

---

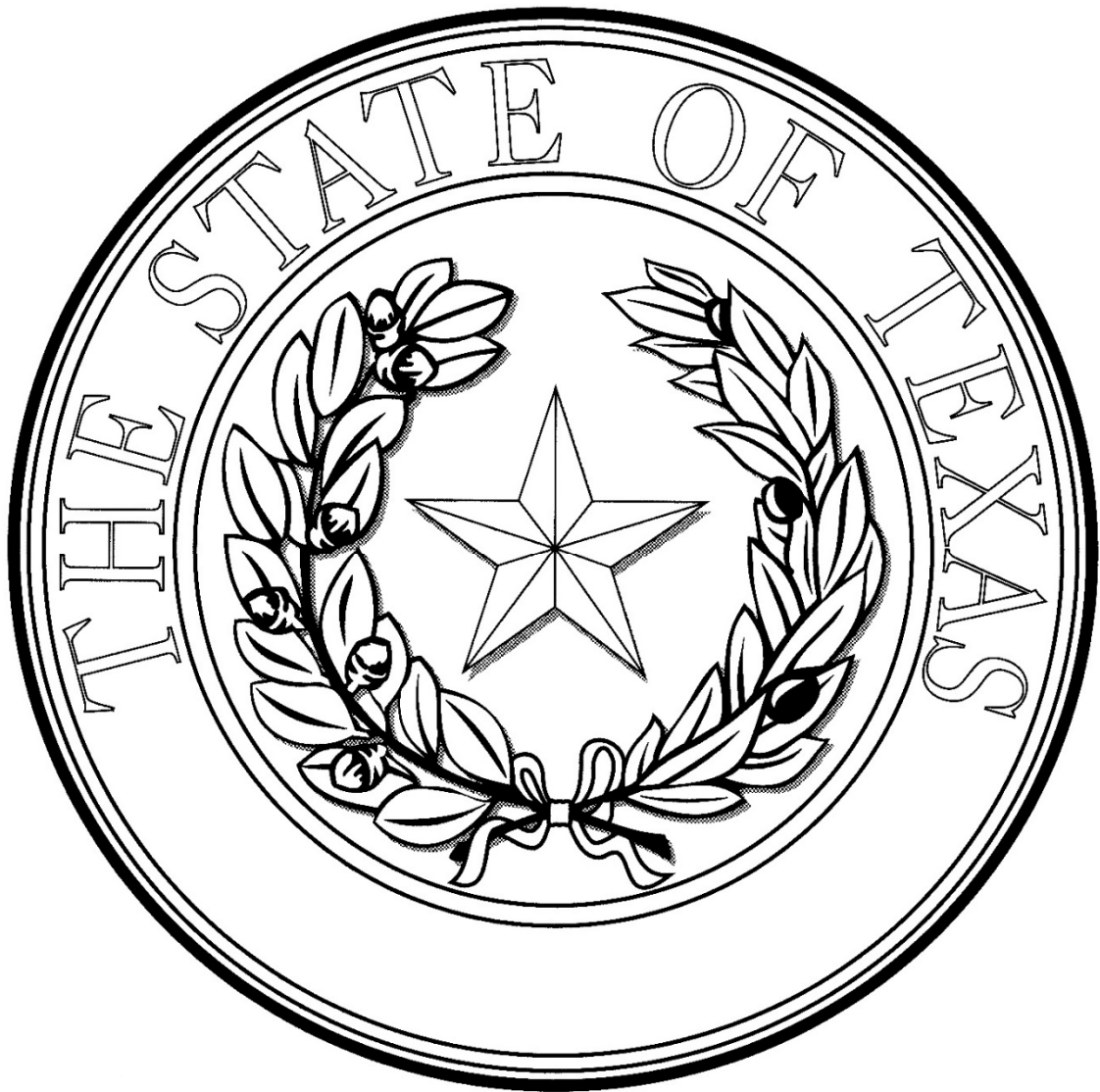
# TEXAS REGISTER

*Volume 49 Number 3*

*January 19, 2024*

*Pages 189 - 298*

---



# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, Texas 78711  
(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

