensee must retain the written directive as specified in subsection (xxx) of this section for inspection by the department.

(5) Procedures for administrations requiring a written directive.

(A) For any administration requiring a written directive, the licensee must develop, implement, and maintain written procedures to provide high confidence:

(i) the patient's or human research subject's identity is verified before each administration; and

(ii) each administration is in accordance with the written directive.

(B) The procedures required by subparagraph (A) of this paragraph must, at a minimum, address the following items applicable for the licensee's use of radioactive material:

(i) verifying the identity of the patient or human research subject;

(ii) verifying the administration is in accordance with the treatment plan, if applicable, and the written directive;

(iii) checking both manual and computer-generated dose calculations;

(iv) verifying any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by subsections (q) and (ddd) of this section;

(v) determining if a medical event, as defined in subsection (uuu) of this section, has occurred; and

(vi) determining, for permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the post-implantation portion of the written directive, unless a written justification of patient unavailability is documented.

(C) A licensee must maintain a copy of the procedures required by subparagraph (A) of this paragraph as specified in subsection (xxx) of this section.

(u) Suppliers for sealed sources or devices for medical or veterinary use. A licensee may only use the following for medical or veterinary use:

(1) sealed sources or devices manufactured, labeled, packaged, and distributed as specified in a license issued under §289.252(o) of this subchapter or equivalent requirements of the NRC or an agreement state;

(2) sealed sources or devices non-commercially transferred from an NRC or agreement state medical or veterinary use licensee; or

(3) teletherapy sources manufactured and distributed as specified in a license issued by the department, the NRC, or an agreement state.

(v) Possession, use, and calibration of dose calibrators to measure the activity of unsealed radioactive material.

(1) For direct measurements performed as specified in subsection (x) of this section, the licensee must possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human or animal research subject.

(2) The licensee must calibrate the instrumentation specified in paragraph (1) of this subsection in accordance with nationally recognized standards or the manufacturer's instructions.

(3) The calibration required by paragraph (2) of this subsection must include tests for constancy, accuracy, linearity, and geometry dependence, as appropriate to demonstrate proper operation of the instrument. The tests for constancy, accuracy, linearity, and geometry dependence must be conducted at the following intervals:

(A) constancy at least once each day before assay of patient dosages;

(B) linearity at installation, repair, relocation, and at least quarterly thereafter;

(C) geometry dependence at installation; and

(D) accuracy at installation and at least annually thereafter.

(4) The licensee must maintain a record of each instrument calibration as specified in subsection (xxx) of this section. The record must include:

(A) model and serial number of the instrument and calibration sources;

(B) complete date of the calibration including the month, day, and year;

(C) results of the calibration; and

(D) name of the individual who performed the calibration.

(w) Calibration of survey instruments. A licensee must calibrate the survey instruments used to show compliance with this subsection and with §289.202 of this chapter before first use, annually, and following a repair affecting the calibration. A licensee must:

(1) calibrate all scales with readings up to 10 millisieverts (mSv) (1000 millirem (mrem)) per hour with a radiation source;

(2) calibrate two separated readings on each scale or decade used to show compliance;

(3) conspicuously note on the instrument the complete date of the calibration including the month, day, and year;

(4) not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than 20 percent; and

(5) maintain a record of each survey instrument calibration as specified in subsection (xxx) of this section.

(x) Determination of dosages of unsealed radioactive material for medical or veterinary use.

(1) Before medical or veterinary use, the licensee must determine and record the activity of each dosage.

(2) For a unit dosage, this determination must be made by:

(A) direct measurement of radioactivity; or

(B) a decay correction, based on the activity or activity concentration determined by:

(i) a manufacturer or preparer licensed as specified in §289.252(r) of this subchapter, or under an equivalent NRC or agreement state license;

(ii) an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the FDA; or

(iii) a PET radioactive drug producer licensed as specified in §289.252(kk) of this subchapter or equivalent NRC or agreement state requirements.

(3) For other than unit dosages, this determination must be made by:

(A) direct measurement of radioactivity;

(B) combination of measurement of radioactivity and mathematical calculations; or

(C) combination of volumetric measurements and mathematical calculations, based on the measurement made by:

(i) a manufacturer or preparer licensed as specified in §289.252(r) of this subchapter, or under an equivalent NRC or agreement state license; or

(ii) a PET radioactive drug producer licensed as specified in §289.252(kk) of this subchapter or equivalent NRC or agreement state requirements.

(4) Unless otherwise directed by the authorized user, a licensee must not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20 percent.

(5) A licensee restricted to only unit doses prepared as specified in §289.252(r) of this subchapter need not comply with paragraph (2) of this subsection unless the administration time of the unit dose deviates from the nuclear pharmacy's pre-calibrated time by 15 minutes or more.

(6) A licensee must maintain a record of the dosage determination required by this subsection as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) the radiopharmaceutical;

(B) patient's or human or animal research subject's name or identification number, if one has been assigned;

(C) prescribed dosage;

(D) determined dosage or a notation the total activity is less than 30 μCi (1.1 MBq);

(E) the date and time of the dosage determination; and

(F) the name of the individual who determined the dosage.

(y) Authorization for calibration, transmission, and reference sources.

(1) Any licensee authorized by subsections (n), (o), (p), or (q) of this section for medical or veterinary use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use:

(A) sealed sources, not exceeding 30 millicuries (mCi) (1.11 gigabecquerel (GBq)) each, manufactured and distributed by a person licensed under §289.252(o) of this subchapter or equivalent NRC or agreement state regulations;

(B) sealed sources, not exceeding 30 mCi (1.11 GBq) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under §289.252(o) of this subchapter or equivalent NRC or agreement state regulations, provided the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions;

(C) any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 15 mCi (0.56 GBq);

(D) any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 200 μCi (7.4 MBq) or 1000 times the quantities in §289.202(ggg)(3) of this chapter; and

(E) technetium-99m in amounts as needed.

(2) Radioactive material in sealed sources authorized by this subsection must not be:

(A) used for medical or veterinary use as defined in subsection (c) of this section except as specified in the requirements in subsection (bbb) of this section; or

(B) combined (i.e., bundled or aggregated) to create an activity greater than the maximum activity of any single sealed source authorized under this section.

(3) A licensee using calibration, transmission, and reference sources as specified in the requirements in paragraph (1) or (2) of this subsection need not list these sources on a specific medical or veterinary use license.

(z) Requirements for possession of sealed sources and brachytherapy sealed sources. A licensee in possession of any sealed source or brachytherapy source must:

(1) follow the radiation safety and handling instructions supplied by the manufacturer and the leakage test requirements as specified in §289.201(g) of this chapter and reporting requirements in §289.202(bbb) of this chapter; and

(2) conduct a physical inventory at intervals not to exceed six months to account for all sealed sources in its possession. Records of the inventory must be made and maintained for inspection by the department as specified in subsection (xxx) of this section and must include:

(A) model number of each source and serial number if one has been assigned;

(B) identity of each source and its nominal activity;

(C) location of each source;

(D) date of the inventory; and

(E) name of the individual who performed the inventory.

(aa) Labeling of vials and syringes. Each syringe and vial containing a radiopharmaceutical must be labeled to identify the radioactive drug. Each syringe shield and vial shield must also be labeled unless the label on the syringe or vial is visible when shielded.

(bb) Surveys for ambient radiation exposure rate.

(1) In addition to the requirements of §289.202(p) of this chapter and except as provided in paragraph (2) of this subsection, a licensee must survey, with a radiation detection survey instrument, at the end of each day of use, all areas where radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee is not required to perform the surveys required by paragraph (1) of this subsection in an area where patients or human research subjects are confined when they cannot be released as specified in subsection (cc) of this section or an animal that is confined. Once the patient or human or animal research subject is released from confinement, the licensee must survey with a radiation survey instrument the area in which the patient or human or animal research subject was confined.

(3) A record of each survey must be retained as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name, model, and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(cc) Release of individuals containing radioactive drugs or implants containing radioactive material.

(1) The licensee may authorize the release from its control, any individual administered radioactive drugs or implants containing radioactive material if the total effective dose equivalent (TEDE) to any other individual from exposure to the released individual is not likely to exceed 0.5 rem (5 mSv).

(2) The licensee must provide the released individual, or the individual's parent or guardian, with written instructions on actions recommended to maintain doses to other individuals ALARA if the TEDE to any other individual is likely to exceed 0.1 rem (1 mSv). If the TEDE to a nursing infant or child could exceed 0.1 rem (1 mSv), assuming there was no interruption of breast-feeding, the instructions must include:

(A) guidance on the interruption or discontinuation of breast-feeding; and

(B) information on the potential consequences, if any, of failure to follow the guidance.

(3) The licensee must maintain for inspection by the department, a record as specified in subsection (xxx) of this section of each patient released according to paragraph (1) of this subsection. The record must include:

(A) the basis for authorizing the release of an individual; and

(B) the instructions provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a TEDE exceeding 0.5 rem (5 mSv).

(dd) Mobile nuclear medicine service. A license for a mobile nuclear medicine service for medical or veterinary use of radioactive material is issued if the department approves the documentation submitted by the applicant as specified in the requirements of subsections (f) and (n) of this section. The clients of the mobile nuclear medicine service must be licensed if the client receives or possesses radioactive material to be used by the mobile nuclear medicine service.

(1) A licensee providing mobile nuclear medicine service must:

(A) obtain a letter signed by the management of each client for which services are rendered permitting the use of radioactive material at the client's address and clearly delineating the authority and responsibility of the licensee and the client;

(B) check instruments used to measure the activity of unsealed radioactive material for proper function before medical or veterinary use at each client's address or on each day of use, whichever is more frequent. As a minimum, the check for proper function required by this subparagraph must include a constancy check;

(C) have at least one fixed facility where records are maintained and radioactive material is delivered by manufacturers or distributors each day before the mobile nuclear medicine licensee dispatches its vehicles to client sites;

(D) agree to have an authorized physician user directly supervise each technologist at a reasonable frequency;

(E) check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(F) before leaving a client's address, survey all areas of use to ensure compliance with the requirements of §289.202 of this chapter.

(2) A mobile nuclear medicine service must not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the radioactive material. Radioactive material delivered to the client must be received and handled in conformance with the client's license.

(3) A licensee providing mobile nuclear medicine services must maintain records, for inspection by the department, as specified in subsection (xxx) of this section including the letter required in paragraph (1)(A) of this subsection and the record of each survey required in paragraph (1)(F) of this subsection.

(ee) Decay-in-storage.

(1) The licensee may hold radioactive material with a physical half-life of less than or equal to 120 days for decay-in-storage and dispose of it without regard to its radioactivity if the licensee:

(A) monitors radioactive material at the surface before disposal and determines its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(B) removes or obliterates all radiation labels, except for radiation labels on materials within containers and handled as biomedical waste after it has been released from the licensee.

(2) The licensee must retain a record of each disposal as required by paragraph (1) of this subsection as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of the disposal;

(B) manufacturer's name, model number, and serial number of the survey instrument used;

(C) background radiation level;

(D) radiation level measured at the surface of each waste container; and

(E) name of the individual who performed the survey.

(ff) Use of unsealed radioactive material for uptake, dilution, and excretion studies not requiring a written directive. Except for quantities that require a written directive as specified in subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for uptake, dilution, or excretion studies:

(1) obtained from:

(A) a manufacturer or preparer licensed as specified in §289.252(r) of this subchapter or equivalent NRC or agreement state requirements; or

(B) a PET radioactive drug producer licensed as specified in §289.252(kk) of this subchapter or equivalent NRC or agreement state requirements; or

(2) excluding production of PET radionuclides, prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician or veterinarian who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(3)(A)(ii)(VII) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the authorized nuclear pharmacist in subparagraph (A) of this paragraph, or the physician or veterinarian who is an authorized user in subparagraph (B) of this paragraph; or

(3) obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(gg) Training for uptake, dilution, and excretion studies. Except as provided in subsection (l) of this section, the licensee must require an authorized user of unsealed radioactive material for the uses authorized in subsection (ff) of this section to be:

(1) a physician certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification recognized, a specialty board must require all candidates for certification to:

(A) complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution,

and excretion studies as described in paragraph (3)(A) of this subsection; and

(B) pass an examination, administered by diplomates of the specialty board, assessing knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) an authorized user as specified in subsections (jj) or (nn) of this section or equivalent NRC or agreement state requirements; or

(3) a physician or veterinarian who:

(A) completes 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical or veterinary use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

(i) classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical or veterinary use; and

(V) radiation biology; and

(ii) work experience, under the supervision of an authorized user meeting the requirements of this subsection, subsections (l), (jj), or (nn) of this section, or equivalent NRC or agreement state requirements involving:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(VI) administering dosages of radioactive drugs to patients or human or animal research subjects; and

(B) obtains written attestation the individual has satisfactorily completed the requirements in subparagraph (A) of this paragraph and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical or veterinary uses authorized under subsection (ff) of this section. The attestation must be obtained from either:

(i) a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection, or subsections (jj) or (nn) of this section, or equivalent NRC or agreement state requirements; or

(ii) a residency program director affirming in writing the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in subsections (l), (gg), (jj), or (nn) of this section, or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subparagraph (A) of this paragraph.

(hh) Use of unsealed radioactive material for imaging and localization studies not requiring a written directive. Except for quantities requiring a written directive as specified in subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for imaging and localization studies:

(1) obtained from:

(A) a manufacturer or preparer licensed as specified in §289.252(r) of this subchapter or equivalent NRC or agreement state requirements; or

(B) a PET radioactive drug producer licensed as specified in §289.252(kk) of this subchapter or equivalent NRC or agreement state requirements; or

(2) excluding production of PET radionuclides prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician or veterinarian who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(3)(A)(ii)(VII) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the authorized nuclear pharmacist in subparagraph (A) of this paragraph, or the physician or veterinarian who is an authorized user in subparagraph (B) of this paragraph; or

(3) obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(ii) Permissible molybdenum-99, strontium-82, and strontium-85 concentrations.

(1) The licensee may not administer to humans a radiopharmaceutical containing:

(A) more than 0.15 μCi of molybdenum-99 per mCi of technetium-99m (0.15 kilobecquerel (kBq) of molybdenum-99 per MBq of technetium-99m); or

(B) more than 0.02 μCi of strontium-82 per mCi of rubidium-82 chloride (0.02 kBq of strontium-82 per MBq of rubidium-82 chloride) injection; or

(C) more than 0.2 μCi of strontium-85 per mCi of rubidium-82 (0.2 kBq of strontium-85 per MBq of rubidium-82 chloride) injection.

(2) The licensee using molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical must measure the molybdenum-99 concentration in each eluate from a generator to demonstrate compliance with paragraph (1) of this subsection.

(3) The licensee using a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical must, before the first patient use of the day, measure the concentration of radionuclides

strontium-82 and strontium-85 to demonstrate compliance with paragraph (1) of this subsection.

(4) If the licensee is required to measure the molybdenum-99 or strontium-82 and strontium-85 concentrations, the licensee must retain a record of each measurement as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) for each measured elution of technetium-99m:

(i) the ratio of the measures expressed as µCi of molybdenum-99 per mCi of technetium-99m (kBq of molybdenum-99 per MBq of technetium-99m);

(ii) time and date of the measurement; and

(iii) name of the individual who made the measurement.

(B) for each measured elution of rubidium-82:

(i) the ratio of the measures expressed as µCi of strontium-82 per mCi of rubidium (kBq of strontium-82 per MBq of rubidium-82);

(ii) the ratio of the measures expressed as µCi of strontium-85 per mCi of rubidium (kBq of strontium-85 per MBq of rubidium-82);

(iii) time and date of the measurement; and

(iv) name of the individual who made the measurement.

(5) The licensee must report any measurement that exceeds the limits in paragraph (1) of this subsection at the time of generator elution, as specified in subsection (www) of this section.

(jj) Training for imaging and localization studies. Except as provided in subsection (l) of this section, the licensee must require an authorized user of unsealed radioactive material for the uses authorized in subsection (hh) of this section to be:

(1) a physician certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board must require all candidates for certification to:

(A) complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in paragraph (3) of this subsection; and

(B) pass an examination, administered by diplomates of the specialty board, assessing knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) an authorized user as specified in subsection (nn) of this section and who meets the requirements of paragraph (3)(A)(ii)(VII) of this subsection or equivalent NRC or agreement state requirements; or

(3) a physician or veterinarian who:

(A) completes 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical or veterinary use of unsealed radioactive material for imaging and localization studies. The training and experience must include:

(i) classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical or veterinary use; and

(V) radiation biology; and

(ii) work experience under the supervision of an authorized user who meets the requirements in subsection (l) of this section, this subsection, or paragraph (3)(A)(ii)(VII) of this section, and subsection (nn) of this section, or equivalent NRC or agreement state requirements. An authorized nuclear pharmacist who meets the requirements in subsections (k) or (l) of this section may provide the supervised work experience for subclause (VII) of this clause. Work experience must involve:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(VI) administering dosages of radioactive drugs to patients or human or animal research subjects; and

(VII) eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclide purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(B) obtains written attestation the individual has satisfactorily completed the requirements in this paragraph and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical or veterinary uses authorized under subsections (ff) and (hh) of this section. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements of subsection (l) of this section, this subsection, or paragraph (3)(A)(ii)(VII) of this subsection, and subsection (nn) of this section, or equivalent NRC or agreement state requirements; or

(ii) a residency program director affirming in writing the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsections (l), (jj), or (nn) of this section and paragraph (3)(A)(ii)(VII) of this subsection, or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in this paragraph.

(kk) Use of unsealed radioactive material requiring a written directive. A licensee may use any unsealed radioactive material iden-

tified in subsection (nn)(2)(A)(ii)(VI) of this section prepared for medical or veterinary use requiring a written directive:

(1) obtained from:

(A) a manufacturer or preparer licensed as specified in §289.252(r) of this subchapter or equivalent NRC or agreement state requirements;

(B) a PET radioactive drug producer licensed as specified in §289.252(kk) of this subchapter or equivalent NRC or agreement state requirements; or

(2) excluding production of PET radionuclides prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician or veterinarian who is an authorized user and meets the requirements specified in subsections (jj) or (nn) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the authorized nuclear pharmacist in subparagraph (A) of this paragraph, or the physician or veterinarian who is an authorized user in subparagraph (B) of this paragraph; or

(3) obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with an IND protocol accepted by the FDA; or

(4) prepared by the licensee for use in research in accordance with an IND protocol accepted by the FDA.

(ll) Safety instruction to personnel.

(1) The licensee must provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects who cannot be released as specified in subsection (cc) of this section. The instruction must be appropriate to the personnel's assigned duties and include:

(A) patient or human or animal research subject control; and

(B) visitor control, including:

(i) routine visitation to hospitalized individuals or animals as specified in §289.202(n) of this chapter;

(ii) contamination control;

(iii) waste control; and

(iv) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) The licensee must maintain a record for inspection by the department, as specified in subsection (xxx) of this section, of individuals receiving instruction. The record must include:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) names of the attendees; and

(D) names of the personnel who provided the instruction.

(mm) Safety precautions. For each human patient or human research subject who cannot be released as specified in subsection (cc) of this section, the licensee must:

(1) provide a private room with a private sanitary facility; or

(2) provide a room with a private sanitary facility with another individual who also has received therapy with an unsealed radioactive material and who also cannot be released as specified in subsection (cc) of this section;

(3) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door and in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(4) either monitor material and items removed from the patient's or the research subject's room to determine their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or, handle such material and items as radioactive waste; and

(5) notify the RSO, or his or her designee, and the authorized user immediately if the patient or research subject has a medical emergency or dies.

(nn) Training for use of unsealed radioactive material requiring a written directive. Except as provided in subsection (l) of this section, the licensee must require an authorized user of unsealed radioactive material for the uses authorized in subsection (kk) of this section to be:

(1) a physician certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state and who meets the requirements in paragraph (2)(A)(ii)(VI) of this subsection. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To be recognized, a specialty board must require all candidates for certification to:

(A) successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in paragraph (2)(A)(i) - (2)(A)(ii)(V) of this subsection. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board assessing knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2) a physician or veterinarian who:

(A) completes 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical or veterinary use of unsealed radioactive material requiring a written directive. The training and experience must include:

(i) classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical or veterinary use; and

(V) radiation biology; and

(ii) work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements. A supervising authorized user meeting the requirements of this paragraph must have experience in administering dosages in the same dosage category or categories (i.e., subclause (VI) of this clause) as the individual requesting authorized user status. The work experience must involve:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(VI) administering dosages of radioactive drugs to patients or human or animal research subjects from the three categories in the following items. Radioactive drugs containing radionuclides in categories not included in this paragraph are regulated under subsection (q) of this section. For each category in which the individual is requesting authorized user status, the work experience must involve a minimum of three cases in:

(-a-) oral administration of less than or equal to 33 mCi (1.22 GBq) of sodium iodide I-131, for which a written directive is required;

(-b-) oral administration of greater than 33 mCi (1.22 GBq) of sodium iodide I-131 (experience with at least three cases in this item also satisfies the requirement of item (-a-) of this subclause); and

(-c-) parenteral administration of any radioactive drug that contains a radionuclide primarily used for its electron emission, beta radiation characteristics, alpha radiation characteristics, or photon energy of less than 150 kiloelectron volts (keV) for which a written directive is required; and

(B) obtains written attestation the individual has satisfactorily completed the requirements of paragraph (2)(A) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical or veterinary uses authorized under subsection (kk) of this section for which the individual is requesting authorized user status. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements and has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status; or

(ii) a residency program director affirming in writing the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsections (l) or (nn) of this section, or equivalent NRC or agreement state requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in this paragraph.

(oo) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee must require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq) to be:

(1) a physician certified by a medical specialty board whose certification process includes all the requirements of paragraph (3)(A) of this subsection and whose certification is recognized by the department, the NRC, or an agreement state (names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page); or

(2) an authorized user as specified in subsection (nn) of this section for uses listed in subsection (nn)(2)(A)(ii)(VI)(-a-) or (-b-) of this section, or subsection (pp) of this section, or equivalent NRC or agreement state requirements; or

(3) a physician or veterinarian who:

(A) successfully completes 80 hours of classroom and laboratory training and work experience applicable to the medical or veterinary use of sodium iodide I-131 for procedures requiring a written directive. The training and experience must include:

(i) classroom and laboratory training, including:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical or veterinary use; and

(V) radiation biology; and

(ii) work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section, or equivalent NRC or agreement state requirements. A supervising authorized user meeting the requirements in subsection (nn)(2) of this section must also have experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-a-) or (-b-) of this section. The work experience must involve:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(VI) administering dosages of radioactive drugs to patients or human or animal research subjects that includes at least three cases involving the oral administration of less than or equal to 33mCi (1.22 GBq) of sodium iodide I-131; and

(B) obtains written attestation the individual has satisfactorily completed the requirements of paragraph (3)(A) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of less than or equal to 33 mCi (1.22 GBq) of sodium iodide I-131 for medical or veterinary uses authorized under subsection (kk) of this section. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section, or equivalent NRC or agreement state requirements and has experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-a-) or (-b-) of this section; or

(ii) a residency program director affirming in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsections (l), (nn), (oo), or (pp) of this section, or equivalent NRC or agreement state requirements, has experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-a-) or (-b-), and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in this paragraph.

(pp) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee must require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq) to be:

(1) a physician certified by a medical specialty board whose certification process includes all the requirements in paragraph (3)(A) of this subsection and whose certification is recognized by the department, the NRC, or an agreement state (names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page); or

(2) an authorized user as specified in subsection (nn) of this section or equivalent NRC or agreement state requirements for uses listed in subsection (nn)(2)(A)(ii)(VI)(-b-) of this section; or

(3) a physician or veterinarian who:

(A) successfully completes 80 hours of classroom and laboratory training applicable to the medical or veterinary use of sodium iodide I-131 for procedures requiring a written directive. The training and experience must include:

(i) classroom and laboratory training, including:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical or veterinary use; and

(V) radiation biology; and

(ii) work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, subsections (nn) or (pp) of this section, or equivalent NRC or agreement state requirements. A supervising authorized user meeting the requirements of subsection (nn)(2) of this section must also have experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-b-) of this section. The work experience must involve:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(VI) administering dosages of radioactive drugs to patients or human or animal research subjects that includes at least three cases involving the oral administration of greater than 33 mCi (1.22 GBq) of sodium iodide I-131; and

(B) obtains written attestation the individual has satisfactorily completed the requirements of paragraph (3)(A) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of greater than 33 mCi (1.22 GBq) of sodium iodide I-131 for medical or veterinary uses authorized under subsection (kk) of this section. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements in subsections (l) or (nn) of this section, this subsection, or equivalent NRC or agreement state requirements and has experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-b-) of this section; or

(ii) a residency program director affirming in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsections (l), (nn), or (pp) of this section, or equivalent NRC or agreement state requirements, has experience in administering dosages as specified in subsection (nn)(2)(A)(ii)(VI)(-b-) of this section, and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in this paragraph.

(qq) Training for the parenteral administration of unsealed radioactive material requiring a written directive.

(1) Except as provided in subsection (l) of this section, the licensee must require an authorized user for the parenteral administration of unsealed radioactive materials requiring a written directive to be:

(A) an authorized user as specified in subsection (nn) of this section for uses listed in subsection (nn)(2)(A)(ii)(VI)(-c-) of this section or equivalent NRC or agreement state requirements; or

(B) an authorized user under subsections (zz) or (ttt) of this section or equivalent NRC or agreement state requirements and meeting the requirements of paragraph (2) of this subsection; or

(C) a physician certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state as specified in subsections (zz) or (ttt) of this section, and meets the requirements of paragraph (2) of this subsection.

(2) The physician or veterinarian must also:

(A) successfully complete 80 hours of classroom and laboratory training applicable to parenteral administrations listed in subsection (nn)(2)(A)(ii)(VI)(-c-) of this section.

(B) complete training and experience to include:

(i) classroom and laboratory training, including:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical use; and

(V) radiation biology; and

(ii) work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, this subsection, or subsection (nn) of this section, or equivalent NRC or agreement state requirements in the parenteral administration listed in subsection (nn)(2)(A)(ii)(VI)(-c-) of this section. A supervising authorized user meeting the requirements of subsection (nn) of this section, this subsection, or equivalent NRC or agreement state requirements must have experience in administering dosages in the same category or categories as the individual requesting authorized user status. The work experience must involve:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human or animal research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(VI) administering dosages to patients or human or animal research subjects that include at least three cases involving the parenteral administration specified in subsection (nn)(2)(A)(ii)(VI)(-c-) of this section; and

(C) obtain written attestation the individual has satisfactorily completed the requirements of paragraph (2)(A) and (B) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements of subsection (l) of this section, subsection (nn) of this section, or this subsection, or equivalent NRC or agreement state requirements. A preceptor authorized user meeting the requirements in subsection (nn) of this section, this section, or equivalent agreement state requirements, must have experience in administering dosages in the same category or categories as the individual requesting authorized user status; or

(ii) a residency program director affirming in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsections (l), (nn), or (qq) of this section, or equivalent NRC or agreement state requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in this paragraph.