***Texas Register***, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

***Secretary of State*** - Jane Nelson

***Director*** - Je T'aime Swindell

***Editor-in-Chief*** - Jill S. Ledbetter

**Editors**

Leti Benavides

Jay Davidson

Briana Franklin

Belinda Kirk

Laura Levack

Joy L. Morgan

Matthew Muir

Breanna Mutschler

Angelica Salcedo

# IN THIS ISSUE

<b>GOVERNOR</b>	
Appointments.....	193
<b>ATTORNEY GENERAL</b>	
Requests for Opinions.....	195
<b>EMERGENCY RULES</b>	
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
<b>WILDLIFE</b>	
31 TAC §65.314.....	197
<b>PROPOSED RULES</b>	
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
<b>EMERGENCY MEDICAL CARE</b>	
25 TAC §157.2.....	202
25 TAC §§157.123, 157.125, 157.130, 157.131.....	211
25 TAC §§157.123, 157.125, 157.128, 157.130.....	211
<b>FOOD AND DRUG</b>	
25 TAC §§229.370 - 229.374.....	229
25 TAC §§229.470 - 229.474.....	233
<b>GENERAL SANITATION</b>	
25 TAC §265.190.....	236
<b>WITHDRAWN RULES</b>	
<b>TEXAS STATE BOARD OF PHARMACY</b>	
<b>PHARMACIES</b>	
22 TAC §291.12.....	241
<b>ADOPTED RULES</b>	
<b>TEXAS HEALTH AND HUMAN SERVICES COMMISSION</b>	
<b>MEDICAID MANAGED CARE</b>	
1 TAC §353.1315.....	243
1 TAC §353.1320.....	243
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
<b>HOSPITAL LICENSING</b>	
25 TAC §133.54.....	247
<b>TEXAS DEPARTMENT OF INSURANCE</b>	
<b>LIFE AND ANNUITY</b>	
28 TAC §§4.201 - 4.206.....	257
28 TAC §§4.601 - 4.608, 4.611, 4.613 - 4.628.....	258
28 TAC §§4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, 4.1011.....	258
28 TAC §§4.1101 - 4.1104, 4.1106 - 4.1116.....	258
28 TAC §4.1117.....	258
28 TAC §4.1201.....	259
28 TAC §§4.1502 - 4.1510.....	259
28 TAC §§4.1602 - 4.1606, 4.1609 - 4.1613.....	259
28 TAC §§4.1702 - 4.1707.....	260
28 TAC §§4.2102 - 4.2106.....	261
28 TAC §§4.2302, 4.2304, 4.2306 - 4.2312.....	261
28 TAC §4.2322.....	262
28 TAC §§4.2701, 4.2702, 4.2705, 4.2706.....	262
28 TAC §§4.2712 - 4.2716.....	262
28 TAC §§4.2721 - 4.2726.....	263
28 TAC §§4.2731 - 4.2734.....	263
28 TAC §§4.2801 - 4.2808.....	263
28 TAC §4.2811.....	264
28 TAC §§4.2821 - 4.2827, 4.2829.....	264
28 TAC §§4.2831 - 4.2836.....	265
<b>PROPERTY AND CASUALTY INSURANCE</b>	
28 TAC §5.4211.....	266
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
<b>WILDLIFE</b>	
31 TAC §§65.91, 65.92, 65.95, 65.97, 65.98.....	278
31 TAC §§65.605, 65.608, 65.611.....	279
<b>TEACHER RETIREMENT SYSTEM OF TEXAS</b>	
<b>EMPLOYMENT AFTER RETIREMENT</b>	
34 TAC §31.5, §31.6.....	280
<b>TEXAS MILITARY DEPARTMENT</b>	
<b>HAZARDOUS PROFESSION DEATH BENEFITS</b>	
37 TAC §§138.1 - 138.3.....	281
<b>TEXAS COMMISSION ON FIRE PROTECTION</b>	
<b>STANDARDS FOR CERTIFICATION</b>	
37 TAC §§421.1, 421.3, 421.17.....	282
<b>RULE REVIEW</b>	
<b>Adopted Rule Reviews</b>	
Texas Board of Nursing.....	283
Health and Human Services Commission.....	283
<b>TABLES AND GRAPHICS</b>	
.....	285
<b>IN ADDITION</b>	
<b>Comptroller of Public Accounts</b>	
Local Sales Tax Rate Changes Effective January 1, 2024.....	289
<b>Office of Consumer Credit Commissioner</b>	

Notice of Rate Ceilings.....	290	Company Licensing .....	296
<b>Texas Commission on Environmental Quality</b>		Notice of Comment Period Extension Proposed Amendments, New Sections, and Repeal Concerning Preferred and Exclusive Provider Benefit Plans .....	296
Agreed Orders.....	290	<b>Texas Parks and Wildlife Department</b>	
Enforcement Orders.....	291	Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit.....	296
Enforcement Orders.....	292	<b>Public Utility Commission of Texas</b>	
Notices of an Application to Amend a Water Use Permit Application No. 3936D .....	293	Notice of Application for True-Up of 2020 Federal Universal Service Fund Impacts to the Texas Universal Service Fund.....	296
Notice of District Petition .....	293	Notice of Application Under Section 56.023 of the Public Utility Regulatory Act .....	297
Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016272001 .....	294	<b>Texas Workforce Commission</b>	
<b>General Land Office</b>		Correction of Error.....	297
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	295		
<b>Texas Department of Insurance</b>			



# 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 January 4, 2024

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2029, Herman B. Adler of Houston, Texas (Mr. Adler is being reappointed).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2029, Ryan T. Bridges of Houston, Texas (Mr. Bridges is being reappointed).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2029, Andoni Zagouris of McAllen, Texas (Mr. Zagouris is being reappointed).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2029, Ricardo "Rick" Fernandez of Argyle, Texas (Mr. Fernandez is being reappointed).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2029, Garrett C. Marquis of Dallas, Texas (replacing Daniel Guerrero, Ed.D. of San Marcos, whose term expired).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2029, Randall D. "Randy" Martin, Pharm.D. of Fort Worth, Texas (replacing Lori W. Henke, Pharm.D. of Amarillo, whose term expired).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2029, Juliann R. "Julie" Spier of Katy, Texas (Ms. Spier is being reappointed).

### Appointments for January 5, 2024

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Gina R. Bellinger of San Antonio, Texas (Ms. Bellinger is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Gita P. Bolt of Houston, Texas (Ms. Bolt is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Ashley B. Cash of Lubbock, Texas (Ms. Cash is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Denise Castillo-Rhodes of Houston, Texas (Ms. Castillo-Rhodes is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Cynthia T. "Cindy" Conroy of El Paso, Texas (Ms. Conroy is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Sasha S. Crane of McAllen, Texas (Ms. Crane is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Marie E. "Maru" De La Paz of Harlingen, Texas (Ms. De La Paz is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Angelique M. De Luca of Fort Worth, Texas (Ms. De Luca is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Gay W. Gaddis of Austin, Texas (replacing Lorena Junco-Margain of Austin, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Amy J. Henderson of Amarillo, Texas (Ms. Henderson is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Kimberly "Kim" Ratcliff of Oakwood, Texas (replacing Laura Koenig Young of Tyler, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Jinous M. Rouhani of Austin, Texas (Ms. Rouhani is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Janine L. Turner of Valley View, Texas (replacing Catherine Gilbert Susser of Dallas, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Nathali Parker Wiesman of New Braunfels, Texas (Ms. Weisman is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Patsy C. Wesson of Fort Worth, Texas (Ms. Wesson is being reappointed).

Appointed to the Department of Information Resources for a term to expire February 1, 2025, Ketih R. Halman of Lubbock, Texas (replacing Stacey S. Napier of Austin, who resigned).

### Appointments for January 9, 2024

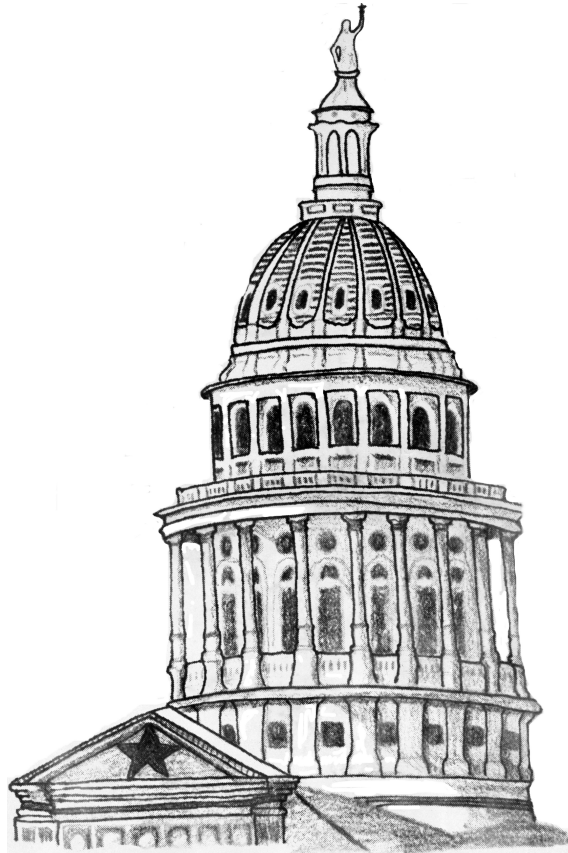
Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2029, Russell Boening of Floresville, Texas (replacing George D. "Dave" Scott of Richmond, whose term expired).

Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2029, Gilbert J. "Gilly" Riojas, III of Corpus Christi, Texas (Mr. Riojas is being reappointed).

Greg Abbott, Governor

TRD-202400071





# 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-0527-KP**

**Requestor:**

The Honorable Brandon Creighton

Chair, Senate Committee on Higher Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a gambling establishment that charges a membership or entrance fee but does not take a percentage of the value gambled violates the gambling provisions of the Penal Code (RQ-0527-KP)

**Briefs requested by January 29, 2024**

**RQ-0528-KP**

**Requestor:**

The Honorable John R. Gillespie

Wichita County Criminal District Attorney

900 Seventh Street

Wichita Falls, Texas 76301-2482

Re: Calculation of the limitation of school tax on homesteads of the elderly or disabled under Texas Tax Code section 11.26 (RQ-0528-KP)

**Briefs requested by February 5, 2024**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202400068

Justin Gordon

General Counsel

Office of the Attorney General

Filed: January 9, 2024





# EMERGENCY RULES

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

#### 31 TAC §65.314

The Texas Parks and Wildlife Department is renewing the effectiveness of emergency amended §65.314 for a 19-day period.

The text of the emergency rule was originally published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5209).

Filed with the Office of the Secretary of State on January 2, 2024.