(rr) Use of sealed sources for manual brachytherapy. The licensee must use only brachytherapy sources as follows:

(1) as approved in the Sealed Source and Device Registry for manual brachytherapy medical or veterinary use. The manual brachytherapy sources may be used for manual brachytherapy uses not explicitly listed in the Sealed Source and Device Registry, but must be used according to the radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

(2) in research to deliver therapeutic doses for medical or veterinary use in accordance with an active Investigational Device Exemption application accepted by the FDA provided the requirements of subsection (u)(1) of this section are met.

(ss) Surveys after sealed source implants and removal.

(1) Immediately after implanting sealed sources in a patient or a human or animal research subject, the licensee must perform a survey to locate and account for all sealed sources not implanted.

(2) Immediately after removing the last temporary implant sealed source from a patient or a human or animal research subject, the licensee must perform a survey of the patient or the human or animal research subject with a radiation detection survey instrument to confirm all sealed sources are removed.

(3) A record of each survey must be retained, for inspection by the department, as specified in subsection (xxx) of this section. The record must include:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name and model and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(tt) Brachytherapy sealed sources accountability.

(1) The licensee must maintain accountability at all times for all brachytherapy sealed sources in storage or use.

(2) Promptly after removing sealed sources from a patient or a human or animal research subject, the licensee must return brachytherapy sealed sources to a secure storage area.

(3) The licensee must maintain a record of the brachytherapy sealed source accountability as specified in subsection (xxx) of this section for inspection by the department.

(A) When removing temporary implants from storage, the licensee must record the number and activity of sources, time and

date the sources were removed, the name of the individual who removed the sources, and the location of use. When temporary implants are returned to storage, the licensee must record the number and activity of sources, the time and date, and the name of the individual who returned them.

(B) When removing permanent implants from storage, the licensee must record the number and activity of sources, the date, the name of the individual who removed the sources, and the number and activity of sources permanently implanted in the patient or human or animal research subject. The licensee must record the number and activity of sources not implanted and returned to storage, the date they were returned to storage, and the name of the individual who returned them to storage.

(uu) Safety instruction to personnel. The licensee must provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects receiving brachytherapy and who cannot be released as specified in subsection (cc) of this section or animals that are confined.

(1) The instruction must be appropriate to the personnel's assigned duties and include:

(A) size and appearance of brachytherapy sources;

(B) safe handling and shielding instructions;

(C) patient or human or animal research subject control;

(D) visitor control, including visitation to hospitalized patients as specified in §289.202(n) of this chapter; and

(E) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) A licensee must maintain a record, for inspection by the department, as specified in subsection (xxx) of this section, of individuals receiving instruction. The record must include:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) names of the attendees; and

(D) names of the personnel who provided the instruction.

(vv) Safety precautions for the use of brachytherapy.

(1) For each patient or human research subject receiving brachytherapy and who cannot be released as specified in subsection (cc) of this section the licensee must:

(A) provide a private room with a private sanitary facility;

(B) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door or in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(C) have available near each treatment room, applicable emergency response equipment to respond to a sealed source inadvertently dislodged from the patient or inadvertently lodged within the patient following removal of the sealed source applicators.

(2) The RSO, or his or her designee, and the authorized user must be notified if the patient or research subject has a medical emergency, and immediately if the patient dies.

(ww) Calibration measurements of brachytherapy sealed sources.

(1) Before the first medical or veterinary use of a brachytherapy sealed source, the licensee must:

(A) determine the sealed source output or activity using a dosimetry system meeting the requirements of subsection (iii)(1) of this section;

(B) determine sealed source positioning accuracy within applicators; and

(C) use published protocols accepted by nationally recognized bodies to meet the requirements of subparagraphs (A) and (B) of this paragraph.

(2) Instead of the licensee making its own measurements as required in paragraph (1) of this subsection, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine made as specified in paragraph (1) of this subsection.

(3) The licensee must mathematically correct the outputs or activities determined in paragraph (1) of this subsection for physical decay at intervals consistent with one percent physical decay.

(4) The licensee must retain a record of each calibration as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) complete date of the calibration including the month, day, and year;

(B) manufacturer's name and model and serial number for the sealed source and instruments used to calibrate the sealed source;

(C) sealed source output or activity;

(D) sealed source positioning accuracy within applicators; and

(E) name of the individual, the source manufacturer, or the calibration laboratory that performed the calibration.

(xx) Strontium-90 sources for ophthalmic treatments.

(1) A licensee using strontium-90 for ophthalmic treatments must ensure certain activities as specified in paragraph (2) of this subsection are performed by either:

(A) an authorized medical physicist; or

(B) an individual who:

(i) is identified as an ophthalmic physicist on a specific medical use license issued by the department, the NRC, or an agreement state; permit issued by the department, the NRC, or an agreement state broad scope medical use licensee; medical use permit issued by an NRC master material licensee; or permit issued by an NRC master material licensee broad scope medical use permittee; and

(ii) holds a master's or doctoral degree in physics, medical physics, other physical sciences, engineering, or applied mathematics from an accredited college or university; and

(iii) has successfully completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and

(iv) has documented training in:

(I) the creation, modification, and completion of written directives;

(II) procedures for administrations requiring a written directive; and

(III) performing the calibration measurements of brachytherapy sources as detailed in subsection (ww) of this section.

(2) The individual identified in paragraph (1) of this subsection must:

(A) calculate the activity of each strontium-90 source used to determine the treatment times for ophthalmic treatments, and the decay must be based on the activity determined under subsection (ww) of this section; and

(B) assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence the administration is in accordance with the written directive. These procedures must include the frequencies the individual meeting the requirements in paragraph (1) of this subsection will:

(i) observe treatments;

(ii) review the treatment methodology;

(iii) calculate treatment time for the prescribed dose; and

(iv) review records to verify the administrations were in accordance with the written directives.

(3) A licensee must maintain a record of the activity of a strontium-90 source as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date and initial activity of the source as determined under subsection (ww) of this section; and

(B) for each decay calculation, the date and the source activity as determined under this subsection.

(yy) Therapy-related computer systems for manual brachytherapy. The licensee must perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays; and

(4) the accuracy of the software used to determine radioactive sealed source positions from radiographic images.

(zz) Training for use of manual brachytherapy sealed sources. Except as provided in subsection (l) of this section, the licensee must require an authorized user of a manual brachytherapy source for the uses authorized in subsection (rr) of this section to be a physician or veterinarian who:

(1) is certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification recognized, a specialty board must require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association; and

(B) pass an examination administered by diplomates of the specialty board assessing knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2) has:

(A) completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources, including:

(i) 200 hours of classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity; and

(IV) radiation biology; and

(ii) 500 hours of work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements at a medical facility authorized to use radioactive material under subsection (rr) of this section, involving:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) checking survey meters for proper operation;

(III) preparing, implanting, and removing brachytherapy sources;

(IV) maintaining running inventories of material on hand;

(V) using administrative controls to prevent a medical event involving the use of radioactive material; and

(VI) using emergency procedures to control radioactive material; and

(B) three years of supervised clinical experience in radiation oncology, under an authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (A)(ii) of this paragraph; and

(C) obtained written attestation the individual has satisfactorily completed the requirements in paragraph (2) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical or veterinary uses authorized under subsection (rr) of this section. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements; or

(ii) a residency program director affirming in writing that the attestation represents the consensus of the residency pro-

gram faculty where at least one faculty member is an authorized user meeting the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraph (2) of this subsection.

(aaa) Training for ophthalmic use of strontium-90. Except as provided in subsection (l) of this section, the licensee must require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician or veterinarian who:

(1) is an authorized user under subsection (zz) of this section or equivalent NRC or agreement state requirements; or

(2) has completed 24 hours of classroom and laboratory training applicable to the medical or veterinary use of strontium-90 for ophthalmic radiotherapy.

(A) The training must include:

(i) classroom training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity; and

(IV) radiation biology; and

(ii) supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five patients. This supervised clinical training must involve:

(I) examination of each patient to be treated;

(II) calculation of the dose to be administered;

(III) administration of the dose; and

(IV) follow-up and review of each patient's case history; and

(3) has obtained written attestation, signed by a preceptor authorized user meeting the requirements of subsection (l) of this section, subsection (zz) of this section, or this subsection, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of paragraph (2)(A) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user of strontium-90 for ophthalmic use.

(bbb) Use of sealed sources and medical devices for diagnosis.

(1) The licensee must use only sealed sources not in medical devices for diagnostic medical uses if the sealed sources are approved in the Sealed Source and Device Registry for diagnostic medicine. The sealed sources may be used for diagnostic medical uses not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

(2) The licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the Sealed Source and Device Registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

(3) Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of subsection (u)(1) of this section are met.

(4) The licensee must ensure installation or exchange of sealed sources in medical imaging equipment is performed only by the manufacturer or persons specifically authorized to perform these services by the department, the NRC, or another agreement state. The licensee must maintain a record for each installation or exchange for inspection by the department as specified in subsection (xxx) of this section. The record must include the date, the installer's radioactive material license number, and the regulatory agency that issued the license to the installer.

(ccc) Training for use of sealed sources for diagnosis. Except as provided in subsection (l) of this section, the licensee must require the authorized user of a diagnostic sealed source or a device authorized as specified in subsection (bbb) of this section to be a physician, dentist, podiatrist, or veterinarian who:

(1) is certified by a specialty board whose certification process includes all the requirements of paragraphs (3) and (4) of this subsection and whose certification is recognized by the department, the NRC, or an agreement state (names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page); or

(2) is an authorized user for uses listed in subsection (hh) of this section or equivalent NRC or agreement state requirements; or

(3) has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity; and

(D) radiation biology; and

(4) has completed training in the use of the device for the uses requested.

(ddd) Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit.

(1) The licensee must only use sealed sources:

(A) as approved and as provided for in the Sealed Source and Device Registry in photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units to deliver therapeutic doses for medical uses; or

(B) in research involving photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units in accordance with an active IDE application accepted by the FDA, provided the requirements of subsection (u)(1) of this section are met.

(2) A licensee must use photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units:

(A) approved in the Sealed Source and Device Registry to deliver a therapeutic dose for medical use. These devices may be used for therapeutic medical treatments not explicitly provided for in

the Sealed Source and Device Registry, but must be used in accordance with radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

(B) in research in accordance with an active IDE application accepted by the FDA, provided the requirements of subsection (u)(1) of this section are met.

(eee) Surveys of patients and human research subjects treated with a remote afterloader unit.

(1) Before releasing a patient or a human research subject from licensee control, the licensee must perform a survey of the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm the sealed source or sources have been removed from the patient or human research subject and returned to the safe shielded position.

(2) The licensee must maintain a record of the surveys as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name, model, and serial number of the survey instrument used; and

(D) name of the individual who made the survey.

(fff) Installation, maintenance, adjustment, and repair.

(1) Only a person specifically licensed by the department, the NRC, or an agreement state may install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the sealed source shielding, the sealed source driving unit, or other electronic or mechanical component that could expose the sealed source or sources, reduce the shielding around the sealed source or sources, or compromise the radiation safety of the unit or the sealed source or sources.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the department, the NRC, or an agreement state may install, replace, relocate, or remove a sealed source or sealed source contained in other remote afterloader units, teletherapy units, or gamma stereotactic units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the department, the NRC, an agreement state, or an authorized medical physicist may install, replace, relocate, or remove a sealed source contained in the unit.

(4) The licensee must maintain a record of the installation, maintenance, adjustment, and repair done on remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units as specified in subsection (xxx) of this section for inspection by the department. For each installation, maintenance, adjustment, and repair, the record must include the date, description of the service, and names of the individuals who performed the work.

(ggg) Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

(1) A licensee must:

(A) secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(B) permit only individuals approved by the authorized user, RSO, or authorized medical physicist to be present in the treatment room during treatment with the sealed source or sources;

(C) prevent dual operation of more than one radiation producing device in a treatment room, if applicable; and

(D) develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the sealed source or sources in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. The procedures must include:

(i) instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(ii) the process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(iii) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally;

(2) A copy of the procedures required by paragraph (1)(D) of this subsection must be physically located at the unit console.

(3) The licensee must post instructions at the unit console to inform the operator of:

(A) the location of the procedures required by paragraph (1)(D) of this subsection; and

(B) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally.

(4) Before the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade affecting the operation and safety of the unit:

(A) a licensee must ensure vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

(B) a licensee must provide operational and safety instructions initially and at least annually to all individuals who operate the unit at the facility, as appropriate to the individual's assigned duties, to include:

(i) procedures identified in paragraph (1)(D) of this subsection; and

(ii) operating procedures for the unit.

(5) A licensee must ensure operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee must maintain records of the procedures required by paragraphs (1)(D) and (4)(B)(ii) of this subsection as specified in subsection (xxx) of this section for inspection by the department.

(7) A licensee must maintain records of individuals receiving instruction and participating in drills required by paragraphs (4) and (5) of this subsection as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) a list of the topics covered;

(B) date of the instruction or drill;

(C) names of the attendees; and

(D) names of the personnel who provided the instruction.

(hhh) Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee must:

(1) control access to the treatment room by a door at each entrance;

(2) equip each entrance to the treatment room with an electrical interlock system that will:

(A) prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(B) cause the sealed source or sources to be shielded promptly when an entrance door is opened; and

(C) prevent the sealed source or sources from being exposed following an interlock interruption until all treatment room entrance doors are closed and the sealed source "on-off" control is reset at the console;

(3) require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, radiation levels have returned to ambient levels;

(4) except for low-dose remote afterloader units, construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation;

(5) for licensed activities when sealed sources are placed within the patient's or human research subject's body, only conduct treatments allowing expeditious removal of a decoupled or jammed sealed source;

(6) in addition to the requirements specified in paragraphs (1) - (5) of this subsection, require:

(A) for low dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units:

(i) an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, trained in the operation and emergency response for the unit, be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, trained to remove the sealed source applicator in the event of an emergency involving the unit, be immediately available during continuation of all patient treatments involving the unit;

(B) for high dose-rate remote afterloader units:

(i) an authorized user and an authorized medical physicist be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, trained in the operation and emergency response for the unit, be physically present during continuation of all patient treatments involving the unit;

(C) for gamma stereotactic radiosurgery units and teletherapy units, require an authorized user and an authorized medical physicist be physically present throughout all patient treatments; and

(D) notify the RSO, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies; and

(7) have applicable emergency response equipment available near each treatment room to respond to a sealed source that remains in the unshielded position or lodges within the patient following completion of the treatment.

(iii) Dosimetry equipment.

(1) Except for low dose-rate remote afterloader sealed sources where the sealed source output or activity is determined by the manufacturer, the licensee must have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions are required:

(A) the system was calibrated using a system or sealed source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration was performed within the previous two years and after any servicing that may have affected system calibration; or

(B) the system was calibrated within the previous four years. Eighteen to 30 months after that calibration, the system was intercompared with another dosimetry system calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison must have indicated the calibration factor of the licensee's system had not changed by more than two percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems used for calibrating sealed sources for therapeutic units, the licensee must use a comparable unit with beam attenuators or collimators, as applicable, and sealed sources of the same radionuclide as the sealed source used at the licensee's facility.

(2) The licensee must have available for use a dosimetry system for spot check output measurements, if such measurements are required by this section. To satisfy this requirement, the system may be compared with a system calibrated as specified in paragraph (1) of this subsection. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot check system may be the same system used to meet the requirements of paragraph (1) of this subsection.

(3) The licensee must retain a record of each calibration, intercomparison, and comparison of dosimetry equipment as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) complete date of the calibration including the month, day, and year;

(B) manufacturer's model and serial numbers of the instruments that were calibrated, intercompared, or compared;

(C) the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(D) the names of the individuals who performed the calibration, intercomparison, or comparison.

(jjj) Full calibration measurements on teletherapy units.

(1) A licensee authorized to use a teletherapy unit for medical use must perform full calibration measurements on each teletherapy unit as follows:

(A) before the first medical use of the unit; and

(B) before medical use under any of the following conditions:

(i) whenever spot check measurements indicate the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed source or following reinstallation of the teletherapy unit in a new location;

(iii) following any repair of the teletherapy unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year.

(2) Full calibration measurements must include determination of:

(A) the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

(B) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(C) uniformity of the radiation field and its dependence on the orientation of the useful beam;

(D) timer accuracy and linearity over the range of use;

(E) "on-off" error; and

(F) the accuracy of all distance measuring and localization devices in medical use.

(3) The licensee must use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system indicating relative dose rates.

(4) The licensee must make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee must mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals not to exceed one month for cobalt-60, six months for cesium-137, or at intervals consistent with one percent decay for all other nuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection must be performed by an authorized medical physicist.

(7) The licensee must retain a record of each calibration as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) complete date of the calibration including the month, day, and year;

(B) manufacturer's name, model number, and serial number of the teletherapy unit's sealed source and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations; and

(D) name and signature of the authorized medical physicist who performed the full calibration.

(kkk) Full calibration measurements on remote afterloader units.

(1) A licensee authorized to use a remote afterloader for medical use must perform full calibration measurements on each unit:

(A) before the first medical use of the unit;

(B) before medical use under any of the following conditions:

(i) following replacement of the sealed source;

(ii) following reinstallation of the unit in a new location outside the facility; and

(iii) following any repair of the unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly;

(C) at intervals not to exceed three months for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sealed sources whose half-life exceeds 75 days; and

(D) at intervals not to exceed one year for low dose-rate afterloader units.

(2) Full calibration measurements must include, as applicable, determination of:

(A) the output within plus or minus five percent;

(B) sealed source positioning accuracy to within plus or minus 1 millimeter (mm);

(C) sealed source retraction with backup battery upon power failure;

(D) length of the sealed source transfer tubes;

(E) timer accuracy and linearity over the typical range of use;

(F) length of the applicators; and

(G) function of the sealed source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee must use the dosimetry system described in subsection (iii)(1) of this section to measure the output.

(4) A licensee must make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in paragraph (2) of this subsection, a licensee must perform an autoradiograph of the sealed source or sources to verify inventory and sealed source arrangement at intervals not to exceed three months.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the sealed source manufacturer that are made as specified in paragraphs (1) - (5) of this subsection.

(7) The licensee must mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals consistent with one percent physical decay.

(8) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (7) of this subsection must be performed by an authorized medical physicist.

(9) The licensee must retain a record of each calibration as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) complete date of the calibration including the month, day, and year;

(B) manufacturer's name, model number, and serial number of the remote afterloader unit's sealed source, and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations;

(D) name and signature of the authorized medical physicist who performed the full calibration; and

(E) results of the autoradiograph required for low dose-rate remote afterloader unit.

(lll) Full calibration measurements on gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use must perform full calibration measurements on each gamma stereotactic radiosurgery unit:

(A) before the first medical use of the unit;

(B) before medical use under the following conditions:

(i) whenever spot check measurements indicate the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(iii) following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sealed sources or major repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) Full calibration measurements must include determination of:

(A) the output within plus or minus three percent;

(B) relative helmet factors;

(C) isocenter coincidence;

(D) timer accuracy and linearity over the range of use;

(E) "on-off" error;

(F) trunnion centricity;

(G) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off";

(H) helmet microswitches;

(I) emergency timing circuits; and

(J) stereotactic frames and localizing devices (trunnions).

(3) The licensee must use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system indicating relative dose rates.

(4) The licensee must make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee must mathematically correct the outputs determined in paragraph (2)(A) of this subsection at intervals not to exceed one month for cobalt-60 and at intervals consistent with one percent physical decay for all other radionuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection must be performed by an authorized medical physicist.

(7) The licensee must retain a record of each calibration as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) complete date of the calibration including the month, day, and year;

(B) manufacturer's name, model number, and serial number for the unit and the unit's sealed source and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibration; and

(D) name and signature of the authorized medical physicist who performed the full calibration.

(mmm) Periodic spot checks for teletherapy units.

(1) A licensee authorized to use teletherapy units for medical use must perform output spot checks on each teletherapy unit once in each calendar month, including determination of:

(A) timer constancy and linearity over the range of use;

(B) "on-off" error;

(C) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(D) the accuracy of all distance measuring and localization devices used for medical use;

(E) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section; and

(F) the difference between the measurement made in subparagraph (E) of this paragraph and the anticipated output, expressed as a percentage of the anticipated output, the value obtained at last full calibration corrected mathematically for physical decay.

(2) The licensee must perform measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That authorized medical physicist need not actually perform the spot check measurements. The licensee must maintain a copy of the written procedures as specified in subsection (xxx) of this section for inspection by the department.

(3) The licensee authorized to use a teletherapy unit for medical use must perform safety spot checks of each teletherapy facility once in each calendar month and after each sealed source installation to assure proper operation of:

(A) electrical interlocks at each teletherapy room entrance;

(B) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of sealed source housing angulation or elevation, carriage or stand travel, and operation of the beam "on-off" mechanism);

(C) sealed source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(D) viewing and intercom systems;

(E) treatment room doors from inside and outside the treatment room; and

(F) electrically assisted treatment room doors with the teletherapy unit electrical power turned "off."

(4) The licensee must have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(5) If the results of the checks required in paragraph (3) of this subsection indicate the malfunction of any system, the licensee must lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee must retain a record of each spot check required by paragraphs (1) and (3) of this subsection, as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of the spot-check;

(B) manufacturer's name and model and serial number for the teletherapy unit, and sealed source and instrument used to measure the output of the teletherapy unit;

(C) assessment of timer linearity and constancy;

(D) calculated "on-off" error;

(E) determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(F) the determined accuracy of each distance measuring and localization device;

(G) the difference between the anticipated output and the measured output;

(H) notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each sealed source exposure indicator light, and the viewing and intercom system and doors;

(I) name of the individual who performed the periodic spot-check; and

(J) the name and signature of the authorized medical physicist who reviewed the record of the spot check.

(nnn) Periodic spot checks for remote afterloader units.

(1) A licensee authorized to use a remote afterloader unit for medical use must perform spot checks of each remote afterloader facility and on each unit:

(A) before the first use each day of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit;

(B) before each patient treatment with a low dose-rate remote afterloader unit; and

(C) after each sealed source installation.

(2) The licensee must perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot check measurements. The licensee must maintain a copy of the written procedures as specified in subsection (xxx) of this section for inspection by the department.

(3) The licensee must have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1) of this subsection, spot checks must, at a minimum, assure proper operation of:

(A) electrical interlocks at each remote afterloader unit room entrance;

(B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(C) viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(D) emergency response equipment;

(E) radiation monitors used to indicate the sealed source position;

(F) timer accuracy;

(G) clock (date and time) in the unit's computer; and

(H) decayed sealed source activity in the unit's computer.

(5) If the results of the checks required in paragraph (4) of this subsection indicate the malfunction of any system, the licensee must lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee must maintain a record, as specified in subsection (xxx) of this section for inspection by the department, of each check required by paragraph (4) of this subsection. The record must include, as applicable:

(A) date of the spot-check;

(B) manufacturer's name and model and serial number for the remote afterloader unit and sealed source;

(C) an assessment of timer accuracy;

(D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom systems, clock, and decayed sealed source activity in the unit's computer;

(E) name of the individual who performed the periodic spot-check; and

(F) the signature of an authorized medical physicist who reviewed the record of the spot-check.

(ooo) Periodic spot checks for gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use must perform spot checks of each gamma stereotactic radiosurgery facility and on each unit:

(A) monthly;

(B) before the first use of the unit on each day of use; and

(C) after each source installation.

(2) The licensee must perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist with a specialty in therapeutic radiological physics. That individual need not actually perform the spot check measurements. The licensee must maintain a copy of the written procedures as specified in subsection (xxx) of this section for inspection by the department.

(3) The licensee must have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1)(A) of this subsection, spot checks must, at a minimum, achieve:

(A) assurance of proper operation of these items:

(i) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off;"

(ii) helmet microswitches;

(iii) emergency timing circuits; and

(iv) stereotactic frames and localizing devices (trunnions); and

(B) determination of:

(i) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section;

(ii) the difference between the measurement made in clause (i) of this subparagraph and the anticipated output, expressed as a percentage of the anticipated output, (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

(iii) sealed source output against computer calculation;

(iv) timer accuracy and linearity over the range of use;

(v) "on-off" error; and

(vi) trunnion centricity.

(5) To satisfy the requirements of paragraph (1)(B) and (C) of this subsection, spot checks must assure proper operation of:

(A) electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(B) sealed source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(C) viewing and intercom systems;

(D) timer termination;

(E) radiation monitors used to indicate room exposures; and

(F) emergency "off" buttons.

(6) The licensee must arrange for prompt repair of any system identified in paragraph (4) of this subsection not operating properly.

(7) If the results of the checks required in paragraph (5) of this subsection indicate the malfunction of any system, the licensee must lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(8) The licensee must retain a record of each check required by paragraphs (4) and (5) of this subsection as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of the spot check;

(B) manufacturer's name, and model and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(C) an assessment of timer linearity and accuracy;

(D) the calculated "on-off" error;

(E) a determination of trunnion centricity;

(F) the difference between the anticipated output and the measured output;

(G) an assessment of sealed source output against computer calculations;

(H) notation indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency "off" buttons, electrical interlocks, sealed source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions);

(I) the name of the individual who performed the periodic spot check; and

(J) the name and signature of an authorized medical physicist who reviewed the record of the spot check.

(ppp) Additional technical requirements for mobile remote afterloader units.

(1) A licensee providing mobile remote afterloader service must:

(A) check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(B) account for all sealed sources before departure from a client's address of use.

(2) In addition to the periodic spot checks required by subsection (nnn) of this section, a licensee authorized to use remote afterloaders for medical use must perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks must be made to verify the operation of:

(A) electrical interlocks on treatment area access points;

(B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(C) viewing and intercom systems;

(D) applicators, sealed source transfer tubes, and transfer tube-applicator interfaces;

(E) radiation monitors used to indicate room exposures;

(F) sealed source positioning (accuracy); and

(G) radiation monitors used to indicate whether the sealed source has returned to a safe shielded position.