TRD-202400007

James Murphy

General Counsel

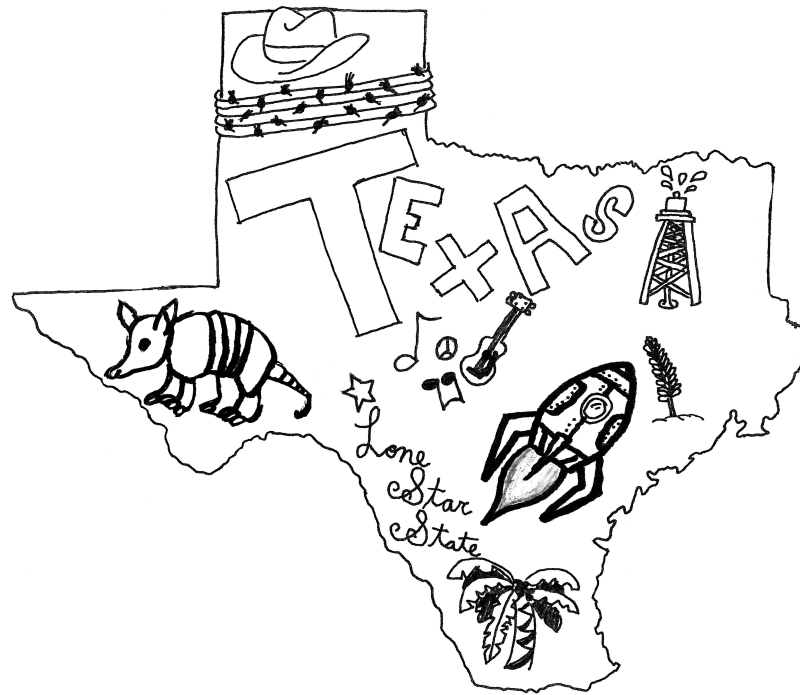
Texas Parks and Wildlife Department

Original effective date: September 7, 2023

Expiration date: January 23, 2024

For further information, please call: (512) 389-4775





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 157. EMERGENCY MEDICAL CARE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §157.2, concerning Definitions, and §157.128, concerning Denial, Suspension, and Revocation of Trauma Facility Designation; the repeal of §157.123, concerning Regional Emergency Medical Services/Trauma Systems; §157.125, concerning Requirements for Trauma Facility Designation; §157.130, concerning Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund; and §157.131, concerning Designated Trauma Facility and Emergency Medical Services Account; and new §157.123, concerning Regional Advisory Councils; §157.125, concerning Requirements for Trauma Facility Designation; and §157.130, concerning Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Services Account.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to update the content and processes with the advances, evidence-based practices, and system processes that have developed since these rules were adopted. The rules also require updates since legislation has been passed since the rules were adopted. Senate Bill (S.B.) 330, 79th Legislature, Regular Session, 2005, requires the development of regional stroke plans. House Bill (H.B.) 15, 83rd Legislature, Regular Session, 2013, and H.B. 3433, 84th Legislature, Regular Session, 2015, require the development of perinatal care regions. S.B. 984, 87th Legislature, Regular Session, 2021, directs the Regional Advisory Councils (RACs) to collect specific health care data. S.B. 969, 87th Legislature, Regular Session, 2021, directs the RACs to provide public information regarding public health disasters to stakeholders. S.B. 1397, 87th Legislature, Regular Session, 2021, directs a RAC to track all transfers and the reason for the transfer out of its region.

#### SECTION-BY-SECTION SUMMARY

The amendment to §157.2, concerning Definitions, integrates terminology for the RACs, emergency medical systems, trauma facilities, and stroke facilities. The definitions include stroke designation terminology and current national standards. The defini-

tions reflect terms for the trauma and emergency health care system, emergency medical services (EMS), trauma center management, and stroke center management.

The repeal of §157.123, concerning Regional Emergency Medical Services/Trauma Systems is replaced with new §157.123, concerning Regional Advisory Councils (RACs), which defines the requirements and functions of the RACs. S.B. 330 amended Texas Health and Safety Code Chapter 773, directing the development of systems of stroke survival, creating a process for stroke designation and regional stroke system plans. H.B. 15 and H.B. 3433 require the development of rules for maternal and neonatal facility designation and the development of perinatal care regions to develop perinatal systems of care. S.B. 1397 adds Texas Health and Safety Code §773.1141, requiring the tracking of all patients transfers out of the identified RAC and the reasons for the transfers. S.B. 984 directs the RACs to collect specific health care data to facilitate emergency response planning and preparedness. S.B. 969 directs the RACs to provide public information regarding public health disasters to stakeholders. The proposed new language of §157.123 integrates these legislative requirements into the rule. New §157.123 uses the term "department" instead of the legacy name "bureau of emergency management (bureau)." Subsection (a) describes a RAC. Subsection (b)(2)(A) requires the RAC to submit a summary of activities validating that all performance criteria are met. Subsection (b)(2)(C) requires the RAC to complete a regional self-assessment, revise the system plan the following year, and have documented evidence that all RAC performance criteria are met. Subsection (c) defines the elements of a regional trauma and emergency health care system plan. Subsection (d) integrates language from S.B. 969 and S.B. 984 into the RAC requirements. Subsection (e) integrates S.B. 1397 requirements for the identified RAC to establish an advisory committee that will develop regional protocols for managing dispatch, triage, transport, and transfer of patients. EMS providers and hospitals are required to collect and report to the RAC data on patients transferred outside of the RAC following established regional protocols. Subsection (f) states the RAC must meet performance criteria to ensure the mission of the regional system is maintained. Subsection (g) defines the relinquishment procedures for a RAC. Subsection (h) describes the procedures to validate RAC documents for compliance.

The repeal of §157.125, concerning Requirements for Trauma Facility Designation, is replaced with new §157.125, concerning Requirements for Trauma Facility Designation. The new section replaces the rule adopted in December 2006, with specific changes from 2019 to integrate the use of telemedicine for facilities that are in a county of less than 30,000 people. New §157.125 defines the requirements hospitals must meet to achieve trauma facility designation. The new rule reflects the national standards for trauma centers as outlined by the Amer-

ican College of Surgeons (ACS). New §157.125 uses the word "department" instead of the legacy name "Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office)." Subsection (a) defines that the department designates hospital applicants as trauma facilities. Subsection (b) describes the documents required for a designation application. Section (c) outlines the steps for approval of a designation application. Subsection (d) defines the eligibility requirements for trauma facility designation. Subsection (e) clarifies that each facility location where inpatients receive hospital services and care may choose to seek separate designation. Subsection (f) describes facilities seeking trauma designation to be validated by a survey organization. Subsection (g) defines the four levels of trauma facility designation. Subsection (g)(1)(A), (2)(A), (3)(A), and (4)(A) integrate the ACS standards into the rule requirements for designation for all levels of trauma centers. Subsection (h) states that Level IV facilities that admit trauma patients to their intensive care unit (ICU) or perform operative interventions on injured patients meeting their trauma activation guidelines or National Trauma Data Bank (NTDB) inclusion criteria or have a projected injury severity score of 11 or greater must meet the Level III ACS verification standards for the laboratory, blood bank, operating suite, ICU, and rehabilitation. Subsection (i) states that Level IV facilities will utilize the most current ACS criteria in addition to the state trauma facility requirements to achieve designation.

Subsection (j) defines the requirements for trauma designation. Subsections (j)(1) and (2) define that facilities seeking trauma designation must meet RAC participation requirements. Subsection (j)(2) states facilities must have evidence of quarterly submission to the State Trauma Registry. Subsection (j)(4) states the facility must maintain a written trauma operational plan for the program. Subsection (j)(10) requires the Chief Executive Officer, Chief Nursing Officer (CNO), Chief Operating Officer, and trauma administrator, in conjunction with the Trauma Medical Director (TMD) and Trauma Program Manager (TPM), to have processes to monitor and track trauma fees and trauma patient uncompensated care; the operational cost of the trauma program; data to assist with completing the uncompensated care grant application; and provide evidence of how these funds are used to demonstrate improvements in the facility's trauma program. Subsection (j)(11) requires the facility to have written trauma management guidelines for the hospital. Subsection (j)(13) states the facilities must complete an annual online Pediatric Readiness Survey. Subsection (j)(15) states rural Level IV trauma facilities in a county with a population of less than 30,000 may utilize telemedicine resources with an Advanced Practice Provider (APP). Subsections (j)(20) state that the facility must maintain medical records that facilitate documentation and integrate the EMS wristband number and substance misuse screening and interventions. Subsection (j)(21) states the facility must have an organized, effective trauma service that is recognized in the medical staff bylaws. Subsection (j)(22) defines that a trauma facility must have a TMD responsible for the provision of trauma care and defines the requirements. Subsection (j)(22)(B) states rural Level IV facilities that do not routinely admit patients meeting trauma activation guidelines and meeting NTDB inclusion criteria may choose to have a board-certified surgeon, emergency medicine physician, or family practice physician serve as their TMD. Subsection (j)(23) states each designated trauma facility must have an identified TPM. Subsection (j)(24) allows rural Level IV or critical access hospital facilities that have 75 or fewer patients annually meeting trauma activation guidelines or NTDB inclusion criteria and do not admit these patients to their facility

for injury management, operative intervention, or intensive care, may choose to utilize a part-time registered nurse in the TPM role, or to integrate the TPM job functions into the CNO's position, as long as the performance improvement process and trauma registry processes are concurrent. Subsection (j)(25) states the TMD, in conjunction with the trauma liaison, defines the criteria and credentialing guidelines for the trauma service surgeons and specialty surgeons covering trauma calls. Subsection (j)(27) states a trauma facility must have a continuous trauma Performance Improvement Patient Safety (PIPS) plan. Subsection (j)(30) states the trauma PIPS plan must outline the roles and responsibilities of the trauma operations committee and its membership. Subsection (j)(31) requires the trauma facility to define who will attend the trauma multidisciplinary peer review committee and have documentation that reflects a minimum of 50 percent attendance. Subsection (j)(34) requires the facility to submit required trauma data every 90 days or quarterly to the State Trauma Registry and have documented evidence of data validation and correction of identified errors or blank fields. Subsection (j)(37)(A) requires the Level I trauma facilities to provide outreach education to the rural facilities in their region. Subsection (j)(38) defines that the trauma facility must have an individual responsible for injury prevention and public education. Subsection (j)(40) states the trauma facility must have a process in place to provide trauma patient outcomes and feedback to EMS providers.

Subsection (k) outlines the process for facilities seeking trauma designation or renewal of designation to submit the application packet. Subsection (l) defines the process for initial trauma facility designation. Subsection (m) states that facilities seeking designation renewal must submit the required documents to the department no later than 90 days before the facility's current trauma designation expiration date. Subsection (n) clarifies the application will not be processed if a facility fails to submit the required application documents and designation fee. Subsection (o) clarifies requirements if a facility requests a different level of care or change in ownership or physical address. Subsection (p) outlines the facility's requirements for scheduling a designation survey through a department-approved survey organization. Subsection (q) defines the requirements for the survey team composition. Subsection (r) requires the survey organizations to follow the department survey guidelines and outlines the conflict of interest for site survey team members. Subsection (s) clarifies that Level I, II, and III facilities using the ACS verification program who do not receive a letter of verification and facilities surveyed by the department-approved survey organization with four or more requirements not met must schedule a conference call with the department. Subsection (t) defines that if a facility's trauma designation expires, the facility must wait six months and begin the process again if they choose to continue as a designated trauma facility. Subsection (u) defines the appeal process for trauma facilities. Subsection (v) outlines the processes for facilities to notify their RAC when the facility's capabilities or capacity to manage trauma patients change and outlines the process to request a waiver or exception for a specific designation requirement. Subsection (w) clarifies that facilities seeking a higher level of designation cannot claim or advertise the higher level of designation until the facility has been awarded the designation level. Subsection (x) states that a hospital providing trauma service must not use or authorize any public communication or advertising containing false, misleading, or deceptive claims regarding their designation level. Subsection (y) states that during a survey, the department or surveyor has the right to review and evaluate trauma patient records, trauma multidisciplinary



plinary performance improvement plan and process documents, and appropriate committee minutes. Subsection (z) states that the department and department-approved survey organizations comply with all relevant laws related to confidentiality.

Section 157.128, concerning Denial, Suspension, and Revocation of Trauma Facility Designation was adopted in September 2000. The amendment changes the legacy name "Office of EMS/Trauma Systems Coordination (office)" to "department" throughout the rule. Subsection (a) updates the reasons why a facility designation may be denied, suspended, or revoked. Subsection (c) describes the appeal process. Subsection (d) clarifies that six months after a facility is denied designation, the facility may reapply for designation. Subsection (e) clarifies that one year after a facility's designation is revoked, the facility may reapply for designation. Subsection (f) adds that the department will inform the facility of the potential funding implications related to the designation denial, suspension, or revocation.