(3) In addition to the requirements for checks in paragraph (2) of this subsection, the licensee must ensure overall proper opera-

tion of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in paragraph (2) of this subsection indicate the malfunction of any system, the licensee must lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) The licensee must maintain a record for inspection by the department, as specified in subsection (xxx) of this section, of each check required by paragraph (2) of this subsection. The record must include:

(A) date of the check;

(B) manufacturer's name, model number, and serial number of the remote afterloader unit;

(C) notations accounting for all sealed sources before the licensee departs from a facility;

(D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom system, applicators and sealed source transfer tubes, and sealed source positioning accuracy; and

(E) the name and signature of the individual who performed the check.

(qqq) Radiation surveys.

(1) In addition to the survey requirements of §289.202(p) of this chapter, a person licensed to use sealed sources in this section must make surveys to ensure the maximum radiation levels and average radiation levels, from the surface of the main sealed source safe with the sealed source or sources in the shielded position, do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee must make the survey required by paragraph (1) of this subsection at installation of a new sealed source and following repairs to the sealed source shielding, the sealed source driving unit, or other electronic or mechanical component that could expose the sealed source or sources, reduce the shielding around the sealed source or sources, or compromise the radiation safety of the unit or the sealed source or sources.

(3) The licensee must maintain a record for inspection by the department, as specified in subsection (xxx) of this section, of the radiation surveys required by paragraph (1) of this subsection. The record must include:

(A) date of the measurements;

(B) manufacturer's name, model number, and serial number of the treatment unit, sealed source, and instrument used to measure radiation levels;

(C) each dose rate measured around the sealed source while the unit is in the "off" position and the average of all measurements; and

(D) the name and signature of the individual who performed the test.

(rrr) Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units.

(1) The licensee must have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during each sealed source replacement to ensure proper functioning of the sealed source exposure mechanism and other safety components. The interval between each full-inspection servicing must not exceed five years for each teletherapy unit and must not exceed seven years for each gamma stereotactic radiosurgery unit.

(2) This inspection and servicing must only be performed by persons specifically licensed to do so by the department, the NRC, or an agreement state.

(3) The licensee must maintain a record of the inspection and servicing as specified in subsection (xxx) of this section for inspection by the department. The record must include:

(A) date of inspection;

(B) manufacturer's name, model, and serial number of both the treatment unit and the sealed source;

(C) a list of components inspected and serviced, and the type of service;

(D) the inspector's radioactive material license number; and

(E) the name and signature of the inspector.

(sss) Therapy-related computer systems for photon-emitting remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee must perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays;

(4) the accuracy of the software used to determine sealed source positions from radiographic images; and

(5) the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

(ttt) Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in subsection (l) of this section, the licensee must require an authorized user of a sealed source for a use authorized in subsection (ddd) of this section to be:

(1) a physician who is certified by a medical specialty board whose certification process is recognized by the department, the NRC, or an agreement state and who meets the requirements of paragraph (3) of this subsection. The names of board certifications recognized by the department, the NRC, or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification recognized, a specialty board must require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, assessing knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance,

and clinical use of stereotactic radiosurgery, remote afterloaders, and external beam therapy; or

(2) a physician who:

(A) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of a sealed source in a therapeutic medical unit, including:

(i) 200 hours of classroom and laboratory training in:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity; and

(IV) radiation biology; and

(ii) 500 hours of work experience, under the supervision of an authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements at a medical facility authorized to use radioactive material in subsection (ddd) of this section involving:

(I) reviewing full calibration measurements and periodic spot checks;

(II) preparing treatment plans and calculating treatment times;

(III) using administrative controls to prevent a medical event involving the use of radioactive material;

(IV) implementing emergency procedures to be followed in the event of the abnormal operation of a medical unit or console;

(V) checking and using survey meters; and

(VI) selecting the proper dose and how it is to be administered; and

(iii) completion of three years of supervised clinical experience in radiation therapy, under an authorized user meeting the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by clause (ii) of this subparagraph; and

(B) has obtained written attestation the individual has satisfactorily completed the requirements of paragraphs (2)(A) and (3) of this subsection and is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The attestation must be obtained from either:

(i) a preceptor authorized user meeting the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements for the types of therapeutic medical units for which the individual is requesting authorized user status; or

(ii) a residency program director affirming in writing the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user meeting the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, for the types of therapeutic medical units for which the individual is requesting authorized user status, and concurring with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subparagraph (A) of this paragraph; and

(3) a physician who has received training in device operation, safety procedures, and clinical use for the types of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, authorized for the types of use for which the individual is seeking authorization.

(uuu) Report and notification of a medical event.

(1) The licensee must report any event as a medical event, except for an event resulting from patient intervention, in which the administration of radioactive material, or radiation from radioactive material, except permanent implant brachytherapy, results in:

(A) a dose differing from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 sievert (Sv)) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin; and

(i) the total dose delivered differs from the prescribed dose by 20 percent or more;

(ii) the total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or

(iii) the fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more;

(B) a dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from:

(i) an administration of a wrong radioactive drug containing radioactive material or the wrong radionuclide for a brachytherapy procedure;

(ii) an administration of a radioactive drug containing radioactive material by the wrong route of administration;

(iii) an administration of a dose or dosage to the wrong individual or human research subject;

(iv) an administration of a dose or dosage delivered by the wrong mode of treatment; or

(v) a leaking sealed source; or

(C) a dose to the skin or an organ or tissue other than the treatment site that is more than:

(i) 50 rem (0.5 Sv) or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration; and

(ii) 50 percent or more of the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration.

(2) For permanent implant brachytherapy, the licensee must report the administration of radioactive material or radiation from radioactive material (excluding sources that were implanted in the correct site but migrated outside the treatment site) resulting in:

(A) the total source strength administered differing by 20 percent or more from the total source strength documented in the post-implantation portion of the written directive;

(B) the total source strength administered outside of the treatment site exceeding 20 percent of the total source strength documented in the post-implantation portion of the written directive; or

(C) an administration, including:

(i) the wrong radionuclide;

(ii) the wrong individual or human research subject;

(iii) sealed source or sources implanted directly into a location discontiguous from the treatment site, as documented in the post-implantation portion of the written directive; or

(iv) a leaking sealed source resulting in a dose that exceeds 50 rem (0.5 Sv) to an organ or tissue.

(3) The licensee must report any event resulting from patient intervention in which the administration of radioactive material, or radiation from radioactive material, results or will result in an unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(4) The licensee must notify the department by telephone no later than the next calendar day after discovery of the medical event.

(5) The licensee must submit a written report to the department within 15 calendar days after discovery of the medical event. The written report must include, excluding the individual's name or any other information that could lead to identification of the individual:

(A) the licensee's name and radioactive material license number;

(B) a description of the licensed source of radiation involved, including, for radioactive material, the kind, quantity, chemical and physical form, source and device manufacturer, model number, and serial number, if applicable;

(C) the name of the prescribing physician;

(D) a brief description of the medical event;

(E) why the event occurred;

(F) the effect, if any, on the individual who received the administration;

(G) actions, if any, taken or planned to prevent recurrence; and

(H) certification the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(6) The licensee must notify the referring physician and the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee must notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care resulting from the medical event, due to a delay in notification. To meet the requirements of this subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee must inform the individual or appropriate responsible relative or guardian that a written description of the event can be obtained from the licensee upon request. The licensee must provide the written description if requested.

(7) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(8) The licensee must annotate a copy of the report provided to the department with:

(A) the name of the individual who is the subject of the event; and

(B) an identification number or if no other identification number is available, the social security number of the individual who is the subject of the event.

(9) The licensee must provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 calendar days after the discovery of the event.

(10) The licensee must retain a copy of the annotated report of the medical event as specified in subsection (xxx) of this section for inspection by the department.

(vvv) Report and notification of a dose to an embryo/fetus or nursing child.

(1) The licensee must report any dose to an embryo/fetus greater than 5 rem (50 mSv) dose equivalent resulting from an administration of radioactive material or radiation from radioactive material to a woman, unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) The licensee must report any dose to a nursing child resulting from an administration of radioactive material to a breastfeeding woman:

(A) greater than 5 rem (50 mSv) TEDE; or

(B) resulting in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee must notify the department by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child requiring a report as specified in paragraphs (1) or (2) of this subsection.

(4) The licensee must submit a written report to the department no later than 15 calendar days after discovery of a dose to the embryo/fetus or nursing child that requires a report as specified in paragraphs (1) or (2) of this subsection. The written report must include, excluding the individual's or child's name or any other information that could lead to identification of the individual or child:

(A) the licensee's name and radioactive material license number;

(B) a description of the licensed source of radiation involved, including, for radioactive material, the kind, quantity, chemical and physical form, source and device manufacturer, model number, and serial number, if applicable;

(C) the name of the prescribing physician;

(D) a brief description of the event;

(E) why the event occurred;

(F) the effect, if any, on the embryo/fetus or the nursing child;

(G) actions, if any, taken or planned to prevent recurrence; and

(H) certification that the licensee notified the pregnant woman (or the pregnant woman's or child's responsible relative or guardian), and if not, why not.

(5) The licensee must notify the referring physician and also notify the pregnant woman, hereafter referred to as the mother, no later than 24 hours after discovery of an event requiring reporting as specified in paragraphs (1) or (2) of this subsection, unless the referring physician personally informs the licensee either that he or she will inform the mother or, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee must make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care resulting from the event, due to a delay in notification. To meet the requirements of this subsection, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother, when appropriate. If a verbal notification is made, the licensee must inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee must provide such a written description if requested.

(6) The licensee must annotate a copy of the report provided to the department with:

(A) the name of the individual or the nursing child who is the subject of the event; and

(B) an identification number or if no other identification number is available, the social security number of the individual who is the subject of the event.

(7) The licensee must provide a copy of the annotated report as described in paragraph (6) of this subsection to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

(8) The licensee must retain a copy of the annotated report as described in paragraph (6) of this subsection of a dose to an embryo/fetus or a nursing child as specified in subsection (xxx) of this section for inspection by the department.

(www) Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations.

(1) The licensee must notify the department by telephone at (512) 458-7460 and the distributor of the generator within seven calendar days after discovery that an eluate exceeded the permissible concentration listed in subsection (ii) of this section at the time of generator elution. The telephone report to the department must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects; when the distributor was notified; and the action taken.

(2) The licensee must submit a written report to the department within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; the probable cause and an assessment of failure in the licensee's equipment, procedures, or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by paragraph (1) of this subsection.

(xxx) Records/documents for department inspection. Each licensee must maintain copies of the following records/documents at each authorized use site and make them available to the department for inspection, upon reasonable notice.
Figure: 25 TAC §289.256(xxx)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-6655

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.31 and §745.37; and new §§745.9051, 745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, and 745.9097.

Amended §745.31 and §745.37; and new §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9087, and 745.9089 are adopted with changes to the proposed text as published in the in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2641). These rules will be republished.

New §§745.9051, 745.9077, 745.9085, 745.9091, 745.9093, 745.9095, and 745.9097 are adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2641). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and new sections are necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation (GRO) may be certified as a psychiatric residential youth treat-

ment facility (PRYTF) to provide treatments and services to individuals 21 years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules to implement the chapter. Accordingly, CCR is adopting amended rules in Chapter 745, Subchapter B to (1) clarify that CCR will also regulate PRYTFs that will care for young adults 18 to 21 years of age in addition to child care; and (2) update rules to meet current practice and to improve readability and understanding. In addition, CCR is adopting new rules in Chapter 745, Subchapter O to (1) define terms; (2) create an application process, including requiring accreditation and a current GRO license; (3) create a renewal process every two years; (4) establish application and renewal fees; (5) clarify how inspections, investigations, and confidentiality will apply to PRYTFs; and (6) establish the enforcement actions that HHSC may take against a PRYTF.

COMMENTS

The 31-day comment period ended May 28, 2024. During this period, HHSC received a comment regarding the proposed rules from one commenter representing Texas Alliance of Child and Family Services (the comment was developed from a committee of residential child-care operations, including child-placing agencies, GROs, and residential treatment centers). A summary of the comment relating to the rules and responses from HHSC follows.

Comment: Regarding §745.9053(a)(1), one commenter stated that because out-of-state providers would need to undergo a lengthy process of initial and then full licensure as a GRO, to attract out-of-state providers there should be recognition in standards for qualified providers from out-of-state that can demonstrate they meet comparable requirements in their state.

Response: HHSC disagrees with the comment and declines to revise §745.9053(a)(1). Texas Health and Safety Code §577A.054(a) states that for HHSC may only issue a PRYTF certificate to a GRO that is licensed under Chapter 42, Texas Human Resources Code. Out-of-state providers do not meet this requirement.

CCR updated §§745.9055(a)(2), 745.9057(a), 745.9063(1), and 745.9065 to clarify the GROs responsibility to continue to meet the Texas Human Resources Code §42.0461, regarding public notice and hearing requirements, and §42.252, regarding operational plan requirements.

In addition, HHSC made minor editorial changes to update the term "Licensing" by modifying the rule title at §745.31 and §745.37 without changing the meaning of the rule titles, and by changing "Licensing" to "Child Care Regulation" at §§745.9053(a)(2) and (3)(D), 745.9059, 745.9061, 745.9063, 745.9065, 745.9071 (in the title and at (b)(3)(B)), and 745.9087(2); modify the language to exclude usage of first- and second-person pronouns in §§745.31, 745.37, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9087, and 745.9089, but without changing the meaning of the rules; add an "and" at §745.9053(b)(1)(B); and corrected two punctuation errors at §745.9089. HHSC also updated the title of Subchapter B, changing "Child Care and Other Operations That We Regulate" to "Child Care and other Operations That Are Subject to Regulation," and titles in Subchapter O, changing Division 1 from "Definitions for Licensing" to "Licensing" and Division 3 from "Renewals" to "Certificate Renewals."

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT ARE SUBJECT TO REGULATION

26 TAC §745.31, §745.37

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§745.31. What operations are subject to regulation under this chapter and corresponding minimum standards?

(a) Child day care and residential child care are subject to regulation under this chapter and corresponding minimum standards, unless Child Care Regulation (CCR) determines the operation is exempt from regulation.

(b) Residential child-care operations include:

(1) Child-placing agencies that verify foster homes and approve adoptive homes; and

(2) General residential operations, which CCR may also certify as a psychiatric residential youth treatment facility (PRYTF) as defined at §745.9051 of this chapter (relating to What do the following words and terms mean when used in this subchapter?).

(c) For a PRYTF, CCR regulates the operation's care of young adults 18 to 21 years of age in addition to child care.

§745.37. What specific types of operations are subject to regulation under this chapter and corresponding minimum standards?

The charts in paragraphs (1) and (2) of this section list the types of operations for child day care and residential child care that are subject to regulation under this chapter and corresponding minimum standards.

(1) Types of Child Day-Care Operations:
Figure: 26 TAC §745.37(1)

(2) Types of Residential Child-Care Operations:
Figure: 26 TAC §745.37(2)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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SUBCHAPTER O. PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITY

DIVISION 1. LICENSING

26 TAC §745.9051

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

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DIVISION 2. APPLICATION PROCESS

26 TAC §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§745.9053. What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?

(a) Before applying for a PRYTF certificate a general residential operation must:

(1) Have a current initial or full license as a general residential operation;

(2) Have Child Care Regulation's approval to provide treatment services to children with an emotional disorder, as provided in §748.63 of this title (relating to Can I provide each type of service that Licensing regulates?); and

(3) Be accredited by:

(A) The Joint Commission;

(B) The Commission on Accreditation of Rehabilitation Facilities;

(C) The Council on Accreditation; or

(D) Another accreditation organization whose standards relate to the care of children and young adults receiving mental health services in a residential setting and is approved by Child Care Regulation.

(b) To meet the accreditation requirement under subsection (a)(3) of this section, a general residential operation:

(1) May obtain accreditation for:

(A) The entire general residential operation, including the PRYTF; or

(B) Only the part of the general residential operation where the PRYTF will operate; and

(2) May have an initial, provisional, full, or other type of accreditation that is appropriate to the accreditation organization.

§745.9055. What does a completed application for a psychiatric residential youth treatment facility (PRYTF) certificate include?

(a) A general residential operation (GRO) must submit:

(1) A PRYTF certificate application (Form 2973, Psychiatric Residential Youth Treatment Facility Application);

(2) A General Residential Operations - Additional Operation Plan (Form 2960, Application for a License to Operate a Residential Child Care Facility, Attachment C) that describes and includes the capacity of the children to be served by the GRO, including any children and young adults that the PRYTF will serve and as required by Texas Human Resources Code §42.252;

(3) An updated floor plan of the building and surrounding space the entire operation will use, including dimensions of the indoor space and the specific areas to be used by the PRYTF;

(4) Additional written policies required in §748.4821 of this title (relating to What additional policies must a general residential operation (GRO) submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?); and

(5) The PRYTF certificate application fee.

(b) The GRO may submit an updated General Residential Operations - Additional Operation Plan (Form 2960, Attachment C) if the GRO is already licensed to provide treatment services to children with emotional disorders.

§745.9057. How do the public notice and hearing requirements apply to an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

(a) A general residential operation (GRO) that is applying for a PRYTF certificate must comply with the rules in Subchapter D, Division 4 of this chapter (relating to Public Notice and Hearing Requirements for Residential Child-Care Operations) if the addition of the PRYTF causes the GRO to meet one of the exceptions in §745.273(b) of this chapter (relating to Which residential child care operations must meet the public notice and hearing requirements?).

(b) The initial public notice and hearing, or a subsequent public notice and hearing, of the GRO must describe and include the capacity of the children and young adults the PRYTF will serve.

(c) If the GRO does not comply with the public notice and hearing requirements, Child Care Regulation may deny the operation a PRYTF certificate.

§745.9059. How long does Child Care Regulation (CCR) have to review an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

(a) CCR has 21 calendar days after receiving a general residential operation's (GRO's) application for a PRYTF certificate to review the paperwork, unless there is good cause to exceed this timeframe.

(b) After CCR reviews the GRO's application, CCR will notify the GRO in writing that:

(1) There is good cause to delay the timeframe for making a determination on the application, consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?);

(2) The GRO is ineligible to receive a PRYTF certificate because it does not meet one or more of the requirements under §745.9053(a) of this division (relating to What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?);

(3) The GRO's application is complete and accepted for processing; or

(4) The GRO's application is incomplete. The notification letter will:

(A) Identify any application materials submitted that do not show compliance with relevant statutes, rules, or minimum standards; and

(B) Explain what the GRO must do to complete the application.

(c) If the GRO's application is not complete by the first anniversary of the date the GRO submitted its application for a PRYTF certificate, CCR will close the application and the GRO must submit a new application, materials, and a PRYTF certificate application fee.

§745.9061. How long does Child Care Regulation (CCR) have to determine whether to issue a psychiatric residential youth treatment facility (PRYTF) certificate after accepting the application?

(a) CCR determines whether to issue a PRYTF certificate no later than two months after CCR accepts the application, unless there is good cause to exceed this timeframe consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?).

(b) The general residential operation may file a complaint regarding timeframes according to §745.325 of this chapter (relating to How do I file a complaint regarding timeframes for processing my application?).

§745.9063. What factors will Child Care Regulation (CCR) consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

CCR determines whether to issue a PRYTF certificate by considering:

(1) The application and any information submitted with the application, including any information noted in Texas Human Resources Code §42.252(f);

(2) The on-site inspection to determine compliance with relevant statutes, rules, and minimum standards;

(3) Any information that CCR gathers through the application process, including any written comments and written information submitted to CCR during the process that CCR considers to be relevant to the decision to issue the PRYTF certificate; and

(4) If a public hearing is required by the GRO under §745.273(b) of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?) any requirements under Texas Human Resources Code §42.0461, including the Verbatim Record and summary Report of Public Comment from the Community, as required in §745.275 of this chapter (relating to What are the specific requirements for a public notice and hearing?).

§745.9065. For what reason may Child Care Regulation (CCR) deny a psychiatric residential youth treatment facility (PRYTF) certificate based on the results of a required public hearing?

If a public hearing is required in §745.273 of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), CCR may deny the general residential operation's request for a PRYTF certificate for a reason described in Texas Human Resources Code §42.0461(e).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. CERTIFICATE RENEWALS

26 TAC §§745.9067, 745.9069, 745.9071, 745.9073

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§745.9067. When does a psychiatric residential youth treatment facility (PRYTF) need to apply to renew the PRYTF certificate?

(a) A PRYTF must apply to renew the PRYTF certificate every two years after the date Child Care Regulation (CCR) issues the certificate.

(b) A PRYTF must timely apply to renew the PRYTF certificate, even if:

(1) There is a pending civil or administrative penalty against the PRYTF; or

(2) The general residential operation or PRYTF is under an enforcement action.

(c) During the year that the PRYTF renews the PRYTF certificate, the renewal period:

(1) Begins 60 calendar days before the anniversary of when CCR issued the PRYTF certificate; and

(2) Ends on the date of the anniversary.

(d) If the PRYTF is late in applying for renewal of the PRYTF certificate, the PRYTF has 30 additional calendar days after the renewal period to apply for renewal.

§745.9069. What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?

A PRYTF must submit a completed PRYTF renewal application, which includes:

(1) Timely submitting the renewal application as required by §745.9067 of this division (relating to When does a psychiatric residential youth treatment facility (PRYTF) need to apply to renew the PRYTF certificate?);

(2) Verification that the following information is current and accurate:

(A) The list of controlling persons at the operation; and

(B) The list of governing body's members, such as officers and owners, if applicable;

(3) A statement as to whether the operation continues to need any existing waivers and variances that the PRYTF will also want to apply to the care of children and young adults receiving psychiatric health treatments and services;

(4) Validation on the provider website the list of persons who require a background check because of their association with the operation;

(5) Verification of the ongoing accreditation of the PRYTF; and

(6) A PRYTF certificate renewal fee.

§745.9071. What happens after Child Care Regulation (CCR) receives a psychiatric residential youth treatment facility (PRYTF)renewal application?

(a) After receiving a PRYTF renewal application, CCR evaluates whether:

(1) The PRYTF completed the renewal application as required by §745.9069 of this division (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(2) The general residential operation license is current and approved to provide treatment services to children with emotional disorders;

(3) The PRYTF has paid each administrative penalty that the PRYTF owes after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; and

(4) The PRYTF meets the statutory, rule, and minimum standard requirements after CCR inspects the PRYTF.

(b) Within 30 calendar days of receiving the renewal application, CCR will send written notice that:

(1) CCR has renewed the PRYTF certificate;

(2) The PRYTF renewal application is incomplete because it did not meet one or more of the renewal application requirements in subsection (a) of this section; or

(3) CCR refuses to renew the PRYTF certificate because:

(A) The PRYTF did not submit a completed PRYTF renewal application;

(B) The PRYTF is no longer accredited as required by §748.4823(a) of this title (relating to When must a psychiatric residential youth treatment facility (PRYTF) notify Child Care Regulation (CCR) about accreditation changes regarding the PRYTF?);

(C) The general residential operation does not have a license;

(D) The general residential operation is not approved to provide treatment services to children with emotional disorders;

(E) The PRYTF did not pay the PRYTF certificate renewal fee;

(F) The PRYTF did not pay an administrative penalty that the PRYTF owes after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; or

(G) After inspecting the PRYTF, CCR determined that it does not meet the statute, rule, and minimum standard requirements.

(c) If the PRYTF renewal application is incomplete, the written notice will include:

(1) CCR's determination that the PRYTF did not meet one or more of the renewal application requirements in subsection (a) of this section; and

(2) A list of the requirements that the PRYTF must complete before CCR can renew the PRYTF certificate.

(d) If the PRYTF submitted an incomplete renewal application during the renewal period, the PRYTF may attempt to submit the missing information until the PRYTF certificate expires.

(e) If the PRYTF submitted an incomplete renewal application during the late renewal period, the PRYTF has 15 calendar days to submit a completed application from the date CCR determined that the renewal application was incomplete.

§745.9073. When does a psychiatric residential youth treatment facility (PRYTF) certificate expire?

(a) A PRYTF certificate expires if:

(1) The PRYTF does not submit a renewal application during the renewal period or late renewal period;

(2) The PRYTF submits a renewal application during the renewal period, the PRYTF was notified that the application was incomplete, and the PRYTF did not submit a completed renewal application before the end of the late renewal period; or

(3) The PRYTF submits a renewal application during the late renewal period, the PRYTF was notified that the application was incomplete, and the PRYTF did not submit a completed renewal application within 15 calendar days after notification.

(b) If the PRYTF certificate expires:

(1) Within 24 hours, the general residential operation (GRO) must inform the following persons that the PRYTF certificate has expired;

(A) All parents of children receiving psychiatric health treatments and services; and

(B) Young adults and any guardians of the young adults receiving psychiatric health treatments and services;

(2) The GRO must immediately:

(A) Discharge and stop providing care to the young adults 18 to 21 years of age receiving psychiatric health treatments and services unless the young adult meets the requirements of §748.1931 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?);

(B) For children receiving psychiatric health treatments and services:

(i) Enroll the child into the general residential operation, if appropriate; or

(ii) Discharge the child to the child's parents.

(3) Before the GRO that had the PRYTF certificate can operate again as a PRYTF, the PRYTF must submit a new PRYTF application, materials, and PRYTF certificate application fee.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. FEES

26 TAC §745.9075

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§745.9075. What fees must a general residential operation (GRO) pay to apply for and maintain its psychiatric residential youth treatment facility (PRYTF) certificate?

In addition to the fees required by §745.509 of this chapter (relating to What fees must I pay to apply for and maintain a license for an operation?), the following chart contains non-refundable fees applicable to a PRYTF, when the fees are due, and the consequences for failure to pay on time:
Figure: 26 TAC §745.9075

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 5. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

26 TAC §745.9077

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

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DIVISION 6. ENFORCEMENT

26 TAC §§745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the du-

ties of HHSC under Chapter 531 of the Texas Government Code. In addition, Texas Health and Safety Code §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§745.9087. Denial of certificate.

The Texas Health and Human Services Commission (HHSC) may deny a psychiatric residential youth treatment facility (PRYTF) certificate if HHSC determines ineligibility based on:

(1) A provision in Texas Health and Safety Code Chapter 577A; or

(2) HHSC's evaluation of the application under the criteria described in §745.9063 of this subchapter (relating to What factors will Child Care Regulation (CCR) consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§745.9089. Refusal To Renew.