The repeal of §157.130, concerning Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, and the repeal of §157.131, concerning Designated Trauma Facility and Emergency Medical Services Account, are necessary to integrate the rule text in new §157.130, concerning Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Medical Services Account. New §157.130(a)(1) integrates the subdivision of a fund under Texas Health and Safety Code Chapter 780. Subsection (a)(4) reorganizes all funding requirements specific to the EMS allocation. Subsection (a)(4)(B) describes how EMS providers may contribute funds for a specified purpose within a trauma service area (TSA). Subsection (a)(5) reorganizes all requirements for the TSA allocation into one section. Subsection (a)(6) reorganizes all requirements for hospital allocation into one section. Subsection (b) outlines the formula calculation allocations for EMS, RACs, and hospitals. Subsection (c) states that if the department finds that an EMS, RAC, or hospital has violated Texas Health and Safety Code Chapter 773 or fails to comply with this chapter, the department may withhold account monies for a period of three years, depending on the seriousness of the infraction.

#### FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules will not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules by providing telemedicine options in non-rural counties, allowing facilities to

request an exception for a designation requirement, and providing structure for the designation appeal process;

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

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

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

Christy Havel Burton has determined that there may be an adverse economic effect on small businesses, micro businesses, or rural communities relating to hospitals meeting the designation requirements due to the advances in trauma care practices, advances in technology, and clinical resource needs since the adoption of the rule in 2004. Costs are associated with complying with requirements.

Texas has approximately 108 rural trauma designated facilities that may incur additional costs to comply with the proposed Level IV trauma designation requirements.

#### LOCAL EMPLOYMENT IMPACT

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Timothy Stevenson has determined that for each year of the first five years the rules are in effect, the public benefit includes improved quality of care, improved data reflecting trauma outcomes, improved regional system development, and advancements in the EMS/Trauma Systems by aligning the Texas trauma system to current national standards, advances in clinical care, evidence-based practice for trauma care, data management, and regional coordination.

Christy Havel Burton has also determined that for the first five years the rules are in effect, any economic costs to the persons regarding the proposed rules are related to complying with the requirements that align the Texas system with current national standards. Trauma designation is voluntary and the choice of the facility.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Jorie Klein, Director of EMS/Trauma Systems Section, DSHS, Attn: Proposed Trauma Rules, P.O. Box 149347, Mail Code 1876, Austin, Texas 78714-3247; street address 1100 West 49th Street, Austin Texas 78756; or by email to DSHS.EMS-Trauma@dshs.texas.gov.

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

postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Trauma Designation Rules 21R151" in the subject line.

## SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

### 25 TAC §157.2

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment is authorized by Texas Government Code Chapter 531; and Texas Health and Safety Code Chapters 773 and 1001.

#### §157.2. Definitions.

The following words and terms, when used in this chapter [these sections], [shall] have the following meanings, unless the context clearly indicates otherwise:

(1) Abandonment--Leaving a patient without appropriate medical care once patient contact has been established, unless emergency medical services personnel are following the medical director's protocols or [;] a physician directive<sub>2</sub>, or the patient signs a release; or turning the care of a patient over to an individual of lesser education when advanced treatment modalities have been initiated.

(2) Accreditation--Formal recognition by a national association of a provider's service or an education program based on standards established by that association.

(3) Act--Emergency Health Care [Medical Services] Act, Texas Health and Safety Code Chapter 773.

(4) Active pursuit of department designation as a trauma facility--An undesignated facility that is recognized by the department after applying for designation as a trauma facility and has met the requirement to be eligible for uncompensated trauma care funds.

(5) Acute Stroke-Ready Level IV stroke facility--A hospital that is reviewed by a department-approved survey organization and meets the national stroke standards of care for an acute stroke-ready facility as described in §157.133 of this chapter (relating to Requirements for Stroke Facility Designation). The hospital is designated by the department, participates in its local Regional Advisory Council (RAC), participates in the regional stroke plan, and submits data to the department, as requested.

(6) [(4)] Administrator of Record (AOR)--The administrator for an emergency medical services (EMS) [EMS] provider who meets the requirements of the Texas Health and Safety Code [;] §773.05712 [and §773.0415].

(7) [(5)] Advanced Emergency Medical Technician (AEMT)--An individual who is certified by the department and is minimally proficient in performing the basic life support skills required to provide emergency prehospital or interfacility care and initiating and maintaining, under medical supervision, certain advanced life support procedures, including intravenous therapy and endotracheal or esophageal intubation.

(8) Advanced Level II stroke facility--A hospital that completes a site survey with a department-approved survey organization and meets the national stroke standards for Non-Comprehensive Thrombectomy Stroke Center. The hospital is designated by the department, participates in the hospital's local RAC, participates in the regional stroke plan, and submits data to the department, as requested, as defined by §157.133 of this chapter.

(9) Advanced Level III trauma facility--A hospital surveyed by a department-approved survey organization that meets the state requirements and American College of Surgeons (ACS) standards for a Level III trauma facility as described in §157.125 of this chapter (relating to Requirements for Trauma Facility Designation). The hospital is designated by the department; provides care to a defined trauma population based on the hospital's geographic location and proximity to other trauma facilities; provides injury prevention and outreach education; participates in its local RAC; submits data to the State Trauma Registry, the National Trauma Data Bank (NTDB), and the Trauma Quality Improvement Program (TQIP); and has appropriate services for dealing with stressful events for the emergency/trauma care providers.

(10) [(6)] Advanced life support (ALS)--Emergency prehospital or interfacility care that uses invasive medical acts, [and] which would include ALS assessment. The provision of advanced life support must [shall] be under the medical supervision and control of a licensed physician.

[(7) Advanced life support (ALS) vehicle--A vehicle that is designed for transporting the sick and injured and that meets the requirements of §157.11(j)(2) of this title (relating to Requirements for an EMS Provider License) as an advanced life support vehicle and has sufficient equipment and supplies for providing advanced level of care based on national standards and the EMS provider's medical director approved treatment protocols.]