The Texas Health and Human Services Commission (HHSC) may refuse to renew a psychiatric residential youth treatment facility (PRYTF) certificate for a reason listed in §745.8605 of this chapter (relating to When can Licensing recommend or impose an enforcement action against my operation?) or if:

(1) The PRYTF did not submit a complete renewal application, timely or otherwise, according to §745.9069 of this subchapter (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(2) The PRYTF was not accredited at the time of the renewal;

(3) The general residential operation (GRO) does not have a current license to operate at the time of the renewal, including if:

(A) HHSC revokes the GRO's license;

(B) HHSC refuses to renew the GRO's license;

(C) The GRO voluntarily closes;

(D) HHSC suspends the GRO's license; or

(E) The GRO voluntarily suspends their license;

(4) The GRO is not approved to provide treatment services to children with an emotional disorder at the time of renewal;

(5) The PRYTF has not paid an administrative penalty after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025;

(6) The PRYTF has not timely submitted the renewal fee to HHSC; or

(7) The PRYTF does not meet:

(A) A provision in Texas Health and Safety Code Chapter 577A;

(B) A rule in this subchapter; or

(C) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §748.61; and new §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809, 748.4821, 748.4823, 748.4825, 748.4831, 748.4833, 748.4841, 748.4843, 748.4845, 748.4847, 748.4851, 748.4861, 748.4863, 748.4865, 748.4867, 748.4869, and 748.4881.

Amended §748.61 and new §§748.4803, 748.4807, 748.4821, 748.4823, 748.4825, 748.4841, 748.4843, 748.4845, 748.4847, 748.4861, 748.4863, 748.4865, 748.4867, 748.4869, and 748.4881 are adopted with changes to the proposed text as published in the in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2671). These rules will be republished.

New §§748.4801, 748.4805, 748.4809, 748.4831, 748.4833, and 748.4851 are adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2671). These ruleswill not be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new sections are necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation (GRO) may be certified as a psychiatric residential youth treatment facility (PRYTF) to provide treatments and services to individuals 21 years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules to implement Chapter 577A; and Section 577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Accordingly, CCR is adopting an amended rule in Chapter 748, Subchapter B to update the types of services CCR regulates to include treatment services for individuals who are 21 of age or younger with a severe emotional disturbance that are admitted to a certified PRYTF. In addition, CCR is adopting new rules in Chapter 748, Subchapter W to (1) define terms and explain the scope of the rules; (2) add requirements for policies, notifications and postings, including requiring ongoing accreditation; (3) require a treatment director; (4) update the training requirements for a caregiver and certain employees; (5) update the child to caregiver ratio during night-sleeping hours; and (6) add admission criteria and specific requirements for plans of care.

COMMENTS

The 31-day comment period ended May 28, 2024. During this period, HHSC received comments regarding the proposed rules

from five commenters: Disability Rights Texas, Texas Medical Association, Texas Association of Health Plans, Texas Alliance of Child and Family Services (the comments were developed from a committee of residential child-care operations, including child-placing agencies, GROs, and Residential Treatment Centers), and an individual. A summary of the comments relating to the rules and responses from HHSC' follows.

Comment: Regarding §748.4821 and §748.4863, one commenter was concerned with mixing older residents with younger residents who may be easily manipulated or at risk of potentially more sophisticated and predatory residents. While the language of §748.4863 addresses separating the populations during therapeutic services and in living quarters, §748.4821 leaves up to the facility the development of a policy to protect the separation of the populations in relation to use of restrooms and indoor/outdoor activities. The commenter strongly recommended that HHSC provide more guidance to providers in terms of what the goal of the policy is and the expectation that staff will ensure the separation of the populations. As it relates to restrooms, the policy should address ensuring the restrooms are locked and unlocked by staff who monitor the use. In the activity areas, the policy should stipulate sufficient staff to supervise all the activity areas while in use to ensure the continued separation of the populations.

Response: HHSC agrees in part and disagrees in part with the comment. HHSC agrees that the standards can provide more guidance to support a stronger policy but does not agree that the policy must mandate locked restrooms and absolute separation of the populations in all instances. Accordingly, HHSC is enhancing the policy requirement at §748.4821(2) regarding the supervision of PRYTF young adults and children when sharing restrooms or indoor or outdoor activity areas. Although the PRYTF population and general population can mix for short periods of time, the enhanced policy now requires a schedule for PRYTF young adults and children to use restrooms and for indoor and outdoor activity times, and an outline for the specific staffing schedule caregivers will use and how caregivers will maintain supervision, based on the supervision needs in the young adults' and children's service plans. After the PRYTF submits the policy, CCR staff are required to review it to determine if the policy is consistent with minimum standards considering the operation's program and number of children in care and then provide feedback as needed.

Comment: Regarding §748.4833, one commenter recommended that non-physician health care professionals be removed as an option for being a treatment director because only physicians would be able to provide or oversee the level of care specified by the underlying Texas statue or other state or federal standards for psychiatric facilities, including federal psychiatric hospitals and psychiatric residential treatment facilities for individuals under the age of 21. The commenter stated that since a facility is required to admit or provide treatment services only when the individual "requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition," the underlying statute contemplates those treatments be provided under the direction of a physician.

Response: HHSC disagrees and declines to revise the rule in response to the comment. A treatment director is not responsible for the direct treatment of an individual but, as noted in current §748.603, is responsible for the overall treatment program, including clinical responsibility for the management of therapeutic interventions, providing directions and overall management of the treatment program, and overseeing the treatment of all children receiving treatment services. Chapter 748 does not contemplate a treatment director making medical decisions that cannot be legally made. Instead, the service planning team is responsible for developing the service plan and new §748.4869(c) requires a psychiatrist or physician to be on the service planning team to develop an individual's service plan (which is another name for a treatment plan). These plans are also based on an individual's admission assessment; identification of medical needs and therapeutic needs, including a plan for a psychiatric evaluation; follow-up treatment; testing; and the use of psychotropic medications. A service plan also requires a list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Also, the federal statutes do not apply to PRYTFs, and Texas Health and Safety Code §577A.002 explicitly exempts a PRYTF from state licensure requirements for a mental hospital, private mental hospital, or other mental health facility licensed under Texas Health and Safety Code Chapter 577.

Comment: Regarding §§748.4843, 748.4845, and 748.4847 related to training, one commenter strongly recommended that mandated training be competency-based. The training should include testing to provide evidence that the person heard, understood, and can apply the training to the work situation. Most training programs, including on line, require testing to demonstrate the individual's competence when the training is completed.

Response: HHSC agrees with the comment. The intent of the additional training is that it meets the current training requirements related to instructor requirements, being competency-based, curriculum requirements, timely completion of the training, appropriate types of training, and documentation. As such, the three training rules have been revised accordingly.

Comment: Regarding §748.4867 and additional specific services an initial service plan must include, one commenter recommended adding language that the services must be included "unless consultation with professionals, documented in the youth's treatment records, indicates that such services are inappropriate for the initial service plan" or similar language to account for the need for clinical judgement in identifying services.

Response: HHSC disagrees and declines to revise the rule in response to the comment. The added services are specifically required by Texas Health and Safety Code §577A.101.

Comment: Regarding §748.4869(a) and (b), one commenter had concerns whether the requirement that a licensed psychiatrist or physician be included in the care team when providing psychiatric health treatments and services extends to the service planning team as contemplated under Texas Health and Safety Code Chapter 577A. The commenter also had concerns that treatment services regarding medical needs would be outside the scope of practice of non-physician behavioral health professionals listed in proposed subsection (b) and recommended a psychiatrist or physician be included on the service planning team for children with primary medical needs.

Response: HHSC disagrees with the comment and declines to revise subsection (a) of the rule or make the suggested change to subsection (b) of the rule at this time. CCR specifically added the requirement that a licensed psychiatrist or physician be included in the service planning team to develop an initial ser-

vice plan for an individual that will be receiving psychiatric health treatments and services in subsection (c) in response to Texas Health and Safety Code Chapter 577A. Regarding children with primary medical needs, §748.4869 replaces §748.1339 for PRYTFs, but subsection (b) has not changed from what is in current §748.1339. Any change to §748.4869(b) would only impact PRYTFs and would not impact all GROs. HHSC will review the comment requiring a psychiatrist or a physician to be on the service planning team for a child with primary medical needs in the next comprehensive rule review, which will also ensure the public can comment on any more broadly proposed change.

Comment: Regarding §748.4869(c), one commenter recommended deleting a licensed or registered occupational therapist from the list of professionals that could be on the initial service planning team for an individual receiving psychiatric health treatments and services because the occupational therapist may not have the relevant skill set. The commenter did recommend keeping subparagraph (c)(6) for allowance of other disciplines and professions.

Response: HHSC agrees with the comment and has revised the rule as recommended.

There were also several general comments regarding the rules.

General Comment 1: Two commenters had three comments related to funding.

General Comment 1A: One commenter recognized the need for high quality settings to serve children with higher needs, but there doesn't seem to be a clear funding mechanism. The commenter encouraged the state to continue to search for options that are sufficiently funded, like Qualified Residential Treatment Programs (QRTPs), the Residential Treatment Center (RTC) Division Project, and the state's transition to the Texas Child-Centered Care (T3C) structure for rates and delivery of residential care.

General Comment 1B: One commenter stated that there is no rate structure to support the specialized PRYTF setting, so it is unlikely to attract qualified providers.

General Comment 1C: One commenter stated that there is a gap in Medicaid coverage for residential treatment for youth experiencing mental health challenges, especially after short-term crisis stabilization in a psychiatric hospital. The commenter recommended aligning the PRYTF standards with the federal Medicaid Psychiatric Residential Treatment Facilities (PRTFs) standards to create a pathway for Medicaid coverage for children with severe mental health needs.

Response to General Comments 1A, 1B, and 1C: The comments are outside the scope of this rule project. H.B. 3121 did not provide a funding mechanism or otherwise address funding for care in a PRYTF. Moreover, the alignment of PRYTF standards with PRTF standards would not make these individuals Medicaid eligible. Medicaid PRTF funding is not currently in the Texas Medicaid state plan, so funding would not be available even if the standards were aligned at this time. However, if Medicaid PRTF funding is made available later, HHSC can look at the option of aligning these standards. Finally, the comment to encourage the continued search for options that are sufficiently funded, like QRTPs, the RTC Division Project, and the state's transition to T3C structure for rates and delivery of residential care, will be forwarded to the appropriate persons associated with these options in HHSC and the Department of Family and Protective Services.

General Comment 2: One commenter found the PRYTF title confusing with Medicaid Psychiatric Residential Treatment Facilities (PRTFs) and preferred a different nomenclature, maybe Youth Treatment Facility.

Response: HHSC disagrees and declines to revise any rule in response to the comment. HHSC understands the nomenclature problem for this type of facility; however, HHSC does not find any alternative title for a PRYTF, including Youth Treatment Facility, any less confusing and the PRYTF title is specifically used in Texas Health and Safety Code Chapter 577A.

General Comment 3: One commenter expressed concern with mixing the PRYTF population with the general GRO population.

Response: HHSC disagrees and declines to revise any rule in response to the comment. There are already regulations in place that support the general GRO population of children in care. This includes training requirements, supervision requirements, and specific supervision requirements noted on each child's service plan that must be followed. In addition, a GRO is already required to be approved to provide treatment services to children with emotional disorders, so a GRO should be very aware of this population. If a GRO cannot ensure the safety of a child in a mixed population setting, then the GRO would have to find a different solution to protect the safety of the child. Finally, a GRO that does not want to mix the PRYTF population with the general GRO population is not required to.

General Comment 4: One commenter expressed concern with HHSC assuming jurisdiction over the adult PRYTF population as this may be a slippery slope into taking authority over the extended foster care population, which could lead to negative outcomes for those young adults if they are investigated and treated as perpetrators rather than young adults in care.

Response: HHSC disagrees and declines to revise any rule in response to the comment. While the Texas Health and Safety Code Chapter 577A gives HHSC jurisdiction over PRYTFs, including their care of young adults, HHSC has no authority to assume jurisdiction under the Texas Human Resources Code Chapter 42 for the extended foster care population.

General Comment 5: One commenter expressed strong support for the PRYTF rules to expand the current limited capacity for children and young adults seeking quality local mental health services.

Response: HHSC appreciates the support of Alec's Law and the PRYTF rules.

In addition, HHSC made several minor editorial changes to delete the term "Licensing" by modifying the rule title at §748.61 without changing the rule title meaning, and by replacing "Licensing" with "Child Care Regulation" at §748.4823; modify the language to exclude usage of first- and second-person pronouns in §§748.61, 748.4803, 748.4807, 748.4821, 748.4823, 748.4825, 748.4841, 748.4843, 748.4861, 748.4863, 748.4865, 748.4867, 748.4869, and 748.4881, but without changing the meaning of the rules; update a citation at §748.61(3)(E); correct punctuation and add an "and" at §748.4821(1); correct the term "psychiatric health treatments and services" in several places at §748.4843(b)(1) and (2) and §748.4847(b)(2)(A) and (B) and (d)(1) and (2); and correct the spelling of "may" at §748.4863(c).

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 2. SERVICES

26 TAC §748.61

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.61. What types of services are subject to regulation under this chapter?

The following types of services are subject to regulation under this chapter:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and support children:

(A) With an Emotional Disorder who have a:

(i) Current Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and demonstrate two or more of the following:

(I) Major self-injurious actions, including a suicide attempt within the last 12 months;

(II) Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(III) An additional DSM-5 diagnosis of substance-related or addictive disorder with severe impairment; or

(ii) Severe emotional disturbance as defined by §748.4801 of this chapter (relating to What do the following terms mean when used in this subchapter?) who are admitted to a certified psychiatric residential youth treatment facility also defined at §748.4801 of this chapter, in addition to young adults 18 to 21 years of age who also qualify for these services;

(B) With a DSM-5 diagnosis of Intellectual Disability that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of life-threatening conditions, including:

(i) The inability to maintain an open airway without assistance, which does not include the use of inhalers for asthma;

(ii) The inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(E) Determined to be a trafficking victim, including a child:

(i) Determined to be a trafficking victim as the result of a criminal prosecution or who is currently alleged to be a trafficking victim in a pending criminal investigation or prosecution;

(ii) Identified by the parent or agency that placed the child in the operation as a trafficking victim; or

(iii) Determined by the operation to be a trafficking victim based on reasonably reliable criteria, including one or more of the following:

(I) The child's own disclosure as a trafficking victim;

(II) The assessment of a counselor or other professional; or

(III) Evidence that the child was recruited, harbored, transported, provided to another person, or obtained for the purpose of forced labor or commercial sexual activity; and

(3) Additional Programmatic Services, which include:

(A) Emergency Care Services--A specialized type of child-care services designed and offered to provide short-term child care to children who, upon admission, are in an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring;

(B) Transitional Living Program--A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living, which includes basic life skills training and the opportunity for children to practice those skills and is not an independent living program;

(C) Assessment Services Program--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained to facilitate service planning;

(D) Therapeutic Camp Services--A camping program to augment an operation's treatment services with an experiential curriculum exclusively for a child with an emotional disorder who has difficulty functioning in his home, school, or community and is only available to children 13 years old and older; and

(E) Respite Child-Care Services--See §748.73 of this chapter (relating to What are respite child-care services?).

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SUBCHAPTER W. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE PSYCHIATRIC HEALTH TREATMENTS AND SERVICES

DIVISION 1. DEFINITIONS AND SCOPE

26 TAC §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.4803. When is a general residential operation (GRO) required to meet the additional rules of this subchapter?

A GRO that is a certified psychiatric residential youth treatment facility must meet the additional rules in this subchapter when providing psychiatric health treatments and services to an individual.

§748.4807. How do the rules in this subchapter apply to the care of a young adult 18 to 21 years of age at a psychiatric residential treatment facility (PRYTF)?

The rules in this chapter that apply to a PRYTF as noted in §748.4805 of this division (relating to In addition to the rules in this subchapter, what other rules in this chapter apply to a psychiatric residential youth treatment facility (PRYTF)?) also apply to the care of a young adult 18 to 21 years of age whom the PRYTF has admitted for psychiatric health treatments and services.

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DIVISION 2. POLICIES, NOTIFICATIONS, AND POSTINGS

26 TAC §§748.4821, 748.4823, 748.4825

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.4821. What additional policies must a general residential operation (GRO) submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?

A GRO must develop written policies that address:

(1) How the PRYTF will provide 24-hour medical and emergency services, including 24-hour nursing services; and

(2) How caregivers will supervise young adults 18 to 21 years of age receiving psychiatric health treatments and services and children in the GRO, including the PRYTF, when sharing restrooms or indoor or outdoor activity areas. The policy must:

(A) Include a schedule for the young adults and children to use restrooms, for indoor activity time, including cafeteria usage, and outdoor activity time; and

(B) Outline the specific staffing schedule caregivers will use and how the caregivers will maintain supervision, based on the supervision needs in the young adults' and children's service plans.

§748.4823. When must a psychiatric residential youth treatment facility (PRYTF) notify Child Care Regulation (CCR) about accreditation changes regarding the PRYTF?

(a) A PRYTF must always meet the accreditation requirement of §745.9053 of this title (relating to What requirements must a general

residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?).

(b) A PRYTF must notify CCR within two days if the accreditation organization informs the PRYTF that it has taken or will take an action that will result in the PRYTF no longer meeting the accreditation requirement of §745.9053 of this title for any period. Such an action includes revoking, suspending, or refusing to renew the PRYTF's accreditation.

§748.4825. Where must a psychiatric residential youth treatment facility (PRYTF) post the PRYTF certificate?

The PRYTF must post the PRYTF certificate in a prominent and publicly accessible place where employees, children, young adults, parents, and others will be able to view it easily.

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DIVISION 3. PERSONNEL

26 TAC §748.4831, §748.4833

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404499
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 438-3269

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DIVISION 4. TRAINING

26 TAC §§748.4841, 748.4843, 748.4845, 748.4847

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.4841. What are the pre-service experience requirements for a caregiver providing psychiatric health treatments and services?

(a) A caregiver responsible for an individual receiving psychiatric health treatments and services must have a minimum of 40 hours of supervised caregiver experience in:

(1) The current general residential operation providing treatment services to children with an emotional disorder;

(2) Another general residential operation providing treatment services to children with an emotional disorder;

(3) A psychiatric residential youth treatment facility providing psychiatric health treatments and services to children or young adults; or

(4) A residential or hospital setting providing direct care, supervision, guidance, and protection of children or young adults with a severe emotional disturbance.

(b) Until a caregiver has the minimum amount of supervised child-care experience as specified in subsection (a) of this section, the caregiver:

(1) May not be assigned as the only caregiver responsible for a group of individuals if any individual in the group is receiving psychiatric health treatments and services;

(2) Must be always supervised by another caregiver who has already satisfied the 40-hour experience requirement; and

(3) Must have their supervised child-care experience documented in the appropriate personnel record.

§748.4843. What additional pre-service training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) In addition to the types of pre-service training and hours at §748.863(a) of this chapter (relating to What are the pre-service training requirements for a caregiver?), a caregiver must complete four hours of suicide prevention training before the caregiver may be counted in the child to caregiver ratio if any individual in the group is receiving psychiatric health treatments and services.

(b) In addition to the types of pre-service training and hours at §748.864(a) of this chapter (relating to What are the pre-service training requirements for an employee?), a child-care administrator, professional level service provider, treatment director, and case manager

must complete four hours of suicide prevention training within 90 days of beginning job duties that include:

(1) Providing services to or planning services for individuals receiving psychiatric health treatments and services; or

(2) Managing or overseeing employees that provide services to or plans services for individuals receiving psychiatric health treatments and services.

(c) To meet the pre-service training requirements, the suicide prevention training must meet:

(1) The instructor requirements at §748.869(a) and (b) of this chapter (relating to How must pre-service training be conducted?); and

(2) The curriculum requirements at §748.125(c)(1) of this chapter (relating to What is the model suicide prevention, intervention, and postvention policy?).

(d) A caregiver or employee (child-care administrator, professional level service provider, treatment director, and case manager) does not have to complete the four hours of suicide prevention training if the caregiver or employee has documentation that it was completed during the last 12 months.

(e) The PRYTF must document the exemption factor in the appropriate personnel record.

§748.4845. Who must have first-aid and CPR training in a psychiatric residential youth treatment facility?

(a) Caregivers providing psychiatric health treatments and services to individuals must have a current certificate of training with an expiration or renewal date in:

(1) First-aid with rescue breathing and choking, which may be through instructor-led training or self-instructional training; and

(2) Pediatric and adult cardiopulmonary resuscitation (CPR).

(b) Each caregiver must be certified in first aid and CPR within 90 days of employment.

(c) At least one person counted in the child to caregiver ratio must be certified in first aid and CPR at all times.

(d) To meet the first-aid and CPR training requirements, the training must meet:

(1) The CPR training requirements at §748.913 of this chapter (relating to What are the requirements for CPR training?); and

(2) The documentation requirements at §748.915 of this chapter (relating to What documentation must I maintain for the first aid and CPR certifications?).

§748.4847. What additional annual training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) A caregiver providing psychiatric health treatments and services to an individual in a PRYTF must complete 50 annual training hours.

(b) In addition to the one hour of annual suicide prevention training required in §748.125(c) of this chapter (relating to What is the model suicide prevention, intervention, and postvention policy?):

(1) A caregiver must complete four additional hours of annual suicide prevention training for a total of five hours of annual suicide prevention training if the caregiver provides care to an individual receiving psychiatric health treatments and services; and

(2) A child-care administrator, professional level service provider, treatment director, and case manager must complete four additional hours of annual suicide prevention training for a total of five hours of annual suicide prevention training if the employee is or will be:

(A) Providing services to or planning services for individuals receiving psychiatric health treatments and services; or

(B) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric health treatments and services.

(c) In addition to the specific types of annual training and hours required in §748.930(b) of this chapter (relating to What are the annual training requirements for a caregiver?), a caregiver providing psychiatric health treatments and services to an individual must complete two hours of annual training on administering psychotropic medication.

(d) In addition to the specific types of annual training and hours required in §748.931(b) and (c) of this chapter (relating to What are the annual training requirements for an employee), a child-care administrator, professional level service provider, treatment director, and case manager must complete two hours of annual training on administering psychotropic medication if the employee is or will be:

(1) Providing services to or planning services for individuals receiving psychiatric health treatments and services; or

(2) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric health treatments and services.

(e) To meet the annual training requirements, the annual training must meet the requirements in:

(1) §748.935 of this chapter (relating to When must an employee or caregiver complete the annual training?);

(2) §748.937 of this chapter (relating to What types of hours or instruction can be used to complete the annual training requirements?);

(3) §748.941 of this chapter (relating to How must annual training be conducted?);

(4) §748.945 of this chapter (relating to What curriculum components must be included in the annual training for administering psychotropic medication?);

(5) §748.125(c)(1) of this chapter (relating to What is the model suicide prevention, intervention, and postvention policy?), relating to the curriculum components for suicide prevention training; and

(6) §748.949 of this chapter (relating to What documentation must I maintain for annual training?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404500
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 438-3269

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DIVISION 5. CHILD TO CAREGIVER RATIO

26 TAC §748.4851

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202404501
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 438-3269

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DIVISION 6. ADMISSION AND SERVICE PLANS

26 TAC §§748.4861, 748.4863, 748.4865, 748.4867, 748.4869

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.4861. Whom may a psychiatric residential youth treatment facility (PRYTF) admit for psychiatric health treatments and services?

A PRYTF may only admit an individual for psychiatric health treatments and services who:

(1) Is 21 years of age or younger;

(2) Has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) Requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition; and

(4) Was referred for treatment or services in a PRYTF by a licensed mental health professional.

§748.4863. May individuals receiving different types of service live in the same living quarters?

(a) Except as provided by subsections (c) and (d) of this section, children receiving different types of service may reside in the same living quarters as long as:

(1) A professional level service provider completes an evaluation of the living quarters for each child that the psychiatric residential youth treatment facility (PRYTF) places in the living quarters; and

(2) In each evaluation, the professional level service provider ensures that:

(A) There is no conflict of care with the best interests of any of the children placed in the living quarters;

(B) Placing the child with different service or treatment needs in the living quarters will not adversely impact the other children in the living quarters;

(C) The number of children in the living quarters is appropriate at all times based on the needs of all children in the living quarters;

(D) Caregivers can appropriately supervise all children in the living quarters at all times; and

(E) The PRYTF can meet the needs of all children in the living quarters.

(b) If the treatment or service needs of any child in the living quarters changes, the professional level service provider must evaluate the needs of each child in the living quarters to ensure there is no conflict of care.

(c) Children admitted for emergency care services must receive any therapeutic services (such as group therapy or art therapy) separately from children admitted for non-emergency care and must have separate living quarters, such as a separate wing of an operation, or a separate cottage. The PRYTF may combine children admitted for emergency care services with children in non-emergency care for meals, recreation, and transportation.

(d) Young adults 18 to 21 years of age receiving psychiatric health treatments and services that are not in the care of the Texas Department of Family and Protective Services and did not come immediately from another residential child-care operation:

(1) Must receive therapeutic services (such as group therapy or art therapy) separately from children admitted to the operation, including the PRYTF;

(2) Must have separate living quarters, such as a separate wing of an operation, or a separate cottage; and

(3) Must not use an area of the general residential operation's building or grounds at the same time with children admitted to the operation, including the PRYTF, except restrooms and indoor and outdoor activity areas may be shared under a policy required by §748.4821 of this subchapter (relating to What additional policies must a general residential operation (GRO) submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§748.4865. Are there additional requirements for a preliminary service plan when a psychiatric residential youth treatment facility (PRYTF) admits an individual for psychiatric health treatments and services?

When a PRYTF admits an individual for psychiatric health treatments and services, in addition to the requirements listed in §748.1331 of this chapter (relating to What are the requirements for a preliminary service plan?), the preliminary service plan for an individual receiving psychiatric health treatments and services must include:

(1) Therapeutic needs, including plans for psychiatric evaluation, the use of psychotropic medications, and one-to-one therapy;

(2) Family engagement activities;

(3) Plans to consult with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners; and

(4) Nursing care.

§748.4867. Are there additional requirements for an initial service plan when a psychiatric residential youth treatment facility (PRYTF) admits an individual for psychiatric health treatments and services?

(a) In addition to the requirements listed in (b)(2) in Figure: 26 TAC §748.1337(b) of this chapter (relating to What must a child's initial service plan include?), the initial service plan for an individual receiving psychiatric health treatments and services must include:

(1) One-to-one therapy;

(2) Family engagement activities;

(3) Consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(4) 24-hour nursing services, though services do not need to be onsite; and

(5) Direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

(b) A PRYTF must document all professional consultations, examinations, recommendations, and treatment in the individual's record.

§748.4869. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the individual's current caregivers;

(2) For a child, a person designated to make decisions regarding a child's participation in childhood activities; and

(3) At least one professional level service provider who provides direct services to the individual.