(11) [(8)] Advanced life support [Life Support] assessment--Assessment performed by an AEMT or paramedic that qualifies [qualify] as advanced life support based upon initial dispatch information, when it could reasonably be believed that the patient was suffering from an acute condition that may require advanced skills.

(12) Advanced life support vehicle--A vehicle that is designed for transporting the sick and injured and that meets the requirements of §157.11 of this chapter (relating to Requirements for an EMS Provider License) as an advanced life support vehicle and has sufficient equipment and supplies for providing an advanced level of care based on national standards and the EMS provider's medical director-approved treatment protocols.

(13) Advanced Practice Provider (APP)--A nurse practitioner, physician assistant, or certified registered nurse anesthetist that has been reviewed and credentialed by the facility and may have additional credentialing to participate in the trauma program.

(14) [(9)] Air ambulance provider--A person who uses, operates, maintains, or leases [operates/leases] a fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the

Federal Aviation Administration (FAA) air carrier certificate holder unless they also maintain and control the medical aspects that are consistent with EMS provider licensure.

(15) ~~[(10)]~~ Ambulance--A vehicle for transportation of the sick or injured patient ~~[person]~~ to, from, or between places of treatment for an illness or injury ~~;~~ and that provides out-of-hospital ~~[provide out of hospital]~~ medical care to the patient.

(16) American College of Surgeons (ACS)--The organization that sets the national standards for trauma center requirements, trauma verification, the National Trauma Data Standards (NTDS), NTDB, TQIP, and regional system integration and coordination.

(17) Approved survey organization--An organization that meets the department's standards and expectations and is approved to complete designation site surveys in Texas.

(18) ~~[(11)]~~ Authorized ambulance vehicle--A vehicle authorized to be operated by the licensed provider and that meets all criteria for approval as described in §157.11(e) of this chapter ~~[title]~~.

(19) Bad debt--The unreimbursed cost for patient care to a hospital providing trauma care.

(20) Basic Level IV trauma facility--A hospital surveyed by a department-approved survey organization or defined survey process that meets the state requirements and ACS standards for a Level IV trauma facility as described in §157.125 of this chapter. The hospital is designated by the department, provides trauma care to the hospital's population served in their geographic region, participates in injury prevention and outreach education, participates in its local RAC, submits data to the State Trauma Registry, and has appropriate services for dealing with stressful events for the emergency/trauma care providers.

(21) ~~[(12)]~~ Basic life support (BLS)--Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support will have sufficient equipment and supplies for providing basic-level ~~[basic level]~~ care based on national standards and the EMS provider's medical ~~director-approved~~ ~~[director approved]~~ treatment protocols.

(22) ~~[(13)]~~ Basic life support ~~[(BLS)]~~ vehicle--A vehicle that is designed for transporting the sick or injured and that has sufficient equipment and supplies for providing basic life support based on national standards and the EMS provider's medical ~~director-approved~~ ~~[director approved]~~ treatment protocols.

~~[(14)]~~ Basic trauma facility - A hospital designated by the department as having met the criteria for a Level IV trauma facility as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation). Basic trauma facilities provide resuscitation, stabilization, and arrange for appropriate transfer of major and severe trauma patients to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.]

(23) ~~[(15)]~~ Bypass--Direction given to a prehospital emergency medical services unit~~;~~ by direct or online ~~[direct/on-line]~~ medical control or predetermined triage criteria ~~;~~ to pass the nearest hospital for the most appropriate ~~[hospital/trauma]~~ facility. Bypass protocols ~~must~~ ~~[should]~~ have local physician input into their development and must be reviewed through the regional performance improvement process.

(24) Calculation of the costs of uncompensated trauma care--A calculation of a hospital's total costs of uncompensated trauma care for patients meeting the hospital's trauma activation guidelines

and meeting NTDB registry inclusion criteria determined by summing its charges related to uncompensated trauma care as defined in this chapter (relating to Emergency Medical Care), then applying the cost-to-charge ratio derived in accordance with generally accepted accounting principles.

(25) ~~[(16)]~~ Candidate--An individual who is requesting emergency medical services personnel certification, ~~[or]~~ licensure, recertification, or re-licensure ~~[relicensure]~~ from the department ~~[Texas Department of State Health Services]~~.

(26) ~~[(17)]~~ Certificant--Emergency medical services personnel with current certification from the department ~~[Texas Department of State Health Services]~~.

(27) Charity care--The unreimbursed cost to a hospital providing health care services for an inpatient, emergency department, transferred, or expired person classified by the hospital as "financially indigent."

(28) Commissioner--The commissioner of the Texas Department of State Health Services.

(29) Comprehensive Level I stroke facility--A hospital surveyed by a department-approved survey organization that meets the national standards of care for a Comprehensive Stroke Center, participates in its local RAC, participates in the regional stroke plan, and submits data to the department, as requested.

(30) Comprehensive Level I trauma facility--A hospital surveyed by a department-approved survey organization that meets the state requirements and ACS standards for a Level I trauma facility as described in §157.125 of this chapter and designated by the department. A Level I trauma facility serves as a resource trauma facility for its community and RAC. The facility must have continual access to surgical and medical subspecialty services 24 hours a day, 7 days a week. A comprehensive Level I trauma facility manages major, severe, and all types of trauma injuries; provides ongoing educational opportunities on trauma-related topics for health care professionals and the public; implements targeted injury prevention programs with outcome measures; conducts trauma research; participates in its local RAC; submits data to the State Trauma Registry, TQIP, and the NTDB; and ensures availability of appropriate services for dealing with stressful events for emergency/trauma care providers.

(31) Concurrent performance improvement--Performance improvement reviews that occur at the same time as the patient's hospital admission, beginning on the next operational business day of the patient's admission, and continuing throughout the patient's hospital course. All events are identified within 30 business days after the patient is discharged allowing for timely review, interventions, and corrective actions.