(b) Except as provided by subsection (c) of this section, if a general residential operation is providing treatment services to a child, the team must also include two of the following professions:

(1) A licensed professional counselor;

(2) A psychologist;

(3) A psychiatrist or physician;

(4) A licensed registered nurse;

(5) A licensed masters level social worker;

(6) A licensed or registered occupational therapist; or

(7) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(c) If a psychiatric residential youth treatment facility is providing psychiatric health treatments and services to an individual, the team must also include a licensed psychiatrist or physician and one of the following professionals:

(1) A licensed professional counselor;

(2) A psychologist;

(3) A licensed registered nurse;

(4) A licensed masters level social worker; or

(5) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(d) The individual and parents or guardian must be invited to a service planning meeting, so that they may participate and provide input into the development of the service plan.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404502
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 438-3269

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DIVISION 7. PROVIDING CARE TO CHILDREN AND ADULTS

26 TAC §748.4881

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC' under Chapter 531 of Texas Government Code. In addition, Texas Health and Safety §577A.004 requires HHSC to adopt rules necessary to implement Chapter 577A and §577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

§748.4881. After a child in the care of a psychiatric residential youth treatment facility (PRYTF) turns 18 years old, may the young adult remain in care?

A child who turns 18 years old in the care of a PRYTF may remain in care until the young adult's 22nd birthday.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2024.

TRD-202404503
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 438-3269

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER F. ELECTRONIC TRANSACTIONS

28 TAC §21.501

The commissioner of insurance adopts new 28 TAC Subchapter F, §21.501, concerning notices of termination of insurance policies. New §21.501 implements House Bill 1040, 88th Legislature, 2023. The rule is adopted without changes to the proposed text published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3695) and will not be republished.

REASONED JUSTIFICATION. The new subchapter and section clarify that nonrenewals and discontinuations of insurance policies are considered forms of termination that require insurance companies and other regulated entities to notify a party both electronically and by paper or another nonelectronic form.

HB 1040 amended Insurance Code §35.003 and §35.004 to allow regulated entities to do business electronically without obtaining consent from the other party. Before HB 1040, a regulated entity had to obtain an agreement from a party to an insurance transaction to do business or deliver documents electronically. Under HB 1040, no express agreement is required, and the regulated entity can simply notify the party that it will conduct business electronically. After receiving notice, the party has a right to withdraw consent from doing business electronically.

HB 1040 also added to §35.004 new subsection (l), which requires a regulated entity to send notices in both electronic form and in paper or another nonelectronic form to a party when cancelling or terminating a policy. With the proliferation of electronic transactions, entities may be sending notices in only electronic form. The 88th Legislature included new subsection (l) to make sure that regulated entities send notices in nonelectronic form as well as electronic. New §21.501 defines "termination" to include nonrenewal, a refusal to renew, or discontinuation by a regulated entity for the purposes of Insurance Code §35.004.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal. The comment period ended on June 24, 2024.

Commenters: TDI received two comments. One from the Office of Public Insurance Counsel in support of the proposal and one from the American Property and Casualty Insurance Association asking for clarification

Comments on §21.501

Comment. One commenter expresses support for TDI's proposal, saying that it "increases transparency, updates the rules in accordance with statutory changes, and helps ensure that companies give the required notice to those inured."

Agency Response. TDI appreciates the commenter's support.

Comment. Another commenter wanted to know if they are required to send notices to non-renewals that are customer initiated, such as when a renewal proposal is made to the insured, but the insured declines to pay the new premium to renew the policy.

Agency Response. 28 TAC §21.501 clarifies that if a notice of nonrenewal is delivered electronically, then it must also be delivered by paper or another nonelectronic form. 28 TAC §21.501 does not address what circumstances require a notice of nonrenewal.

STATUTORY AUTHORITY. The commissioner adopts new §21.501 under Insurance Code §§35.0045, 551.001, 1202.051, 1271.307, and 36.001.

Insurance Code §35.0045 requires the commissioner to adopt rules necessary to implement and enforce Insurance Code Chapter 35.

Insurance Code §551.001 authorizes the commissioner to adopt rules related to the cancellation and nonrenewal of insurance policies issued under specified provisions of the Insurance Code.

Insurance Code §1202.051 requires the commissioner to adopt necessary rules related to the renewal and continuation of individual health insurance policies.

Insurance Code §1271.307 authorizes the commissioner to adopt necessary rules related to the renewal of managed care individual health care plans and conversion contracts.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2024.

TRD-202404551
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: October 13, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 676-6555

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.52, 800.63, 800.71, 800.74, 800.75, and 800.77

TWC adopts the repeal of the following section of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.65

Amended §§800.52, 800.63, 800.71, 800.74, 800.75, and 800.77 are adopted without changes to the proposal, as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5340), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 800 rule change is to amend Subchapter B, Allocations, to:

--update rule language to conform with current federal program requirements, particularly those relating to the Workforce Innovation and Opportunity Act (WIOA); and

--repeal §800.65 relating to Project Reintegration of Offenders (Project RIO) to align with the Commission's repeal of Texas Administrative Code (TAC), Title 40, Chapter 847, Project RIO Employment Activities and Support Services. Though Project RIO is no longer operational, Local Workforce Development Boards (Boards) continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ALLOCATIONS

TWC adopts the following amendments to Subchapter B:

§800.52. Definitions

Section 800.52 is amended to align language and references with current federal programs.

§800.63. Workforce Investment Act (WIA) Allocations

Section 800.63 is amended to align language with current federal programs and update statutory references. Section 800.63(i) is amended, and (j) and (k) are removed, to align WIOA statewide funding methodologies with federal regulations. Removal of subsection (k) further clarifies the Commission's ability to use and transmit statewide funds to Boards as needed, including use of funds to address emerging needs in regions throughout Texas.

Section 800.63 is amended to change the section name from "Workforce Investment Act (WIA) Allocations" to "Workforce Innovation and Opportunity Act (WIOA) Allocations."

§800.65. Project Reintegration of Offenders

Section 800.65 is repealed to align with the Commission's repeal of Chapter 847, Project RIO Employment Activities and Support Services.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 is amended to remove inactive programs and add WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.74. Midyear Deobligation of Funds

Section 800.74 is amended to remove inactive programs. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75 is amended to align language with current federal programs.

Section 800.75 is amended to change the section name from "Second-Year WIA Deobligation of Funds" to "Second-Year WIOA Deobligation of Funds."

§800.77. Reallocation of Funds

Section 800.77 is amended to remove inactive programs and include WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

PART III. PUBLIC COMMENTS

The comment period ended on August 19, 2024. No comments were received.

SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.52, 800.63, 800.71, 800.74, 800.75, 800.77

STATUTORY AUTHORITY

The adopted rules implement provisions of WIOA by making conforming changes to TWC rules to align with current federal program requirements.

The rules are adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404468

Les Trobman
General Counsel
Texas Workforce Commission
Effective date: October 7, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 850-8356

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40 TAC §800.65

The repeal is adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal relates to Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2024.

TRD-202404469
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: October 7, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 850-8356

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Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Judicial Council

Title 1, Part 8

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission files this notice of its intention to review and consider for readoption, revision, or repeal of Texas Administrative Code, Title 1, Part 8, Chapter 174, including Subchapter C, concerning Policy Monitoring Requirements and Subchapter D, concerning Indigent Defense Procedure Requirements.

The rule review be conducted pursuant to Texas Government Code §2001.039. The Commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Indigent Defense Commission, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 W. 14th St. Suite 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov. Any proposed changes to these sections as a result of the rule review will be published in the Proposed Rules Section of the *Texas Register* and are subject to public comment for a reasonable period prior to final adoption or repeal by the commission.

TRD-202404523
Wesley Shackelford
Deputy Director
Texas Judicial Council
Filed: September 19, 2024

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Texas Council on Alzheimer's Disease and Related Disorders

Title 25, Part 12

The Texas Council on Alzheimer's Disease and Related Disorders, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 12, of the Texas Administrative Code:

Chapter 801, Procedures

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 801, Procedures, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to alzheimers@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 801" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 12, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202404592
Jessica Miller
Director, Rules Coordination Office
Texas Council on Alzheimer's Disease and Related Disorders
Filed: September 24, 2024

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Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 370, State Children's Health Insurance Program

Notice of the review of this chapter was published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4605). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 370 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 370 except for:

§370.46, Waiting Period; and

§370.70, Income Eligibility check in the 6th Month of Coverage.

The identified repeals and any amendments, if applicable, to Chapter 370 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 370 as required by the Texas Government Code §2001.039.

TRD-202404590
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: September 24, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 390, Information Practices

Notice of the review of this chapter was published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5365). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 390 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 390. Any amendments, if applicable, to Chapter 390 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 390 as required by Texas Government Code §2001.039.

TRD-202404567
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: September 23, 2024

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §102.1(a)	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
DENTIST						
Application by Exam	$ 330.00	$ 5.00		$ 15.00	$ 10.00	$ 360.00
Renewal	$ 411.00	$ 5.00	$ 2.50	$ 15.00	$ 10.00	$ 443.50
Renewal - Late 1 to 90 days	$ 665.25					$ 665.25
Renewal - Late 91 to 364 days	$ 887.00					$ 887.00
Licensure by Credentials	$ 2,915.00	$ 5.00		$ 15.00	$ 10.00	$ 2,945.00
Temporary Licensure by Credentials	$ 865.00	$ 5.00		$ 15.00	$ 10.00	$ 895.00
Temporary Licensure by Credentials Renewal	$ 261.00	$ 4.00	$ 2.50	$ 15.00	$ 10.00	$ 292.50
Renewal - Late 1 to 90 days	$ 438.75					$ 438.75
Renewal - Late 91 to 364 days	$ 585.00					$ 585.00
Provisional License	$ 100.00					$ 100.00
Faculty Initial Application	$ 230.00	$ 3.00		$ 15.00	$ 10.00	$ 258.00
Faculty Renewal	$ 305.00	$ 5.00	$ 2.50	$ 15.00	$ 10.00	$ 337.50
Faculty Renewal - Late 1 to 90 days	$ 506.25					$ 506.25
Faculty Renewal - Late 91 to 364 days	$ 675.00					$ 675.00
Conversion Fee - Faculty to Full Privilege	$ 161.00	$ 2.00	$ 2.50	$ 15.00	$ 10.00	$ 190.50
Nitrous Oxide Permit	$ 32.00					$ 32.00
Level 1 Permit	$ 32.00					$ 32.00
Level 2 Permit	$ 260.00					$ 260.00
Level 3 Permit	$ 260.00					$ 260.00
Level 4 Permit	$ 260.00					$ 260.00
Nitrous Level 1 Permit Renewal	$ 10.00					$ 10.00
Level 2 Permit Renewal	$ 60.00					$ 60.00
Level 3 Permit Renewal	$ 60.00					$ 60.00
Level 4 Permit Renewal	$ 60.00					$ 60.00
Application to Reactivate a Retired License	$ 186.00	$ 3.00		$ 15.00	$ 10.00	$ 214.00
Reinstatement of a Canceled Dental License	$ 411.00	$ 5.00		$ 15.00	$ 10.00	$ 441.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Conversion Fee - Full Privilege to Faculty	$ 161.00	$ 2.00	$ 2.50	$ 15.00	$ 10.00	$ 190.50
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 2,165.00	$ 5.00	$ 2.50	$ 15.00	$ 10.00	$ 2,197.50
DENTAL HYGIENIST						
Application by Exam	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Renewal	$ 216.00	$ 5.00	$ 2.50		$ 2.00	$ 225.50
Renewal - Late 1 to 90 days	$ 338.25					$ 338.25
Renewal - Late 91 to 364 days	$ 451.00					$ 451.00
Local Infiltration Anesthesia	$ 32.00					$ 32.00
Licensure by Credentials	$ 635.00	$ 5.00			$ 2.00	$ 642.00
Temporary Licensure by Credentials	$ 225.00	$ 5.00			$ 2.00	$ 232.00
Temporary Licensure by Credentials renewal	$ 101.00	$ 3.00	$ 2.50		$ 2.00	$ 108.50
Renewal - Late 1 to 90 days	$ 162.75					$ 162.75
Renewal - Late 91 to 364 days	$ 217.00					$ 217.00

	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Faculty Initial Application	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Faculty Renewal	$ 201.00	$ 5.00	$ 2.50		$ 2.00	$ 210.50
Faculty Renewal - Late 1 to 90 days	$ 315.75					$ 315.75
Faculty Renewal - Late 91 to 364 days	$ 421.00					$ 421.00
Conversion Fee - Faculty to Full Privilege	$ 51.00	$ 2.00	$ 2.50		$ 2.00	$ 57.50
Application to Reactivate a Retired License	$ 76.00	$ 3.00			$ 2.00	$ 81.00
Reinstatement of a Canceled Dental Hygiene License	$ 213.00	$ 5.00			$ 2.00	$ 220.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
Conversion Fee - Full Privilege to Faculty	$ 55.00	$ 2.00	$ 2.50		$ 2.00	$ 61.50
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 415.00	$ 5.00	$ 2.50		$ 2.00	$ 424.50
DENTAL ASSISTANT						
Initial Application	$ 36.00	$ 2.00			$ 2.00	$ 40.00
Renewal	$ 63.00	$ 4.00	$ 2.50		$ 2.00	$ 71.50
Renewal - Late 1 to 90 days	$ 107.25					$ 107.25
Renewal - Late 91 to 364 days	$ 143.00					$ 143.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Renewal	$ 63.00	$ 4.00	$ 2.50			$ 69.50
Nitrous Oxide Monitoring Late 1 to 90 days	$ 104.25					$ 104.25
Nitrous Oxide Monitoring Late 91 to 364 days	$ 139.00					$ 139.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
Application to Reactivate a Retired Registration	$ 26.00	$ 2.00	$ 2.50		$ 2.00	$ 32.50
Reinstatement of a Cancelled Registration	$ 63.00	$ 2.00	$ 2.50		$ 2.00	$ 69.50
RDA Course Provider Fee	$ 100.00					$ 100.00
DENTAL LABORATORIES						
Application	$ 125.00					$ 125.00
Renewal	$ 134.00	$ 4.00				$ 138.00
Renewal - Late 1 to 90 days	$ 207.00					$ 207.00
Renewal - Late 91 to 364 days	$ 276.00					$ 276.00
Duplicate Certificate	$ 25.00	$ 2.00				$ 27.00
OTHER						
Mobile Application	$ 121.00					$ 121.00
Mobile Renewal	$ 63.00	$ 2.00				$ 65.00
Mobile Renewal - 1 to 90 days	$ 97.50					$ 97.50
Mobile Renewal - 91 to 364 days	$ 130.00					$ 130.00
CE Provider Course Provider Fee	$ 100.00					$ 100.00
Duplicate Certificate Mobile Certificate	$ 25.00	$ 2.00				$ 27.00
Dentist Intern / Resident Prescription Privileges	$ 51.00			$ 15.00	$ 15.00	$ 81.00
Jurisprudence	$ 54.00					$ 54.00
Licensure Verification with Seal	$ 9.00	$ 2.00				$ 11.00
Criminal History Evaluation	$ 25.00					$ 25.00

	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Board Scores	$ 25.00					$ 25.00

Figure: 25 TAC §289.201(m)(1)

MEAN QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent*
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

*Absorbed dose in gray equal to 1 Sv or the absorbed dose in rad equal to 1 rem.

Figure: 25 TAC §289.201(m)(2)

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy (MeV)	Quality Factor** (Q)	Fluence per Unit Dose Equivalent* (neutrons $cm^{-2}rem^{-1}$)	Fluence per Unit Dose Equivalent* (neutrons $cm^{-2}Sv^{-1}$)
(thermal) 2.5×10^{-8}	2	980×10^6	980×10^8
1.0×10^{-7}	2	980×10^6	980×10^8
1.0×10^{-6}	2	810×10^6	810×10^8
1.0×10^{-5}	2	810×10^6	810×10^8
1.0×10^{-4}	2	840×10^6	840×10^8
1.0×10^{-3}	2	980×10^6	980×10^8
1.0×10^{-2}	2.5	$1{,}010 \times 10^6$	$1{,}010 \times 10^8$
1.0×10^{-1}	7.5	170×10^6	170×10^8
5.0×10^{-1}	11	39×10^6	39×10^8
1.0	11	27×10^6	27×10^8
2.5	9	29×10^6	29×10^8
5.0	8	23×10^6	23×10^8
7.0	7	24×10^6	24×10^8
10	6.5	24×10^6	24×10^8
14	7.5	17×10^6	17×10^8
20	8	16×10^6	16×10^8
40	7	14×10^6	14×10^8
60	5.5	16×10^6	16×10^8
1.0×10^2	4	20×10^6	20×10^8
2.0×10^2	3.5	19×10^6	19×10^8
3.0×10^2	3.5	16×10^6	16×10^8
4.0×10^2	3.5	14×10^6	14×10^8

*Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

**Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

Figure: 25 TAC §289.253(ee)(5)

	Name of Record/Document	*Rule Cross-Reference (this section unless otherwise noted)*	*Time Interval for Keeping Record/Document*
(A)	Inspection records	(d)(4)	3 years after each annual internal inspection
(B)	Agreement with well operator, owner, drilling contractor, or land owner	(e)	5 years following completion of the well logging service operation or tracer study
(C)	Survey instrument calibration	(i)	3 years
(D)	Leak test	(j)	3 years
(E)	Quarterly inventory	(k)	3 years
(F)	Utilization record	(l)	3 years
(G)	Certification document	(m)	3 years
(H)	Inspection and maintenance	(o)	3 years
(I)	Training and Testing	(p)	3 years after employee terminates employment with the licensee or registrant
(J)	Current operating, safety, and emergency procedures	(q)	Until termination of license or certificate of registration
(K)	Personnel monitoring	(r)	Until disposal is authorized by the department
(L)	Radiation surveys	(bb)	3 years after completion of the survey
(M)	Current License or Certificate of Registration	(cc)	Until termination of license or certificate of registration
(N)	Receipt and Transfer	§289.201(d)	Until disposal of the records is authorized by the department
(O)	Disposal	§289.201(d)	Until termination of license
(P)	Shipping papers for transportation	§289.257(e)	3 years
(Q)	Current 25 TAC §289.253 of this title and other applicable sections as listed in the license or certificate of registration	(cc)	Until termination of license or certificate of registration

Figure: 25 TAC §289.255(v)(1)

Specific Subsection	Name of Record	Time Interval Required for Record Keeping
(e)(1)(A) and (2)(A) and (f)(1)	Training and Certification Records	5 years
(i)	Receipt and Transfer	3 years
(j)	Disposal	Until license termination
(j)(2)	Survey Instrument Calibrations	3 years
(k)	Quarterly Inventory	3 years
(l)	Utilization Logs	3 years
(m)	Inspection and Maintenance	3 years
(n)	Permanent Radiographic Installation Tests	3 years
(p)	Individual Monitoring Devices	Until disposal is authorized by the department
(p)	Estimates of Exposure	Until disposal is authorized by the department
(p)	Direct-Reading Pocket or Electronic Personal Dosimeter Readings	3 years or until disposal is authorized by the department if dosimeters were used to determine external radiation dose
(p)	Pocket Dosimeter Calibrations and Yearly Response Checks	3 years
(p)	Alarming Ratemeter Calibrations	3 years
(t)(5) and (u)(8)	Internal Audit Program	3 years
(t)(5)(F) and (u)(8)(F)	Annual Refresher Training	3 years
(t)(6) and (u)(9)	Radiation Surveys	3 years or until disposal is authorized by the department if a survey was used to determine an individual's exposure
(t)(7)(C)	Annual Evaluation of Radiation Machines in Shielded Rooms	3 years
(t)(8)(A)(i)	Operating Instructions in Cabinet X-Ray Systems	3 years

(t)(8)(A)(ii)	Tests of X-Ray Interlocks	3 years
(t)(8)(A)(iii)	Evaluation of Certified Cabinet X-Ray Systems	3 years
(u)(6)	Leak Tests	3 years
(u)(10)(D)	Annual Evaluation of Shielded Rooms Containing Sealed Sources	3 years
(u)(10)(E)	Test of Sealed Source Interlocks	3 years
(v)(3)	Records at Temporary Job Sites	During temporary job site operations

Figure: 25 TAC §289.256(xxx)

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.201(d)(1)	Records of receipt and transfer of radioactive material	Until disposal of the records is authorized by the department
§289.201(d)(1)	Records of disposal of radioactive material	Until termination of the radioactive material license
§289.203(b)(1)(B)	Current applicable sections of this chapter as listed in the radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(B)	Copy of the current radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(C), §289.256(f)(3)(A)	Current operating, safety, and emergency procedures	Until termination of the radioactive material license
§289.256 (f)(3)(C)(i)	Qualifications of RSO	Duration of employment
§289.256(f)(3)(C)(ii)	Qualifications of authorized users	Duration of employment
§289.256(f)(3)(C)(iii)	Qualifications of authorized medical physicist	Duration of employment
§289.256(f)(3)(C)(iv)	Qualifications of authorized nuclear pharmacist, if applicable	Duration of employment
§289.256(g)(7)	Qualifications and dates of service for temporary RSO	3 years
§289.256(g)(9)(A)	Actions taken by the licensee's management	5 years
§289.256(g)(9)(B)	Authority, duties, and responsibilities of the RSO and the RSO's agreement to implement the radiation safety program	Until termination of the radioactive material license
§289.256(g)(9)(C)	Document appointing the ARSO	5 years after the ARSO is removed from the license
§289.256(i)(3)	RSC meetings	3 years
§289.256(t)(3)	Written directives	3 years
§289.256(t)(5)(C)	Procedures for administrations requiring a written directive	Until termination of the radioactive material license
§289.256(v)(4)	Calibration of instruments (dose calibrators)	3 years
§289.256(w)(5)	Calibration of survey instruments	3 years
§289.256(x)(6)	Dosage determinations of unsealed radioactive material for medical use	3 years
§289.256(z)(2)	Physical inventory for all sealed source/brachytherapy inventory	3 years
§289.256(bb)(3)	Surveys for ambient radiation exposure rate	3 years

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.256(cc)(3) §289.256(eee)(2)	Patient release	3 years after date of release
§289.256(dd)(3)	Mobile nuclear medicine service client letters	Duration of licensee/client relationship
§289.256(dd)(3)	Mobile nuclear medicine service surveys	3 years
§289.256(ee)(2)	Decay in storage/disposal	3 years
§289.256(ii)(4)	Permissible Molybdenum-99, Strontium-82, and Strontium-85 concentrations	3 years
§289.256(ll)(2)	Safety instructions – unsealed radioactive materials	3 years
§289.256(ss)(3)	Surveys after sealed source implant and removal	3 years
§289.256(tt)(3)	Brachytherapy sealed sources accountability	3 years
§289.256(uu)(2)	Safety instruction to personnel	3 years
§289.256(ww)(4)	Calibration measurements of brachytherapy sealed sources	3 years
§289.256(xx)(3)	Activity of each Strontium 90 source	Duration of life of source
§289.256(bbb)(4)	Service provider documentation	3 years
§289.256(fff)(4)	Installation, maintenance, adjustment, and repair - remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	3 years
§289.256(ggg)(6)	Written safety and operating procedures	Until licensee no longer possesses unit
§289.256(ggg)(7)	Instruction/drills for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	3 years
§289.256(iii)(3)	Dosimetry equipment calibration, intercomparison, and comparison	Until termination of the radioactive material license
§289.256(jjj)(7)	Calibration – teletherapy units	3 years
§289.256(kkk)(9)	Calibration – remote afterloader units	3 years

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.256(lll)(7)	Calibration – gamma stereotactic radiosurgery units	3 years
§289.256(mmm)(2)	Written procedures for spot checks - teletherapy units	Until licensee no longer possesses unit
§289.256(mmm)(6)	Spot checks - teletherapy units	Until licensee no longer possesses unit
§289.256(nnn)(2)	Written procedures for spot checks - remote afterloaders	3 years
§289.256(nnn)(6)	Spot checks - remote afterloader	3 years
§289.256(ooo)(2)	Written procedures for spot checks - gamma stereotactic radiosurgery units	3 years
§289.256(ooo)(8)	Spot checks - gamma stereotactic radiosurgery units	3 years
§289.256(ppp)(5)	Technical requirements for mobile remote afterloader units	3 years
§289.256(qqq)(3)	Radiation surveys	Duration of the use of the unit
§289.256(rrr)(3)	Full-inspection servicing records for teletherapy and gamma stereotactic radiosurgery units	Duration of the use of the unit
§289.256(uuu)(9)	Annotated report – medical event	Until termination of the radioactive material license
§289.256(vvv)(8)	Annotated report – dose to embryo/fetus or nursing child	Until termination of the radioactive material license

Figure: 26 TAC §745.37(1)

Types of Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in the caregiver's own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least: (i) four hours a day, three or more days a week, for three or more consecutive weeks; or (ii) four hours a day for 40 or more days in a period of 12 months. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the primary caregiver's own home for up to six unrelated children from birth through 13 years and may provide care after school hours for not more than six additional elementary school children, for at least: (i) four hours a day, three or more days a week, for three or more consecutive weeks; or (ii) four hours a day for 40 or more days in a period of 12 months. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the primary caregiver's own home for seven to twelve children from birth through 13 years, for less than	License

	24 hours a day, but at least two hours a day, three or more days a week. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	
(D) Licensed Child-Care Center	An operation providing care at a location other than the home of the director, owner, or operator, for seven or more children under 14 years of age, for less than 24 hours a day, but at least two hours a day, three or more days a week.	License
(E) Before or After-School Program	An operation that provides care to children who attend pre-kindergarten through grade six for at least two hours a day, three or more days a week. A program may operate before, after, or before and after the customary school day and during school holidays.	License
(F) School-Age Program	An operation that provides supervision and recreation, skills instruction, or skills training to children who attend pre-kindergarten through grade six for at least two hours a day, three or more days a week. A program may operate before, after, or before and after the customary school day and during school holidays, the summer period, or any other time when school is not in session.	License
(G) Employer-Based Child Care	A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours a day. The care is located on the employer's premises	Compliance Certificate

	and in the same building where the parents work.	
(H) Shelter Care	A child-care program at a temporary shelter, such as a family violence or homeless shelter, providing care for seven or more children under 14 years of age while the resident parent is away from the shelter. The child-care program operates for at least four hours a day three or more days a week.	Compliance Certificate

Figure: 26 TAC §745.37(2)

Types of Residential Child-Care Operations	Description	Type of Permit
(A) General Residential Operation	An operation that provides care for seven or more children up to the age of 18 years. The care must include child-care services and may also include programmatic services or treatment services. Residential treatment centers are a type of general residential operation. After obtaining a license for a general residential operation, an operation may apply for a certificate for a psychiatric residential youth treatment facility (PRYTF) as defined at §745.9051 of this chapter (relating to What do the following words and terms mean when used in this subchapter?). A PRYTF may provide psychiatric health treatments and services to individuals 21 years of age and younger.	License
(B) Child-Placing Agency (CPA)	A person, agency, or organization, other than a parent, who places or plans for the placement of a child in an adoptive home, foster home, or other residential care setting.	License
(C) Foster Home (also known as a "foster family home" or an "agency foster home")	An operation that a CPA verifies and regulates, is the primary residence of the foster parents, and provides care for six or fewer children, up to the age of 18 years.	Verification that a CPA issues.

Figure: 26 TAC §745.9075

Type and Amount of Fee	When the Fee is Due	Consequences for Failure to Pay a Fee on Time
(1) PRYTF Certificate Application Fee: $890	Before Child Care Regulation (CCR) accepts the application.	CCR will return the application as incomplete.
(2) PRYTF Certificate Renewal Fee: $740	On the biennial anniversary of the date CCR issued the certificate.	CCR will not renew the certificate.

Figure: 28 TAC §3.16(b)

Additional certifications required under 28 TAC §3.16.

Additional Certifications[1]	File and use[2]	Exempt[2]	Resubmission[3]	Substantially similar[3]	Exact copy[3]	Substitution[3]	Supplemental[3]	Matrix or insert page[3]
1. The form does not contain any provisions that fail to comply with corrections requested by the department under the same or another form number.	X	X	X					
2. The form has not been previously disapproved (including by withdrawal of approval or failed audit) by the department under the same or another form number, or the prior disapproval has been specifically disclosed in the filing.	X	X	X					
3. The issuer has reviewed the form to ensure it complies with any new requirements that were established after the date the previous form was approved.				X	X	X		
4. No changes have been made to the form other than those identified.			X	X	X	X		
5. The form meets the definition of an exact copy in 28 Texas Admin. Code §3.2.					X			
6. The original version of the form has not been issued or otherwise used in Texas and will not be issued or used in Texas at any time.						X		
7. The form will be marketed only as supplemental coverage.							X	
8. The final product created and issued using the forms will comply with all applicable requirements.								X
9. The form filed qualifies to be filed exempt consistent with 28 Tex. Admin. Code §3.4004.		X						
10. The form filed complies with the criteria for exempt forms specified in 28 Tex. Admin. Code §3.4005.		X						
11. The form filed does not contain any new, uncommon, or unusual provisions, conditions, or concepts as provided in 28 Tex. Admin. Code §3.4006.		X						
12. The insurer submitting the form has had a certificate of authority to do business in Texas for a period not less than two years as required in 28 Tex. Admin. Code §3.4007.		X						
13. The use of the form filed will be discontinued in the event of future changes in laws or rules that would prohibit the use of such forms.		X						

[1] More than one column may apply to a given filing.
[2] Exempt and File-and-Use are filing modes that may be used as specified in §3.10.
[3] Substantially similar, exact copy, substitution, resubmission, and supplemental are terms defined in §3.2.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/30/24 - 10/06/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/30/24 - 10/06/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202404600
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 25, 2024

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Court of Criminal Appeals

Final Approval of Amendments to Texas Rule of Appellate Procedure 39.8

Court of Criminal Appeals of Texas

Misc. Docket No. 24-006

Final Approval of Amendments to
Texas Rule of Appellate Procedure 39.8

ORDERED that:

1. On February 6, 2024, in Misc. Dkt. No. 24-9005, the Supreme Court of Texas preliminarily approved new Texas Rule of Appellate Procedure 27a and amendments to Texas Rules of Appellate Procedure related to the Fifteenth Court of Appeals, including amendments to Texas Rule of Appellate Procedure 39.8, and invited public comment.

2. Following the comment period, the Supreme Court of Texas revised the rules. This Order incorporates the revisions and contains the final version of the new and amended rules, and this Court adopts the revisions to Texas Rule of Appellate Procedure 39.8 (shown in redline). These rules are effective September 1, 2024.

3. The Clerk is directed to:

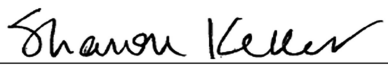
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

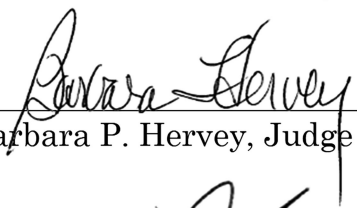
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

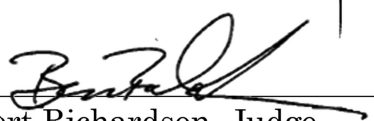
Dated: September 10, 2024.



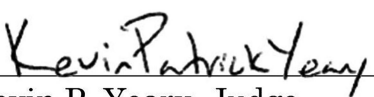
Sharon Keller, Presiding Judge



Barbara P. Hervey, Judge

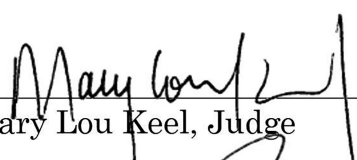


Bert Richardson, Judge

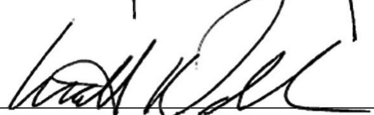


Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

Michelle Slaughter, Judge

Jesse F. McClure, Judge

Rule 39. Oral Argument; Decision Without Argument

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39.8. Clerk's Notice

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

(a) whether the court will allow oral argument or will submit the case without argument;

(b) the date of argument or submission without argument;

(c) if argument is allowed~~, the time allotted for argument; and~~:

(1) the time allotted for argument; and

(2) the location of the argument or instructions for joining the argument electronically, the court's designated contact information, and instructions for submitting exhibits; and

(d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date. Once issued, the court may amend the notice at any time before the case is set for argument or submission. The 21-day requirement does not apply to amended notices.

Notes and Comments

Comment to 2024 change: Rule 39.8 is amended to clarify requirements for notices and to clarify the court's ability to amend notices.

TRD-202404599
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: September 24, 2024

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 4, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **November 4, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Angel Campos Sr., Guadalupe Campos, and Miguel Campos dba Little Angel's Auto and Scrap Metal Recycling; DOCKET NUMBER: 2022-0586-MLM-E; IDENTIFIER: RN111363578; LOCATION: Presidio, Presidio County; TYPE OF FACILITY: auto and scrap metal recycling operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge stormwater associated with scrap metal recycling activities; and 30 TAC §324.15 and 40 CFR §279.22(d), by failing to perform response actions upon detection of a release of used oil; PENALTY: $2,925; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Angel Elias dba Judy K's Kountry Kitchen; DOCKET NUMBER: 2024-0031-PWS-E; IDENTIFIER: RN101237683; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), (vi), (B)(iii) and (ix), (D)(i) and (ii), (E)(i) and (ii), and (F), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $4,152; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: Charlotte Retief dba Cowboy Capital RV Park and Campground and Gerhard Retief dba Cowboy Capital RV Park and Campground; DOCKET NUMBER: 2024-0053-PWS-E; IDENTIFIER: RN111819579; LOCATION: Pipe Creek, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.46(q)(5)(B), by failing to implement special precautions, protective measures, or issue boil water notices to customers within 24 hours of receiving written notification from the Executive Director; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(4) COMPANY: City of Amarillo; DOCKET NUMBER: 2024-0022-MWD-E; IDENTIFIER: RN101611929; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010392003, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $44,625; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Lockhart; DOCKET NUMBER: 2023-1209-PST-E; IDENTIFIER: RN102004967; LOCATION: Lockhart, Caldwell County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, and failing to inspect the overfill prevention equipment at least once every three years to ensure that the equipment is set to activate at the correct level and will activate when a regulated substance reaches that level; and 30 TAC §334.48(e)(1) and §334.50(b)(2)(B) and TWC, §26.3475(b) and (c)(1), by failing to provide release detection for the suction piping associated with the underground storage tank system, and failing to conduct the annual operability testing of the release detection equipment to ensure it is operating properly; PENALTY: $3,751; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: COWBOY'S READY MIX, LLC; DOCKET NUMBER: 2024-0263-MLM-E; IDENTIFIER: RN110935590; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §205.4(a) and TWC, §26.040(e) and §26.121(a), by failing to obtain authorization to discharge wastewater and stormwater associated with industrial activity from ready-mixed concrete plants, concrete product plants, and their associated facilities; 30 TAC §324.6 and 40 Code of Federal Regulations §279.22, by failing to properly manage used oil; 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to register all above ground storage tanks; and 30 TAC §335.4(1) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters in the state; PENALTY: $14,500; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: CUA, LLC; DOCKET NUMBER: 2023-1704-AIR-E; IDENTIFIER: RN111803532; LOCATION: Denton, Denton County;

TYPE OF FACILITY: pool cleaning business; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: $4,688; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Dupre Logistics LLC dba Dupre Transport; DOCKET NUMBER: 2023-1109-PST-E; IDENTIFIER: RN104358718; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: $2,255; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Emerald Forest Utility District; DOCKET NUMBER: 2024-0461-PWS-E; IDENTIFIER: RN102685013; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $1,020; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: Eula Water Supply Corporation; DOCKET NUMBER: 2024-0165-PWS-E; IDENTIFIER: RN102682036; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(11) COMPANY: Everett Square Incorporated; DOCKET NUMBER: 2024-0251-MLM-E; IDENTIFIER: RN103128625; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.45(h)(1)(D), by failing to provide the use of portable generators capable of serving multiple facilities equipped with quick connect systems in accordance with the affected utility's approved Emergency Preparedness Plan; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $900; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(12) COMPANY: Fairway Methanol LLC; DOCKET NUMBER: 2023-1721-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 103626, PSDTX1296, and N164, Special Conditions Number 14.A., Federal Operating Permit Number O3678, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to comply with the concentration limit; PENALTY: $158,925; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $63,570; ENFORCEMENT COORDINATOR: Caleb Martin, (512) 239-2091; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Files Valley Water Supply Corporation; DOCKET NUMBER: 2024-0431-PWS-E; IDENTIFIER: RN102693207; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or obtain an exception by acquiring plan approval from the Executive Director for a booster pump taking suction from the distribution lines; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: Ingram Readymix Number 101, L.L.C.; DOCKET NUMBER: 2024-0482-WQ-E; IDENTIFIER: RN102653060; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG113016, Part III, Section A, Permit Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Jagodik Investments, LLC; DOCKET NUMBER: 2024-0096-PWS-E; IDENTIFIER: RN111833885; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Rachel Frey, (512) 239-4330; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: K-Solv Chemicals, LLC; DOCKET NUMBER: 2022-0750-AIR-E; IDENTIFIER: RN100616721; LOCATION: Channelview, Harris County; TYPE OF FACILITY: dock facility that conducts barge degassing and heel removal operations; RULES VIOLATED: 30 TAC §115.354(2)(C) and §116.115(c), New Source Review (NSR) Permit Numbers 87595 and 129626, Special Conditions (SC) Numbers 11.F. and 18.F., and Texas Health and Safety Code (THSC) §382.085(b), by failing to conduct quarterly Leak Detection and Repair monitoring; 30 TAC §101.20(2) and §116.115(c), 40 Code of Federal Regulations (CFR) §61.247(b), NSR Permit Number 129626, SC Number 4.C., and THSC, §382.085(b), by failing to submit the 40 CFR Part 61 Subpart V semiannual reports; 30 TAC §101.20(2) and §116.115(c), 40 CFR §61.305(f), NSR Permit Number 129626, SC Number 4.D., and THSC, §382.085(b), by failing to submit the 40 CFR Part 61 Subpart BB quarterly reports; 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Numbers 87595 and 129626, General Conditions (GC) Number 7, and THSC, §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §116.115(b)(2)(G), NSR Permit Numbers 87595 and 129626, GC Number 9, and THSC, §382.085(b), by failing to maintain all air pollution emission capture and abatement equipment in good working order and operating properly during normal facility operations; 30 TAC §116.115(c), NSR Permit Number 87595, SC Numbers 5.B.(2) and 7.B., and THSC, §382.085(b), by failing to calibrate the temperature

monitor on annual basis; 30 TAC §116.115(c), NSR Permit Number 87595, SC Number 6, and THSC, §382.085(b), by failing to limit the use of compounds at the storage and loading, barge depressurizing, and barge degassing to those identified in NSR Permit Number 87595 Attachment Lists I, II, and III; 30 TAC §116.115(c), NSR Permit Number 87595, SC Number 7.A., and THSC, §382.085(b), by failing to maintain the minimum six-minute average temperature in, or immediately downstream of, the combustion zone at or above 1,450 degrees Fahrenheit; 30 TAC §116.115(c), NSR Permit Number 87595, SC Number 7.D., and THSC, §382.085(b), by failing to operate the Vapor Combustor with no visible emissions; 30 TAC §116.115(c), NSR Permit Number 87595, SC Number 8, and THSC, §382.085(b); by failing to operate the Vapor Combustor five minutes prior to, during, and for 15 minutes after emissions are directed to the Vapor Combustor; 30 TAC §116.115(c), NSR Permit Numbers 87595 and 129626, SC Numbers 11.F. and 18.F., and THSC, §382.085(b); by failing to calibrate the flame ionization detector; and 30 TAC §116.115(c), NSR Permit Number 129626, SC Number 17, and THSC, §382.085(b), by failing to perform loading of liquids into containers within a total enclosure or within a partial enclosure designed and operated with a capture velocity of at least 200 feet per minute at the container vent; PENALTY: $164,996; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2923; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Lone Star Industries, Incorporated; DOCKET NUMBER: 2019-0411-AIR-E; IDENTIFIER: RN100220847; LOCATION: Maryneal, Nolan County; TYPE OF FACILITY: cement plant; RULES VIOLATED: 30 TAC §§101.20(1), (2), and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.8(d) and §63.7(b), New Source Review (NSR) Permit Numbers 82775 and PSDTX1101, Special Conditions (SC) Numbers 3.A, 3.B, and 22.B, Federal Operating Permit (FOP) Number O1119, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.E, 4.B, and 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to provide notice at least 60 days prior to conducting any performance test or as soon as possible of any delay in conducting the initially scheduled performance test or at least seven days prior to a rescheduled performance test; 30 TAC §§101.20(1), (2), and (3), 116.115(c), and 122.143(4), 40 CFR §§60.13(c)(2), 60.64(d)(1), and 63.10(d)(2), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.A, 3.B, and 22.D, FOP Number O1119, GTC and STC Numbers 1.E, 4.E, and 8, and THSC, §382.085(b), by failing to submit the results of the performance test within 60 days after completion of the performance test; 30 TAC §§101.20(1), (2), and (3), 116.115(c), and 122.143(4), 40 CFR §60.62(a)(1)(ii) and §63.1343(b), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 1 and 5, FOP Number O1119, GTC and STC Number 9, and THSC, §382.085(b), by failing to comply with the emissions limit and maximum allowable emissions rates; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.7(c) and §60.65(a), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.A and 31.A, FOP Number O1119, GTC and STC Numbers 4.A, 8 and 9, and THSC, §382.085(b), by failing to submit a semiannual excess emissions and monitoring systems performance report for the operation of the Continuous Emissions Monitoring System (CEMS) as required by 40 CFR Part 60 Subpart F by the 30th day following the end of each six-month period; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.13(c)(2), NSR Permit Numbers 82775 and PSDTX1101, SC Number 24.E, FOP Number O1119, GTC and STC Numbers 1.A and 8, and THSC, §382.085(b), by failing to submit the quarterly cylinder gas audit (CGA) reports for the operation of the CEMS; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §§60.7(c), 60.65(a), 63.10(e)(3)(i), and 63.1354(b)(9), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.A, 3.B, and 31.A, FOP Number O1119, GTC and STC Numbers 1.E, 4.A, 8 and 9, and THSC, §382.085(b), by failing to submit a semiannual excess emissions and monitoring systems performance test report for the operation of the Continuous Parameter Monitoring System (CPMS) as required by 40 CFR Part 60 Subpart F and 40 CFR Part 63 Subpart A by the 30th day following the end of each six-month period; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.8(d), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.A(2) and 22.B, FOP Number O1119, GTC and STC Numbers 4.B and 9, and THSC, §382.085(b), by failing to provide notice at least 30 days prior to conducting any performance test or as soon as possible of any delay in conducting the initially scheduled performance test or at least seven days prior to a rescheduled performance test; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.13(c)(2) and §60.64(d)(1), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.A(2) and 22.D, FOP Number O1119, GTC and STC Numbers 4.E and 9, and THSC, §382.085(b), by failing to submit the results of the performance test within 60 days after completion of the performance test; 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 CFR §63.7(b), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.B(1) and 22.B, FOP Number O1119, GTC and STC Numbers 1.E and 9, and THSC, §382.085(b), by failing to provide notice at least 60 calendar days before the performance test or as soon as testing is scheduled but not less than 30 days prior to the performance test; 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 CFR §63.10(d)(2), NSR Permit Numbers 82775 and PSDTX1101, SC Numbers 3.B and 22.D, FOP Number O1119, GTC and STC Numbers 1.E and 9, and THSC, §382.085(b), by failing to submit the results of the performance tests within 60 days after completion of the performance tests; 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 CFR §63.1346(a), NSR Permit Numbers 82775 and PSDTX1101, SC Number 3.B, FOP Number O1119, GTC and STC Numbers 1.A and 9, and THSC, §382.085(b), by failing to comply with the established baghouse inlet temperature limit; 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 CFR §63.1350(b)(1)(i), NSR Permit Numbers 82775 and PSDTX1101, SC Number 3.B, FOP Number O1119, GTC and STC Number 1.E, and THSC, §382.085(b), by failing to conduct an annual performance test; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 82775 and PSDTX1101, SC Number 5, FOP Number O1119, GTC and STC Number 8, and THSC, §382.085(b), by failing to comply with the emissions limits; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 82775 and PSDTX1101, SC Number 24.L, FOP Number O1119, GTC and STC Number 8, and THSC, §382.085(b), by failing to submit written notification to the TCEQ Abilene Regional Office at least 30 days prior to conducting the quarterly CGA of the CEMS; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1119, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1119, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; 30 TAC §122.143(4) and §122.145(2)(c), FOP Number O1119, GTC, THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; 30 TAC §122.143(4) and §122.146(1) and (2), FOP Number O1119, GTC and STC Number 12, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification (PCC) within 30 days of any certification period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1119, GTC and STC Number 31.A, and THSC, §382.085(b), by failing to submit a PCC within 30 days of any certification period; PENALTY: $390,884; ENFORCEMENT COORDINATOR: Amanda

Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Mauriceville Municipal Utility District; DOCKET NUMBER: 2024-0395-MWD-E; IDENTIFIER: RN102286952; LOCATION: Orange, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013839001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $15,750; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: New Gurukirpa Enterprises, Incorporated dba Crystals Food and Fuel; DOCKET NUMBER: 2024-0466-PST-E; IDENTIFIER: RN108874157; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tanks (USTs); and 30 TAC §334.50 (b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs and associated piping installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: $6,042; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: OXY USA Incorporated; DOCKET NUMBER: 2022-0295-AIR-E; IDENTIFIER: RN103758470; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 8414, 9235, PSDTX485M1 and PSDTX328M4, Special Conditions Numbers 8, and 26, Federal Operating Permit (FOP) Number O627, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 1.A. and 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the in-stack concentration of oxygen from the Tail Gas Incinerator no less than 1.0% by volume and no greater than 12% by volume; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O627, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $215,047; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $86,019; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(21) COMPANY: Regal 5 LLC dba Joe's Future Food Mart; DOCKET NUMBER: 2022-1376-PST-E; IDENTIFIER: RN101432268; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Sasol Chemicals (USA) LLC; DOCKET NUMBER: 2023-1703-AIR-E; IDENTIFIER: RN100214576; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4), Federal Operating Permit Number O1254, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to comply with the hourly fuel gas usage limit; PENALTY: $34,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $13,800; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Scout Energy Management LLC; DOCKET NUMBER: 2023-1472-AIR-E; IDENTIFIER: RN100226943; LOCATION: Masterson, Potter County; TYPE OF FACILITY: natural gas liquids and sales gas production plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 20711 and PSDTX798M1, Special Conditions Number 2, Federal Operating Permit (FOP) Number O4062, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 12, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O4062, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(D), (G), and (H) and §122.143(4), FOP Number O4062, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §101.201(c) and §122.143(4), FOP Number O4062, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: $186,663; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $93,331; ENFORCEMENT COORDINATOR: Caleb Martin, (512) 239-2091; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: TATUM EXCAVATING COMPANY, INCORPORATED; DOCKET NUMBER: 2024-0262-WQ-E; IDENTIFIER: RN111037412; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $23,400; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: Texas Water Utilities, L.P.; DOCKET NUMBER: 2023-1396-PWS-E; IDENTIFIER: RN101376648; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and (g) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.32 gallons per minute per connection as required by the alternative capacity requirement approved by the Executive Director on April 17, 2012; PENALTY: $750; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(26) COMPANY: Thomas H. Watson, II; DOCKET NUMBER: 2023-0935-WQ-E; IDENTIFIER: RN110859154; LOCATION: Cuero, Dewitt County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.42, by failing to maintain authorization to discharge wastewater and stormwater associated with industrial activity from ready-mixed concrete plants, concrete product plants, and their associated facilities; and TWC, §26.121(a), by failing to prevent an unauthorized discharge of pollutants into or adjacent to any water in the state; PENALTY: $35,250; ENFORCEMENT COORDINATOR:

Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(27) COMPANY: Victoria County Water Control and Improvement District Number 1; DOCKET NUMBER: 2024-0214-PWS-E; IDENTIFIER: RN101397735; LOCATION: Bloomington, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $1,337; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(28) COMPANY: Wellborn Special Utility District; DOCKET NUMBER: 2022-1660-PWS-E; IDENTIFIER: RN101203016; LOCATION: College Station, Brazos County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(2)(F) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps with a service pump capacity of at least 2.0 gallons per minute per connection; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(29) COMPANY: Xevex Materials' LLC; DOCKET NUMBER: 2024-0234-MLM-E; IDENTIFIER: RN111786778; LOCATION: Niederwald, Hays County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.126(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; and 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to register an aboveground storage tanks in existence on or after September 1, 1989, with the TCEQ; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Z B ENTERPRISES, INCORPORATED dba Overton Texaco; DOCKET NUMBER: 2023-1119-PST-E; IDENTIFIER: RN102835766; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202404586
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: September 24, 2024

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Enforcement Orders

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2021-1545-AIR-E on September 25, 2024, assessing $93,729 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Freeport LNG Development, L.P., Docket No. 2022-0058-AIR-E on September 25, 2024, assessing $152,173 in administrative penalties with $30,434 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Portland, Docket No. 2022-0129-MWD-E on September 25, 2024, assessing $279,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Veolia ES Technical Solutions, L.L.C., Docket No. 2022-0445-AIR-E on September 25, 2024, assessing $42,269 in administrative penalties with $8,453 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Troy G. Waller dba Rockwell Acres Water System, Docket No. 2022-0456-PWS-E on September 25, 2024, assessing $7,200 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ECOLAB INC., Docket No. 2022-0751-WQ-E on September 25, 2024, assessing $9,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quality Readymix, Ltd., L.L.P., Docket No. 2022-0792-WQ-E on September 25, 2024, assessing $10,850 in administrative penalties with $2,170 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CSWR-Texas Utility Operating Company, LLC, Docket No. 2022-1040-MWD-E on September 25, 2024, assessing $29,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Brighton Manor Apartments, L.P., Docket No. 2022-1192-UTL-E on September 25, 2024, assessing $750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Troy G. Waller dba Rockwell Acres Water System, Docket No. 2022-1330-UTL-E on September 25, 2024, assessing $610 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Duck Creek Municipal Utility District Of Denton County, Docket No. 2022-1631-DIS on September

25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kayla Murray, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Usa Waste Of Texas Landfills Inc, Docket No. 2023-0265-MSW on September 25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Anthony Tatu, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Los Botines Water Supply Corporation, Docket No. 2023-0291-UTL-E on September 25, 2024, assessing $825 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Webb County Consolidated Independent School District, Docket No. 2023-0391-PWS-E on September 25, 2024, assessing $1,275 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edmonson, Docket No. 2023-1312-PWS-E on September 25, 2024, assessing $5,050 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Rachel Vulk, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MILLER GROVE WATER SUPPLY CORPORATION, Docket No. 2023-1479-PWS-E on September 25, 2024, assessing $983 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mason Demasi, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2023-1629-PWS-E on September 25, 2024, assessing $8,191 in administrative penalties with $1,638 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2023-1659-AIR-E on September 25, 2024, assessing $10,875 in administrative penalties with $2,175 deferred. Information concerning any aspect of this order may be obtained by contacting Christina Ferrara, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hamilton, Docket No. 2024-0030-PWS-E on September 25, 2024, assessing $2,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Emerson Rinewalt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS CONCRETE SAND AND GRAVEL ENTERPRISE INC, Docket No. 2024-0064-WQ-E on September 25, 2024, assessing $7,812 in administrative penalties with $1,562 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jim Hogg County Water Control and Improvement District 2, Docket No. 2024-0086-PWS-E on September 25, 2024, assessing $2,625 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Watson, Thomas Howard Ii, Docket No. 2024-0678-AIR on September 25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katherine Keithley, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fnh Construction Llc, Docket No. 2024-0679-AIR on September 25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Chrystyn Cavazos, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Circle S West Municipal Utility District Of Ellis County, Docket No. 2024-1226-DIS on September 25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Allie Soileau, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Prairie Crossing Wastewater Llc, Docket No. 2024-1260-MWD on September 25, 2024, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Allie Soileau, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202404613
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of an Amendment to a Certificate of Adjudication Application No. 14-1556D

Notice Issued September 17, 2024

Jon Thomas Murr, P.O. Box 361, Junction, Texas 76849-0361, seeks to amend Certificate of Adjudication No. 14-1556 to add voluntary instream purpose of use to the 50 acre-feet of water per year currently authorized for diversion. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on August 9 and August 20, 2024. Additional fees were received on September 4, 2024. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 5, 2024.

The Executive Director has prepared a draft amendment. The application and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at

TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 2, 2024. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by October 2, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by October 2, 2024.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 2814 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202404605

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 25, 2024

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Notice of District Petition

Notice issued September 18, 2024

TCEQ Internal Control No. D-01292024-037; Buffalo Hills Development, LLC., a Texas limited liability company (Petitioner), filed a petition for the creation of Hawk Ridge Municipal Utility District of Johnson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, § 52 and Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority of the assessed value of the real property to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 87.89 acres located within Johnson County, Texas; and (4) the land within the proposed District is located wholly within the corporate limits of the City of Venus (City). The petition further states that the proposed District will manage: (1) the construction, maintenance and operation of a waterworks system, purchase and sale of water, for domestic and commercial purposes; (2) the construction and installation, maintenance, purchase and operation of drainage and roadway facilities and improvements; and (3) the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $16,800,000. It is noted that application material provided indicates that the cost of said project will be approximately $16,800,000 ($12,500,000 for water, wastewater, and drainage plus $4,300,000 for roads). Pursuant to the "Consent and Development Agreement among City of Venus, Texas and Buffalo Hills Development, LLC," entered into on March 20, 2023, the City asserts that the land within the proposed District will be located within the corporate limits of the City and provided the City's consent to the creation of the District. Accordingly, the requirements of TWC Section 54.016 and Texas Local Government Code Section 42.042 have been satisfied.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404606

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of District Petition

Notice issued September 19, 2024

TCEQ Internal Control No. D-08132024-020: McKinney Ridge, LLC, a Texas limited liability company and HC McKinney 3, LLC, a Texas limited liability company (Petitioners) filed a petition for creation of Collin County Municipal Utility District No. 11 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Back Nine Partners, L.P., a Texas limited partnership and AgTrust, ACA, as an agent or nominee on behalf of its wholly-owned subsidiaries, AgTrust, FCLA and/or AgTrust, PCA, on the property to be included in the proposed District and information provided indicates that the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 572.705 acres located within Collin County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, improve, maintain, operate such additional facilities, systems, plants, and enterprises, and road facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $184,200,000 ($148,100,000 for water, wastewater, and drainage and $36,100,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404607
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of District Petition

Notice issued September 19, 2024

TCEQ Internal Control No. D-08142024-026: Whitley Heritage, LP, a Texas limited partnership and 222 Farm, LTD., a Texas limited partnership (Petitioners) and Provident Realty Advisors, Inc., a Texas corporation (earnest money contract holder) filed a petition for creation of Collin County Municipal Utility District No. 12 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 226.813 acres located within Collin County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, and road facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $66,335,000 ($42,905,000 for water, wastewater, and drainage and $23,430,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete no-

tice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404608
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of District Petition

Notice issued September 19, 2024

TCEQ Internal Control No. D-09042024-006: Amigos del Sol, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Iron Pointe Municipal Utility District (District) of El Paso County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,520.369 acres located within El Paso County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of El Paso, Texas. The petition further states that the proposed District will: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the District; and, (6) provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the proposed District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $277,600,000 ($227,000,000 for water, wastewater, and drainage plus $3,140,000 for recreation plus $47,460,000 for roads). The Property is located wholly within the extraterritorial jurisdiction of the City of El Paso, El Paso County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404609

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of District Petition

Notice issued September 19, 2024

TCEQ Internal Control No. D-08272024-051; Ranch Road Ladera, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Ladera Municipal Utility District (District) of Caldwell County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Marbro Funding, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 116.411 acres located within Caldwell County, Texas; and (4) all of the land within the proposed District is located within the corporate boundaries of the City of Luling. By Resolution No.2024-R-06, passed and approved on July 11, 2024, the City of Luling, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document. The petition further states that the proposed District will: (1) provide a water supply for municipal uses, domestic uses and commercial purposes (2) collect, transport, process, dispose of and control all domestic industrial, or communal wastes whether in fluid, solid, or composite state (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and provide for the payment of organization expenses, operational expense during construction and interest during construction (4) design, acquire, construct, finance, improve, operate, and maintain macadamized graveled, or paved roads or improvements in aid of those roads; and (5) provide such other facilities systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that, from the information available, the cost of said project will be approximately $30,600,000 ($20,000,000 for water, wastewater, and drainage facilities, and $10,600,000 for roads and improvements in aid of roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202404610
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of District Petition

Notice issued September 19, 2024

TCEQ Internal Control No. D-07182024-047: Lanzola MHP4, LP S1, a series of a Delaware limited partnership, (Petitioner) filed an amended petition for creation of Las Haciendas Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The amended petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The amended petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Vantage Bank Texas, a Texas state bank, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 509.93 acres located within Bastrop County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The amended petition further states that the proposed District will design, construct, acquire, improve, extend, finance, and issue bonds to: (1) maintain, operate, and convey an adequate and efficient water works and sanitary sewer system for domestic and commercial purposes; (2) maintain, operate, and convey works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District and to control, abate, and amend local storm waters or other harmful excesses of waters; (3) maintain, operate, and convey park and recreational facilities; (4) convey roads and improvements in aid of those roads; and (5) maintain, operate, and convey of such other additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the amended petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $77,116,519 ($58,778,838 for water, wastewater, and drainage and $18,337,681 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404611
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of Hearing Clancy Utility Holdings LLC SOAH Docket No. 582-25-00462 TCEQ Docket No. 2024-0726-MWD TPDES Permit No. WQ0016335001

APPLICATION.

Clancy Utility Holdings LLC, 4143 Maple Avenue, Suite 400, Dallas, Texas 75219, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed TCEQ Permit No. WQ0016335001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 39,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 16.20 acres. This permit will not authorize a discharge of pollutants into waters in the State.

The wastewater treatment facility and disposal site will be located approximately 0.8 miles southwest of the intersection of Hamilton Pool Road and Stagecoach Ranch Road, in Hays County, Texas 78620. The wastewater treatment facility and disposal site will be located in the drainage basin of Pedernales River in Segment No. 1414 of the Colorado River Basin. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.1375,30.328888&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Dripping Springs Community Library, 501 Sportsplex Drive, Dripping Springs, Texas.

DIRECT REFERRAL.

The Combined Notice of Public Meeting and Notice of Application and Preliminary Decision was published on January 4, 2024. A Public Meeting was held on February 12, 2024. On June 18, 2024, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - November 5, 2024

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 160 737 4850

Password: TCEQ2424

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 737 4850

Password: 54429104

Visit the SOAH website for registration at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 305; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney

may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from Clancy Utility Holdings LLC at the address stated above or by calling Mrs. Andrea Wyatt, P.E., Murfee Engineering Company, Inc., at (512) 327-9204.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: September 23, 2024

TRD-202404616
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of Hearing The Psalm 25:10 Foundation SOAH Docket No. 582-24-25107 TCEQ Docket No. 2024-0596-MWD TPDES Permit No. WQ0016202001

APPLICATION.

The Psalm 25:10 Foundation, 3000 Altamesa Boulevard, Suite 300, Fort Worth, Texas 76133, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016202001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day.

The facility will be located approximately 0.5 miles northwest of the intersection of West Farm-to-Market Road 4 and Farm-to-Market Road 2331, in Johnson County, Texas 76044. The treated effluent will be discharged to an unnamed tributary, thence to an unnamed impoundment, thence to West Fork Nolan River, thence to Nolan River, thence to Lake Pat Cleburne in Segment No. 1228 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and West Fork Nolan River. The designated uses for Segment No. 1228 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.554722%2C32.400555&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at City of Godley Municipal Complex, City Secretary's Office, 200 West Railroad Street, Godley, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - November 7, 2024

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 356 5764

Password: TCE596

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 356 5764

Password: 142569

Visit the SOAH website for registration at:

http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 28, 2024. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from The Psalm 25:10 Foundation at the address stated above or by calling Mr. Richard Alberque, Director of Land Development, TCCI Land Development Inc., at (214) 734-0360 / (469) 688-8224.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: September 23, 2024

TRD-202404617
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 4, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 4, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Chaos Shaw AKA Chongbai Xia dba Twin Lakes Water; DOCKET NUMBER: 2021-1377-PWS-E; TCEQ ID NUMBER: RN101453512; LOCATION: 6495 Appian Way, Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.46(u), by failing to plug an abandoned PWS well with cement in accordance with 16 TAC Chapter 76 or submit the test results proving that the well is in a non-deteriorated condition; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, ground storage tanks (GSTs), standpipes, and elevated storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association (AWWA) standards; 30 TAC §290.43(c)(1), by failing to provide the GST with a gooseneck roof vent or a roof ventilator designed by an engineer and installed in strict accordance with AWWA standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.43(c)(4), by failing to ensure that all clearwells and water storage tanks have a liquid level indicator located at the tank site; 30 TAC §290.42(j), by failing to use an approved chemical or media for the treatment of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(1), by failing to maintain at the PWS accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the PWS will use to comply with the monitoring requirements; 30 TAC §290.43(c)(7), by failing to provide the GST with a means of removing accumulated silt and deposits at all low points in the bottom of the tank; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(F)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(F)(iii), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute (gpm) per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(F)(i), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.43(c)(2) and TCEQ Agreed Order Docket Number 2018-0424-PWS-E, Ordering Provision Number 3.c.iii., by failing to maintain the GST in strict accordance with current AWWA standards with a roof opening of not less than 30 inches in diameter with a lockable cover that overlaps the curbing at least two inches in a downward direction and a gasket to make a positive seal when the hatch is closed; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees, and/or associated late fees, for TCEQ Financial Administration Account Number 92200190 for Fiscal Year 2019, 2020, and 2021; PENALTY: $14,788; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202404585

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: September 24, 2024

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Notice of Public Meeting Cancellation

The Texas Commission on Environmental Quality (TCEQ) submitted a Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Permit Number WQ0016472001 for HWY 3349 HOLDINGS LLC, for publication in the September 06, 2024, issue of the *Texas Register*, TexReg Docket Number 202403863. However the application was withdrawn by the request of the applicant on September 18, 2024. Therefore, the public meeting scheduled for Thursday, September 26, 2024, is cancelled.

Members of the public with questions regarding this application or public meeting may seek further information by calling the TCEQ Public Education Program toll free at (800) 687-4040.

TRD-202404612
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Notice of Water Quality Application

The following notice was issued on September 17, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER.*

INFORMATION SECTION

The Texas Commission on Environmental Quality has a staff initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0014514001 issued to Fort Bend County Municipal Utility District No. 133, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027, to remove the Other Requirement No. 5 from the existing permit issued on October 6, 2022. This minor amendment was initiated based on the TCEQ Water Quality Standard's superseded memo issued on June 9, 2022. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,360,000 gallons per day. The facility is located at 23527 1/2 Bellaire Boulevard, in Fort Bend County, Texas 77469.

TRD-202404604
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2024

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Texas Ethics Commission

Correction of Error

The Texas Ethics Commission withdrew proposed new 1 TAC §§12.51 - 12.53 in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5934). The notice of withdrawn rulemaking incorrectly omitted 1 TAC §12.53. The correct listing of the proposed new rules being withdrawn should have been published as 1 TAC §§12.51 - 12.53 in the notice.

TRD-202404601

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Texas Facilities Commission

Requests for Proposals #303-5-20768 Cedar Park or Leander

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety -- Driver's License (DPS-DL), announces the issuance of Request for Proposals (RFP) # 303-5-20768. TFC seeks a five (5) or ten (10) year lease of approximately 10,613 square feet of office space and 195 square feet of outdoor lounge area in Cedar Park or Leander, Texas.

The deadline for questions is October 15, 2024, and the deadline for proposals is November 5, 2024, at 3:00 p.m. The award date is January 16, 2024. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Samantha De Leon at samantha.deleon@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at https://www.txsmartbuy.gov/esbd/303-5-20768.

TRD-202404588
Rico Gamino
Procurement Director
Texas Facilities Commission
Filed: September 24, 2024

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General Land Office

Official Notice to Vessel Owner/Operator Pursuant to §40.254, Tex. Nat. Res. Code

PRELIMINARY REPORT

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on August, 20, 2024.

Facts

Based on an inspection conducted on July 12, 2024, the Commissioner of the General Land Office (GLO), has determined that the vessel identified as **Vessel Id #67** is in a derelict condition in coastal waters without the consent of the Commissioner. The vessel is/or was located at 960 CR209, in Matagorda County, Texas.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value.

20 Day Placard: USCG Vessel Documentation No./TPWD Reg. No. - TX 6210 KA.

The last registered owner of this vessel is unknown.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal wa-

ters, on public lands without the consent of the Commissioner, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed immediately from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing will result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information contact the Hurricane Beryl Vessel Owner Hotline

TRD-202404565
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 23, 2024

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of July 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
HOUSTON	EAGLE ANALYTICAL SERVICES INC	L07231	HOUSTON	00	07/18/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	TEXAS ONCOLOGY	L06206	AUSTIN	28	07/26/24
BAYTOWN	COVESTRO LLC	L01577	BAYTOWN	78	07/26/24
BAYTOWN	EXXON MOBIL CORPORATION DBA EXXONMOBIL CHEMICAL COMPANY	L01135	BAYTOWN	97	07/18/24
BEAUMONT	EXXON MOBIL CORPORATION	L00603	BEAUMONT	115	07/25/24
BIG SPRING	SHROFF CARDIOLOGY AND INTERNAL MEDICINE CLINIC PA	L05893	BIG SPRING	05	07/24/24
CARROLLTON	SANA HEALTHCARE CARROLLTON LLC DBA CARROLLTON REGIONAL MEDICAL CENTER	L07078	CARROLLTON	04	07/15/24
DALLAS	PIPELINE EAST DALLAS LLC DBA WHITE ROCK MEDICAL CENTER	L06955	DALLAS	04	07/29/24
DALLAS	UT SOUTHWESTERN MEDICAL CENTER	L06663	DALLAS	25	07/25/24
DALLAS	UT SOUTHWESTERN MEDICAL CENTER	L05947	DALLAS	59	07/22/24
DALLAS	HEARTPLACE PLLC	L04607	DALLAS	83	07/16/24
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	155	07/23/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP DBA MEDICAL CITY DALLAS	L01976	DALLAS	240	07/26/24
EL PASO	EL PASO CARDIOLOGY ASSOCIATES PA	L05162	EL PASO	23	07/29/24
EL PASO	EL PASO COUNTY HOSPITAL DISTRICT DBA UNIVERSITY MEDICAL CENTER OF EL PASO	L00502	EL PASO	83	07/26/24
FORTH WORTH	NORTH TEXAS MCA LLC DBA MEDICAL CITY ALLIANCE	L06687	FORTH WORTH	14	07/24/24
FRISCO	TEXAS HEALTH HOSPITAL FRISCO	L07017	FRISCO	02	07/15/24
GROESBECK	SOUTH LIMESTONE HOSPITAL DISTRICT DBA LIMESTONE MEDICAL CENTER	L05932	GROESBECK	11	07/23/24
HOUSTON	AVANCE BIOSCIENCES INC	L06493	HOUSTON	03	07/24/24
HOUSTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06944	HOUSTON	13	07/16/24
HOUSTON	SPECTRACELL LABORATORIES INC	L04617	HOUSTON	25	07/17/24
HOUSTON	RADIOMEDIX INC	L06044	HOUSTON	33	07/19/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	HOUSTON NORTHWEST OPERATING COMPANY LLC DBA HOUSTON NORTHWEST MEDICAL CENTER	L06190	HOUSTON	48	07/29/24
HOUSTON	TEXAS CHILDRENS HOSPITAL	L04612	HOUSTON	81	07/16/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN-TEXAS MEDICAL CENTER	L00650	HOUSTON	98	07/24/24
KERRVILLE	SID PETERSON MEMORIAL HOSPITAL DBA PETERSON HEALTH	L01722	KERRVILLE	50	07/16/24
LUBBOCK	LUBBOCK COUNTY HOSPITAL DISTRICT OF LUBBOCK COUNTY TEXAS	L04719	LUBBOCK	177	07/25/24
LUFKIN	MEMORIAL HEALTH SYSTEM OF TEXAS DBA CHI ST LUKES HEALTH MEMORIAL LUFKIN	L01346	LUFKIN	104	07/26/24
NACOGDOCHES	SHARED MEDICAL SERVICES INC	L06142	NACOGDOCHES	45	07/23/24
ORANGE	THE DOW CHEMICAL COMPANY	L07026	ORANGE	07	07/19/24
SAN ANTONIO	BHS PHYSICIANS NETWORK INC DBA HEART & VASCULAR INSTITUTE OF TEXAS	L06750	SAN ANTONIO	30	07/16/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	266	07/19/24
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L05788	SUGAR LAND	61	07/19/24
THE WOODLANDS	THE METHODIST HOSPITAL DBA METHODIST DEBAKEY HEART & VASCULAR	L07075	THE WOODLANDS	05	07/24/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04947	AUSTIN	33	07/19/24
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L05683	COLLEGE STATION	47	07/24/24
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	166	07/24/24
THROUGHOUT TX	BONDED INSPECTIONS INC	L00693	DALLAS	100	07/25/24
THROUGHOUT TX	WEAVER CONSULTANTS GROUP LLC	L06395	FORT WORTH	13	07/29/24
THROUGHOUT TX	SENTINEL INTEGRITY SOLUTIONS INC	L06735	HOUSTON	15	07/16/24
THROUGHOUT TX	GEOTEST ENGINEERING INC	L02735	HOUSTON	49	07/15/24
THROUGHOUT TX	TERRACON CONSULTANTS INC	L05268	HOUSTON	78	07/26/24
THROUGHOUT TX	KLEINFELDER INC	L06960	IRVING	15	07/29/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC DBA ACTT-ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC	L06508	LA PORTE	30	07/18/24
THROUGHOUT TX	MISTRAS GROUP INC	L06369	LA PORTE	39	07/25/24
THROUGHOUT TX	ATLAS TECHNICAL CONSULTANTS LLC	L06407	LUBBOCK	33	07/17/24
THROUGHOUT TX	EMPIRE WIRELINE LLC	L06997	MANVILLE	4	07/18/24
THROUGHOUT TX	B2Z ENGINEERING LLC	L06996	MCALLEN	10	07/26/24
THROUGHOUT TX	BASIN PUMP DOWN SERVICES	L07170	MIDLAND	01	07/15/24
THROUGHOUT TX	TIER 1 INTEGRITY LLC	L06718	PASADENA	28	07/16/24
THROUGHOUT TX	CACTUS MEASUREMENT LCC	L07187	RICHMOND	04	07/17/24
THROUGHOUT TX	CACTUS MEASUREMENT LLC	L07187	RICHMOND	05	07/23/24
THROUGHOUT TX	FENAGH LLC	L07124	ROUND ROCK	04	07/18/24
THROUGHOUT TX	EAST TEXAS TESTING LABORATORY INC DBA ETTL ENGINEERS & CONSULTANTS INC	L01423	WHITEHOUSE	43	07/26/24
THROUGHOUT TX	CITY OF WICHITA FALLS	L03217	WICHITA FALLS	23	07/23/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

TYLER	MOTHER FRANCES HOSPITAL REGIONAL HEALTH CARE CENTER DBA CHRISTUS MOTHER FRANCES HOSPITAL - TYLER	L01670	TYLER	224	07/26/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
KILLEEN	LOCKHEED MARTIN CORPORATION MISSILES & FIRE CONTROL, KILLEEN SPECIAL REPAID ACTIVITY	L06653	KILLEEN	05	07/25/24
SUGAR LAND	BITSWAVE INC	L06606	SUGAR LAND	06	07/17/24
THROUGHOUT TX	UES PROFESSIONAL SOLUTIONS 44 LLC	L03411	DALLAS	42	07/26/24
THROUGHOUT TX	EVOLUTION WELL SERVICES OPERATING LLC	L06748	THE WOODLANDS	8	07/18/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
THROUGHOUT TX	FRONTIER TUBULAR SOLUTIONS LLC	L06581	HOUSTON	02	07/16/24

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	Exemption Number	City of Licensed Entity	Amend ment Number	Date of Action
THROUGHOUT TX	UNIVERSITY OF SOUTH ALABAMA	AL 584	E24-02	MOBILE	00	07/28/24

TRD-202404596
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: September 24, 2024

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Licensing Actions for Radioactive Materials

During the first half of August 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Numbe r	Date of Action
BEAUMONT	EXXON MOBIL CORPORATION	L00603	BEAUMONT	116	08/01/24
CYPRESS	HOUSTON INTERVENTIONA L CARDIOLOGY PA	L05470	CYPRESS	19	08/08/24
DEER PARK	EQUISTAR CHEMICALS LP	L00204	DEER PARK	79	08/05/24
EL PASO	EL PASO COUNTY HOSPITAL DISTRICT DBA UNIVERSITY MEDICAL CENTER OF EL PASO	L00502	EL PASO	84	08/05/24
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH SYSTEM	L01303	HOUSTON	113	08/14/24
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	170	08/05/24
KAUFMAN	TEXAS HEALTH PRESBYTERIAN HOSPITAL OF KAUFMAN	L03337	KAUFMAN	23	08/01/24
LANCASTER	LANCASTER REGIONAL HOSPITAL LP DBA CRESCENT MEDICAL CENTER LANCASTER	L06847	LANCASTER	09	08/08/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

LIVINGSTON	MEMORIAL HOSPITAL OF POLK COUNTY DBA CHI ST LUKES HEALTH MEMORIAL LIVINGSTON	L05552	LIVINGSTON	21	08/08/24
LUBBOCK	AURELIO R. CERVERA, MD PA DBA CASL HEALTH DBA CARDIOVASCULAR ARRHYTHMIAS SERVICES OF LUBBOCK	L07221	LUBBOCK	02	08/01/24
MCKINNEY	BAYLOR SCOTT & WHITE MEDICAL CENTERS - GREATER NORTH TEXAS DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - MCKINNEY	L06470	MCKINNEY	019	08/08/24
NACOGDOCHES	SHARED MEDICAL SERVICES INC	L06142	NACOGDOCHES	46	08/13/24
RICHMOND	OAKBEND MEDICAL CENTER	L02406	RICHMOND	64	08/13/24
ROUND ROCK	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS ROUND ROCK MEDICAL CENTER	L03469	ROUND ROCK	74	08/08/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L05217	SAN ANTONIO	29	08/01/24
THROUGHOUT TX	TRISPEC LLC	L06642	CORPUS CHRISTI	10	08/13/24
THROUGHOUT TX	HVJ NORTH TEXAS – CHELLIAH CONSULTANTS INC	L06807	DALLAS	12	08/07/24
THROUGHOUT TX	RONE ENGINEERING SERVICES LLC	L02356	DALLAS	62	08/07/24
THROUGHOUT TX	RONE ENGINEERING SERVICES LLC	L02356	DALLAS	63	08/13/24
THROUGHOUT TX	AMBIPAR RESPONSE TEXAS LLC	L06394	FORT WORTH	7	08/07/24
THROUGHOUT TX	CREDO SERVICES LLC	L06953	FRIENDSWOOD	01	08/13/24
THROUGHOUT TX	FROST GEOSCIENCES INC	L06015	HELOTES	09	08/07/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04942	HOUSTON	32	08/07/24
THROUGHOUT TX	FIXED EQUIPMENT RELIABILITY LLC	L07168	INGLESIDE	06	08/08/24
THROUGHOUT TX	CUTTER TECHNICAL SERVICES LLC	L07052	KILGORE	06	08/07/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	ACUREN INSPECTION INC DBA PREMIUM DBA INSPECTION AND TESTING INC DBAVERSA INTEGRITY GROUP INC DBA CAPITAL ULTRASONIC LLC	L01774	LA PORTE	319	08/01/24
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	11	08/13/24
THROUGHOUT TX	SOUTHWESTERN ELECTRIC POWER COMPANY	L02008	PITTSBURG	26	08/08/24
THROUGHOUT TX	CENTURY INSPECTION INC	L00062	PONDER	120	08/13/24
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	13	08/01/24
THROUGHOUT TX	WRANGLER WIRELINE INC	L05404	SOUR LAKE	11	08/08/24
TYLER	ALLENS NUTECH INC DBA NUTECH INC	L04274	TYLER	110	08/07/24
WEBSTER	CHCA CLEAR LAKE LP DBA HCA HOUSTON HEALTHCARE CLEAR LAKE	L01680	WEBSTER	115	08/13/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
DALLAS	RLS (USA) INC	L05529	DALLAS	62	08/13/24
MCALLEN	RENAISSANCE CARDIOLOGY GROUP OF SOUTH TEXAS PLLC DBA HEART INSTITUTE AT RENAISSANCE	L06627	MCALLEN	02	08/13/24
THROUGHOUT TX	NUCLEAR SOURCES AND SERVICES INC DBA NSSI	L02991	HOUSTON	52	08/05/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
SUGAR LAND	E+ PET IMAGING XI LP DBA PET IMAGING OF SUGAR LAND	L05858	SUGAR LAND	12	08/07/24
VICTORIA	VICTORIA HEART AND VASCULAR CENTER PA	L05748	VICTORIA	12	08/07/24

TRD-202404597
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: September 24, 2024

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Licensing Actions for Radioactive Materials

During the second half of August 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
THROUGHOUT TX	CLEAN-CO SYSTEMS INC	L07232	CHANNELVIEW	00	08/20/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ARLINGTON	HEALTH IMAGING PARTNERS LLC DBA ENVISION IMAGING	L06634	ARLINGTON	11	08/15/24
AUSTIN	AUSTIN CARDIOLOGY CLINIC PLLC	L07196	AUSTIN	01	08/27/24
AUSTIN	UROLOGY AUSTIN PLLC	L06798	AUSTIN	05	08/19/24
AUSTIN	ASCENSION SETON MEDICAL CENTER	L00268	AUSTIN	178	08/26/24
BROWNWOOD	HENDRICK MEDICAL CENTER BROWNWOOD	L02322	BROWNWOOD	74	08/21/24
COLLEGE STATION	SCOTT & WHITE HOSPITAL-COLLEGE STATION	L06557	COLLEGE STATION	18	08/20/24
COLLEGE STATION	BCS HEART LLP	L04890	COLLEGE STATION	22	08/26/24
DALLAS	CARDINAL HEALTH	L05610	DALLAS	55	08/26/24
DALLAS	TEXAS HEALTH PRESBYTERIAN HOSPITAL DALLAS	L01586	DALLAS	112	08/20/24
DEER PARK	DEER PARK REFINING LIMITED PARTNERSHIP	L04554	DEER PARK	48	08/26/24
EL PASO	AKUMIN IMAGING TEXAS LLC DBA SOUTHWEST X-RAY	L05207	EL PASO	28	08/26/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

EL PASO	EL PASO COUNTY HOSPITAL DISTRICT DBA UNIVERSITY MEDICAL CENTER OF EL PASO	L00502	EL PASO	85	08/15/24
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L07089	FORT WORTH	03	08/19/24
FORT WORTH	ONCOLOGY HEMATOLOGY CONSULTANTS PA DBA THE CENTER FOR CANCER AND BLOOD DISORDERS	L05919	FORT WORTH	36	08/21/24
HARLINGEN	THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY	L06754	HARLINGEN	12	08/22/24
HOUSTON	W D VON GONTEN ENGINEERING LLC	L06789	HOUSTON	04	08/22/24
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	11	08/22/24
HOUSTON	RADIOMEDIX INC	L06044	HOUSTON	34	08/15/24
HOUSTON	RLS (USA) INC	L05517	HOUSTON	35	08/19/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SUGARLAND HOSPITAL	L03457	HOUSTON	82	08/21/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SOUTHWEST HOSPITAL	L00439	HOUSTON	269	08/26/24
HUMBLE	RADIOMEDIX INC	L06990	HUMBLE	17	08/15/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

LAKE JACKSON	THE DOW CHEMICAL COMPANY	L00451	LAKE JACKSON	118	08/30/24
LUBBOCK	COLIBRI ISOTOPES CORPORATION	L07203	LUBBOCK	03	08/26/24
MCALLEN	RIO GRANDE VALLEY ISOTOPES LLC	L06202	MCALLEN	14	08/26/24
PASADENA	EQUISTAR CHEMICALS LP	L01854	PASADENA	57	08/20/24
PASADENA	CELANESE LTD	L01130	PASADENA	85	08/30/24
PLANO	TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO	L04467	PLANO	84	08/21/24
PORT LAVACA	UNION CARBIDE CORPORATION	L00051	PORT LAVACA	108	08/26/24
ROUND ROCK	ARA ST DAVIDS IMAGING LP	L05862	ROUND ROCK	126	08/21/24
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	267	08/26/24
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L05788	SUGAR LAND	62	08/21/24
THREE RIVERS	DIAMOND SHAMROCK REFINING COMPANY LP DBA VALERO THREE RIVERS REFINERY	L03699	THREE RIVERS	34	08/21/24
THROUGHOUT TX	RWLS DBA RENEGADE SERVICES	L06307	ANDREWS	44	08/26/24
THROUGHOUT TX	EUSTIS ENGINEERING LLC	L07051	HOUSTON	003	08/23/24
THROUGHOUT TX	ECS SOUTHWEST LLP	L06693	HOUSTON	12	08/21/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	NUCLEAR SOURCES AND SERVICES INC DBA NSSI	L02991	HOUSTON	53	08/30/24
THROUGHOUT TX	ARCTIC TESTING & INSPECTION LLC	L07065	LA PORTE	09	08/15/24
THROUGHOUT TX	STRONGHOLD INSPECTION LTD	L06918	LA PORTE	11	08/19/24
THROUGHOUT TX	SUNTRAC SERVICES INC	L03062	LEAGUE CITY	38	08/21/24
THROUGHOUT TX	ALLIED WIRELINE SERVICES LLC	L06374	MIDLAND	23	08/20/24
THROUGHOUT TX	PLPS INC	L04955	PEARLAND	10	08/26/24
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	14	08/19/24
THROUGHOUT TX	US ECOLOGY TEXAS INC	L05518	ROBSTOWN	019	08/23/24
VICTORIA	VICTORIA OF TEXAS LP DBA DETAR HEALTHCARE SYSTEM	L01630	VICTORIA	56	08/21/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
BRYAN	ST JOSEPH REGIONAL HEALTH CENTER DBA CHI ST JOSEPH HEALTH REGIONAL HOSPITAL	L00573	BRYAN	90	08/28/24
BUDA	TEXAS LEHIGH CEMENT COMPANY LP	L06633	BUDA	06	08/14/24
GEORGETOWN	RADIATION DETECTION COMPANY	L06647	GEORGETOWN	006	08/26/24
NEW BRAUNFELS	RESOLUTE HOSPITAL COMPANY LLC DBA RESOLUTE BAPTIST HOSPITAL	L06632	NEW BRAUNFELS	13	08/20/24
THROUGHOUT TX	TEXAS CMT INC	L04766	DALLAS	014	08/26/24
THROUGHOUT TX	SPEESOIL INC	L05619	EL PASO	008	08/15/24
THROUGHOUT TX	QUARTET ENGINEERS CORPORATION	L06879	HOUSTON	009	08/15/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
CORPUS CHRISTI	NARAIN D MANGLA MD PA	L05630	CORPUS CHRISTI	08	08/21/24
THROUGHOUT TX	SCHNABEL ENGINEERING LLC	L07160	AUSTIN	03	08/26/24

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	Exemption Number	City of Licensed Entity	Amendment Number	Date of Action
COLLEGE STATION	TEXAS A&M UNIVERSITY	L00448	E24-3	COLLEGE STATION	167	08/20/24

TRD-202404598
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: September 24, 2024

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Order Placing 2-Methyl AP-237, Etodesnitazene, NPyrrolidino Etonitazene, and Protonitazene into Schedule I and Extending the Temporary Placement of Butonitazene, Flunitazene, and Metodesnitazene in Schedule I

The U.S. Drug Enforcement Administration issued a final order placing 2-methyl AP-237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one), including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act effective April 15, 2024. This final rule was published in the *Federal Register*, Volume 89, Number 52, pages 18793-18796.

This scheduling action was taken pursuant to the following:

1. 2-Methyl AP-237 has a pharmacological profile and potential for abuse similar to other classical opioids such as fentanyl (schedule II), morphine (schedule II), and heroin (schedule I);

2. 2-Methyl AP-237 has no currently accepted medical use in treatment in the United States; and,

3. Control of 2-methyl AP-237 is required to meet the United States' obligations under the 1961 United Nations Single Convention on Narcotic Drugs.

The U.S. Drug Enforcement Administration issued a final order permanently placing 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (other names: etodesnitazene; etazene), 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (other names: *N*-pyrrolidino etonitazene; etonitazepyne), and *N*,*N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: protonitazene), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts are possible within the specific chemical designation, in schedule I of the Controlled Substances Act effective April 11, 2024. This final rule was published in the *Federal Register*, Volume 89, Number 71, pages 25514-25517.

This scheduling action was taken pursuant to the following:

1.aEtodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene share aa pharmacological profile with etonitazene (schedule I), isotonitazene (schedule I),a and other schedule I and II synthetic opioids;a

2.aThe use of etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene presentsa a high risk of abuse and have negatively affected users and communities; and,a

3.aEtodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene have no currentlya accepted medical use in treatment in the United States.a

The U.S. Drug Enforcement Administration issued temporary order extending the placement of 2-(2-(4-Butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (other name: butonitazene), *N*,*N*-Diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: flunitazene), and *N*,*N*-Diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: metodesnitazene) including their isomers, esters, ethers,a salts, and salts of isomers, esters, and ethers whenever the existence of sucha isomers, esters, ethers, and salts are possible within the specific chemicala designation, in schedule I of the Controlled Substance Act effective April 12, 2024.a This temporary order was published in the *Federal Register*, Volume 89, Numbera 71, pages 25517-25519. This scheduling action was taken based on a finding thata these substances pose an imminent hazard to the public safety.a

Pursuant to the Texas Controlled Substances Act, Health and Safety Code Section 481.034(g), , at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register. In the capacity as Commissioner of the Texas Department of State Health Services, Jennifer Shuford, M.D., does hereby order that the substance 2-Methyl AP-237, etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene be placed into schedule I, anda butonitazene, flunitazene, and metodesnitazene remain temporarily placed ina schedule I.a

-Schedule I Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts are possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
(2) Acetylmethadol;
(3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Othere name: acryloylfentanyl);
(5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino)cyclohexymethyl]benzamide);
(6) Allylprodine;
(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);
(8) α′-Methyl butyryl fentanyl (2-methyl-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(9) α-Methylfentanyl or any other derivative of fentanyl;
(10) α-Methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(11) Benzethidine;
(12) β-Hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
(13) β-Hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
(14) β-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide; *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenylpropanamide);
(15) β-Methyl fentanyl (*N*-phenyl-*N*-(1-(2-phenylpropyl)piperidin-4-yl)propionamide);
(16) β′-Phenyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide) (Other name: 3-phenylpropanoyl fentanyl);
(17) Betaprodine;
(18) Brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one);
(19) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(20) Clonitazene;
(21) Crotonyl fentanyl (Other name: (6-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide);
(22) Cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-Phenylcyclopentanecarboxamide);
(23) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide);
(24) Diampromide;
(25) Diethylthiambutene;
(26) Difenoxin;
(27) Dimenoxadol;
(28) 2′,5′-Dimethoxyfentanyl (N-(1-(2,5-dimethoxyphenethyl)piperidin-4-yl)-N-phenylpropionamide);
(29) Dimethylthiambutene;

(30) Dioxaphetyl butyrate;
(31) Dipipanone;
(32) Ethylmethylthiambutene;
*(33) 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (Other names: etodesnitazene; etazene);
(34) Etonitazene;
(35) Etoxeridine;
(36) Fentanyl carbamate (ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate);
(37) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *p*-fluoroisobutyryl fentanyl);
(38) 2'-Fluoro *o*-fluorofentanyl (*N*-(1-(2-fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide) (Other name: 2'-fluoro 2-fluorofentanyl);
(39) Furanyl fentanyl (*N*-(1-phenethylpiperdin-4-yl)-*N*-phenylfuran-2-carboxamide);
(40) 3-Furanyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-3-carboxamide);
(41) Furethidine;
(42) Hydroxypethidine;
(43) Isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide);
(44) Isotonitazene (*N*,*N*-diethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine);
(45) Isovaleryl fentanyl (3-methyl-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(46) Ketobemidone;
(47) Levophenacylmorphan;
(48) *m*-Fluorofentanyl (*N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide);
(49) *m*-Fluoroisobutyryl fentanyl (*N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide);
(50) Meprodine;
(51) Methadol;
(52) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
*(53) 2-Methyl AP-237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one);
(54) 4'-Methyl acetyl fentanyl (*N*-(1-(4-methylphenethyl)piperidin-4-yl)-*N*-phenylacetamide);
(55) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
(56) 3-Methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(57) Metonitazene (*N*,*N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine);
(58) Moramide;
(59) Morpheridine;

(60) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(61) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
(62) Noracymethadol;
(63) Norlevorphanol;
(64) Normethadone;
(65) Norpipanone;
*(66) 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (other names: *N*-pyrrolidino etonitazene; etonitazepyne);
(67) Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-phenethylpiperidin-4-yl)acetamide);
(68) *o*-Fluoroacryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)acrylamide);
(69) *o*-Fluorobutyryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide) (Other name:2-fluorobutyryl fentanyl);
(70) *o*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl);
(71) *o*-Fluorofuranyl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
(72) *o*-Fluoroisobutyryl fentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide);
(73) *o*-Methyl acetylfentanyl (*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide) (Other name: 2-methyl acetylfentanyl);
(74) *o*-Methyl methoxyacetyl fentanyl (2-methoxy-*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide) (Other name: 2-methyl methoxyacetyle fentanyl);
(75) *p*-Chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide);
(76) *p*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
(77) *p*-Fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4-piperidinyl]propanamide);
(78) *p*-Fluoro furanyl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
(79) *p*-Methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
(80) *p*-Methoxyfuranyl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
(81) *p*-Methylcyclopropyl fentanyl (*N*-(4-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide);
(82) *p*-Methylfentanyl (*N*-(4-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 4-methylfentanyl);
(83) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(84) Phenadoxone;
(85) Phenampromide;
(86) Phencyclidine;

(87) Phenomorphan;
(88) Phenoperidine;
(89) Phenyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbenzamide) (Othere name: benzoyl fentanyl);
(90) Piritramide;
(91) Proheptazine;
(92) Properidine;
(93) Propiram;
*(94) *N*,*N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: protonitazene);
(95) Tetrahydrofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide);
(96) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(97) Thiofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide) (Other names: 2-thiofuranyl fentanyl; thiophene fentanyl);
(98) Tilidine;
(99) Trimeperidine;
(100) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide);
(101) Valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide); and,
(102) Zipeprol (1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol).

-Schedule I Temporarily Listed Substances Subject to Emergency Scheduling by the U.S. Drug Enforcement Administration

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of the salts, esters, ethers isomers, and salts of isomers, esters, ethers is possible within the specific chemical designation:

(1) Fentanyl-related substances.

(1-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(1-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(1-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(1-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(1-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(1-1-5) Replacement of the *N*-propionyl group by another acyl group.

(1-2) This definition includes, but is not limited to, the following substances:

(1-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2′-fluoro-*o*-fluorofentanyl);

(1-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: *o*-methyl acetylfentanyl);

(1-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β′-phenyl fentanyl; hydrocinnamoyl fentanyl); and,

(1-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl).

(2) 2-(2-(4-Butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N*,*N*-diethylethan-1-amine (Other name: butonitazene);

(3) *N*,*N*-Diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: flunitazene);

(4) *N*,*N*-Diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metodesnitazene);

(5) 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-a][1,4]diazepine (Other name: etizolam);

(6) 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-a][1,4]diazepine (Other name: flualprazolam);

(7) 6-(2-chlorophenyl)-1-methyl-8-nitro-4*H*-benzo[*f*][1,2,4]triazolo[4,3-a][1,4]diazepine (Other name: clonazolam);

(8) 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-a][1,4]diazepine (Other names: 8-bromo-6-(2-fluorophenyl)-1-methyl-4*H*-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine and flubromazolam);

(9) 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2*H*-benzo[*e*][1,4]diazepin-2-one (Other name: diclazepam);

(10) Methyl 3,3-dimethyl-2-(1-(pent-4-en-1-yl)-1*H*-indazole-3-carboxamido)butanoate (Other name: MDMB-4en-PINACA);

(11) Methyl 2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (Other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA);

(12) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(pent-4-en-1-yl)-1*H*-indazole-3-carboxamide (Other name: ADB-4en-PINACA);

(13) 5-Pentyl-2-(2-phenylpropan-2-yl)pyrido[4,3-b]indol-1-one (Othere names: CUMYL-PEGACLONE; SGT-151);

(14) Ethyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (Other names: 5F-EDMB-PICA; 5F-EDMB-2201); and,

(15) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indole-3-carboxamido)-3-methyl butanoate (Other name: MMB–FUBICA).

Changes are marked by an asterisk (*).

Jennifer Shuford, M.D., M.P.H.

9/10/2024
Date

TRD-202404589
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: September 24, 2024

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Petition to Determine Whether a Certain Market With a Population Under 100,000 Should Remain Regulated

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on August 27, 2024, seeking a determination whether a certain market in Texas with a population under 100,000 should be deregulated.

Docket Style and Number: Petition of Brightspeed of Coastal Texas, Inc. to Determine Whether a Certain Market with a Population under 100,000 Should Remain Regulated, Docket Number 56999.

The Application: Brightspeed of Coastal Texas, Inc. filed a petition seeking a determination that certain markets of the company with populations of under 100,000 in Texas should be deregulated. The Commission has jurisdiction over the petition under § 65.052 of the Public Utility Regulatory Act (PURA). In making a determination, PURA § 65.052(b)(2) provides that the Commission may not determine that a market should remain regulated if the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company (ILEC), there are at least two competitors operating in all or part of the market that are unaffiliated with the ILEC and provide voice communications service without regard to the delivery technology. Brightspeed of Coastal Texas, Inc. additionally seeks to be reclassified as a deregulated company under PURA § 65.002.

Under PURA § 65.052(a), the Commission must issue a final order no later than 90 days after the petition is filed. The 90th day in this case is November 25, 2024.

Persons wishing to file a motion to intervene or comments on the application should contact the Public Utility Commission no later than October 16, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56999.

TRD-202404587
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2024

♦ ♦ ♦

Supreme Court of Texas

Order Approving Amendments to the Internal Procedural Rules of the Board of Disciplinary Appeals

Supreme Court of Texas

Misc. Docket No. 24-9067

Order Approving Amendments to the Internal Procedural Rules of the Board of Disciplinary Appeals

ORDERED that:

1. The Internal Procedural Rules of the Board of Disciplinary Appeals are amended as follows, effective immediately.

2. The Clerk is directed to:

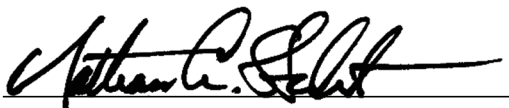
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

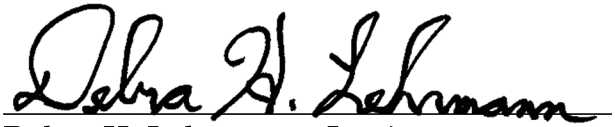
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

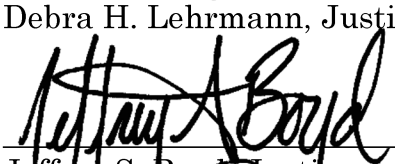
Dated: September 24, 2024.



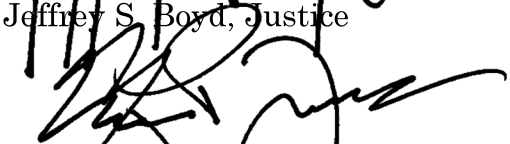
Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice

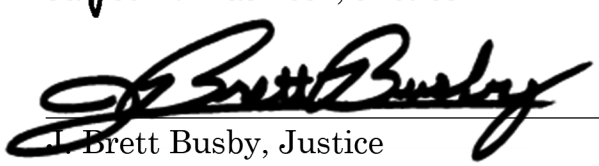


Jeffrey S. Boyd, Justice

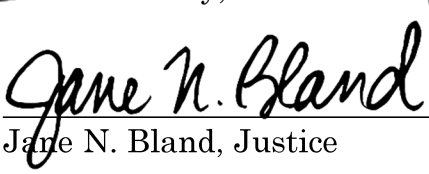


John P. Devine, Justice

James D. Blacklock, Justice

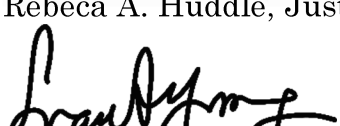


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES

SECTION 1: GENERAL PROVISION

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

***

(4) **Exceptions.**

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry or a complaint is not required to be filed electronically.

***

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule. If a grievance is classified as a complaint, the CDC must notify both the Complainant and the Respondent of the Respondent's right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. For a grievance classified as a complaint, the CDC must send the Respondent an appeal notice form, approved by BODA, with notice of the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA ~~must only~~must not consider documents or other submissions that ~~were~~the Complainant or Respondent filed with the CDC ~~prior to~~or BODA after the CDC's classification ~~decision~~. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

Rule 3.03. Disposition of Classification Appeal

(a) BODA may decide a classification appeal by doing any of the following:

(1) affirm the CDC's classification of the grievance as an inquiry and the dismissal of the grievance;

(2) reverse the CDC's classification of the grievance as an inquiry, reclassify the grievance as a complaint, and return the matter to the CDC for investigation, just cause determination, and further proceedings in accordance with the TRDP;

(3) affirm the CDC's classification of the grievance as a complaint and return the matter to the CDC to proceed with investigation, just cause determination, and further proceedings in accordance with the TRDP; or

(4) reverse the CDC's classification of the grievance as a complaint, reclassify the grievance as an inquiry, and dismiss the grievance.

(b) When BODA reverses the CDC's inquiry classification and reclassifies a grievance as a complaint, BODA must reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. When BODA affirms the CDC's complaint classification, BODA may reference any provisions of the TDRPC under which BODA concludes professional misconduct is alleged. The scope of investigation will be determined by the CDC in accordance with TRDP 2.12.

(c) BODA's decision in a classification appeal is final and conclusive, and such decision is not subject to appeal or reconsideration.

(d) A classification appeal decision under (a)(1) or (4), which results in dismissal, has no bearing on whether the Complainant may amend the grievance and resubmit it to the CDC under TRDP 2.10.

TRD-202404603
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: September 25, 2024

♦ ♦ ♦

Texas Department of Transportation

Department Policies Affecting Bicycle Use on the State Highway System

Notice

Virtual Public Hearing - Dallas District

In accordance with Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter D, Rule §25.55(a) and (b), the Texas Department of Transportation (TxDOT) and the North Central Texas Council of Governments (NCTCOG) is offering a virtual public hearing on district transportation projects, programs, and policies affecting bicycle use on the state highway system. The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. The presentation will be posted online by **Thursday, November 7, 2024, at 5 p.m., and will remain online through Monday, November 25, 2024, at 11:59 p.m.** To log into the virtual public hearing, go to the following web address at the date and time indicated above:

www.keepitmovingdallas.com/bicycle-2024

If you do not have internet access, you may call Mohammed Shaikh at (214) 320-6148 between the hours of 9 a.m. and 4 p.m., Monday through Friday, to ask questions and access project materials during the project development process. **Please note that the materials will not be available until Thursday, November 7, 2024**.

Members of the public may call the verbal testimony line at (833) 228-7711 to leave their recorded comments after review of the public hearing presentation beginning on **Thursday, November 7, 2024, at 5 p.m. through Monday, November 25, 2024, at 11:59 p.m.**

Formal written comments may also be provided by mail or email as explained below. All verbally provided testimony, and timely written comments will be considered by TxDOT and included as part of the official record. Responses to verbally provided testimony and comments will be prepared by TxDOT, included as part of the hearing and project record, and made available online at *www.keepitmovingdallas.com/bicycle-2024*.

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or are a person with a disability who requires an accommodation to attend and participate in the virtual public hearing, please contact **Kenna Mitchell, TxDOT Dallas District Public Information Officer at (214) 320-4404** no later than **Friday, November 1, 2024, at 4 p.m.** Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

La audiencia pública virtual se llevará a cabo en inglés. Si usted necesita un intérprete o un traductor de documentos porque su idioma principal no es el inglés o tiene alguna dificultad para comunicarse eficazmente en inglés, se le proporcionará uno. Si usted tiene alguna discapacidad y necesita ayuda, se pueden hacer arreglos especiales para atender la mayoría de las necesidades. Si usted necesita servicios de interpretación o traducción o usted es una persona con alguna discapacidad que requiera una adaptación para asistir a y participar en el evento de audiencia pública virtual, por favor póngase en contacto con **Kenna Mitchell, Oficial de Información Pública del Distrito de Dallas de TxDOT, al número (214) 320-4404, a más tardar a las 4:00 p.m. hora central del viernes, 1 de noviembre de 2024.**

Por favor sepa que es necesario dar aviso con anticipación, ya que algunos servicios y adaptaciones pueden requerir tiempo para que TxDOT los organice.

Written comments from the public regarding the proposed project are requested and may be submitted by mail to **STV Inc. Attn: Shyanne Hernandez, 5750 Genesis Court, Suite 200, Frisco, Texas 75034**. Written comments may also be submitted by email to **Shyanne.Hernandez@stvinc.com**. All written comments must be received on or before **Monday, November 25, 2024, at 11:59 p.m.** Additionally, as stated above, members of the public may call the verbal testimony line at (833) 2288-7711 and verbally provide comments from **Thursday, November 7, 2024, at 5 p.m. through Monday, November 25, 2024, at 11:59 p.m.** Responses to written comments received and public testimony provided will be available online at *www.keepitmovingdallas.com/bicycle-2024* once they have been prepared.

If you have any general questions regarding the proposed project or the virtual hearing, please contact **Mohammed Shaikh** at **(214) 320-6148** or **Mohammed.Shaikh@txdot.gov**.

TRD-202404568
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2024

♦ ♦ ♦

Department Policies Affecting Bicycle Use on the State Highway System

Notice

Virtual Public Hearing - Fort Worth District

In accordance with Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter D, Rule §25.55(a) and (b), the Texas Department of Transportation (TxDOT) and the North Central Texas Council of Governments (NCTCOG) is offering a virtual public hearing on district transportation projects, programs, and policies affecting bicycle use on the state highway system. The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. The presentation will be posted online by **Thursday, November 7, 2024, at 5 p.m., and will remain online through Monday, November 25, 2024, at 11:59 p.m.** To log into the virtual public hearing, go to the following web address at the date and time indicated above:

www.keepitmovingdallas.com/bicycle-2024

If you do not have internet access, you may call Terrence McAllister at (817) 370-6515 between the hours of 9 a.m. and 4 p.m., Monday through Friday, to ask questions and access project materials during the project development process. **Please note that the materials will not be available until Thursday, November 7, 2024**.

Members of the public may call the verbal testimony line at (833) 233-1177 to leave their recorded comments after review of the public hearing presentation beginning on **Thursday, November 7, 2024, at 5 p.m. through Monday, November 25, 2024, at 11:59 p.m.**

Formal written comments may also be provided by mail or email as explained below. All verbally provided testimony, and timely written comments will be considered by TxDOT and included as part of the official record. Responses to verbally provided testimony and comments will be prepared by TxDOT, included as part of the hearing and project record, and made available online at *www.keepitmovingdallas.com/bicycle-2024.*

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or are a person with a disability who requires an accommodation to attend and participate in the virtual public hearing, please contact **Flávia Paulino** at **Flavia.Paulino@txdot.gov**, no later than **Friday, November 1, 2024, at 4 p.m.** Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

La audiencia pública virtual se llevará a cabo en inglés. Si usted necesita un intérprete o un traductor de documentos porque su idioma principal no es el inglés o tiene alguna dificultad para comunicarse eficazmente en inglés, se le proporcionará uno. Si usted tiene alguna discapacidad y necesita ayuda, se pueden hacer arreglos especiales para atender la mayoría de las necesidades. Si usted necesita servicios de interpretación o traducción o usted es una persona con alguna discapacidad que requiera una adaptación para asistir a y participar en el evento de audiencia pública virtual, por favor póngase en contacto con **Flávia Paulino** *por correo electrónico dirigido a* **Flavia.Paulino@txdot.gov***, a más tardar a las* **4:00 p.m. hora central del viernes, 1 de noviembre de 2024**. *Por favor sepa que es necesario dar aviso con anticipación, ya que algunos servicios y adaptaciones pueden requerir tiempo para que TxDOT los organice.*

Written comments from the public regarding the proposed project are requested and may be submitted by mail to **STV Inc. Attn: Shyanne Hernandez, 5750 Genesis Court, Suite 200, Frisco, Texas 75034.** Written comments may also be submitted by email to **Shyanne.Hernandez@stvinc.com**. All written comments must be received on or before **Monday, November 25, 2024, at 11:59 p.m.** Additionally, as stated above, members of the public may call the verbal testimony line at (833) 233-1177 and verbally provide comments from **Thursday, November 7, 2024, at 5 p.m. through Monday, November 25, 2024, at 11:59 p.m.** Responses to written comments received and public testimony provided will be available online at *www.keepitmovingdallas.com/bicycle-2024* once they have been prepared.

If you have any general questions regarding the proposed project or the virtual hearing, please contact **Terrence McAllister** at **(817) 370-6515** or **Terrence.McAllister@txdot.gov.** executed by FHWA and TxDOT.

TRD-202404570
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: September 23, 2024

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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