(32) Concurrent trauma registry abstraction--Trauma registry data abstraction and registry data entry occurring at the same time as the patient's hospital admission, beginning on the next operational business day of the patient's admission, continuing throughout the hospital course, and completed within 60 days after the patient's discharge, allowing for timely access to data for performance improvement reviews and decision-making.

(33) Consumer Protection Division (CPD)--A division within the Texas Department of State Health Services responsible for the oversight of EMS provider licensure, certification, and education, and complaint investigation. The division is responsible for the hospital designation process for trauma, stroke, maternal, and neonatal facilities; the RAC system development and advances; and funding, grant management, and distribution of funding for the division.

(34) Contingent designation--A designation awarded to a facility with one to three unmet designation requirements. The department develops a corrective action plan (CAP) for the facility, and the facility must complete this plan and meet requirements to remain designated. Contingent designations may require a focused survey to validate requirements are met.

(35) Contingent probationary designation--A designation awarded to a facility with four or more unmet designation requirements. The department develops a CAP for the facility and the facility must complete this plan and meet requirements to remain designated. The facility may be required to submit documentation reflecting the CAP to the department at defined intervals. Contingent probationary designation requires a full survey within 12 to 18 months after the original survey date. The facility must demonstrate that requirements are met to maintain designation.

(36) Corrective action plan (CAP)--A plan for the facility developed by the department that describes the actions required of the facility to correct requirements that are not met during their designation survey.

(37) Cost-to-charges ratio--A ratio that covers all applicable hospital costs and charges relating to inpatient care determined by the Texas Health and Human Services Commission from the hospital's Medicaid cost report.

(38) County of licensure--The county in which the physical address of a licensed EMS provider is located, as indicated by the provider on the application for licensure that is filed with the department.

{(18) Comprehensive trauma facility - A hospital designated by the department as having met the criteria for a Level I trauma facility as described in §157.125 of this title. Comprehensive trauma facilities manage major and severe trauma patients, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, implement targeted injury prevention programs, and conduct trauma research.}

(39) [(19)] Course medical director--A Texas-licensed [Texas licensed] physician, approved by the department, with experience in and current knowledge of emergency care who must [shall] provide direction over all instruction and clinical practice required in EMS training courses.

(40) [(20)] Credit hour--Continuing education credit unit awarded for successful completion of a unit of learning activity as defined in §157.32 of this chapter [title] (relating to Emergency Medical Services [EMS] Education Program and Course Approval).

(41) [(21)] Critically injured person--A person suffering major or severe trauma, with severe multi-system [multi system] injuries or major unisystem injury; the extent of the injury may be difficult to ascertain, but [which] has the potential of producing mortality or major disability. Retrospectively, typically defined with an injury severity score of 25 or greater.

{(22) Current--Within active certification or licensure period of time.}

(42) Definitive care--The phase of care in which therapeutic interventions, treatments, or procedures are performed to stop or control an injury, illness, or disease and promote recovery.

(43) [(23)] Department--The Texas Department of State Health Services.

(44) Designated facility administrator--Administrator responsible for the oversight, funding, contracts, and leadership of designated programs.

(45) [(24)] Designated infection control officer--A designated officer who serves as a liaison between the employer and their employees [employer's employees] who have been or believe they have been exposed to a potentially life-threatening infectious disease [;] through a person who was treated or [and/or] transported [;] by the EMS provider.

(46) [(25)] Designation--A formal recognition by the department of a hospital's capabilities, commitment, care practices, and participation in the RAC to serve as a trauma or stroke facility [trauma care capabilities and commitment].

(47) Designation appeal--The process for a hospital that has been downgraded or denied a specific level of designation to appeal the designation decision and provide information and justification that the hospital meets the criteria for a higher level of designation.

(48) Dispatch--The sending of persons and equipment by EMS for assessment and prompt, efficient transportation of a sick or injured patient, if required.

(49) [(26)] Distance learning--A method of learning remotely without being in regular face-to-face contact with an instructor in the classroom.

(50) [(27)] Diversion--A procedure put into effect by a health care [trauma] facility to ensure appropriate patient care when that facility is unable to provide the level of care required for [by] trauma [patient's] injuries or stroke care when the facility has temporarily lost capacity or capabilities [exhausted its resources].

(51) [(28)] Emergency call--A [new] call or other similar communication from a member of the public, as part of a 9-1-1 system or other emergency access communication system, made to obtain emergency medical services.

(52) [(29)] Emergency care attendant (ECA)--An individual who is certified by the department as minimally proficient in performing [to provide] emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(53) [(30)] Emergency medical services (EMS)--Services used to respond to an individual's perceived need for immediate medical care [and to prevent death or aggravation of physiological or psychological illness or injury].

(54) [(31)] Emergency medical services [(EMS)] operator--A person who, as an employee of a public agency[;] as [that term is] defined by Texas Health and Safety Code, §771.001, receives emergency calls and may provide medical information or medical instructions to the public during those emergency calls.

{(32) Emergency medical services and trauma care system - An arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.}

(55) [(33)] Emergency medical services [(EMS)] personnel--

- (A) emergency care attendant (ECA);
- (B) emergency medical technician (EMT);
- (C) advanced emergency medical technician (AEMT);

(D) emergency medical technician-intermediate [~~technician intermediate~~] (EMT-I); [or]

(E) emergency medical technician-paramedic (EMT-P); or

(F) licensed paramedic (LP).

(56) [(34)] Emergency medical services [(EMS)] provider--A person who uses, operates, or maintains EMS vehicles and EMS personnel to provide emergency medical services [EMS].

(57) Emergency medical services vehicle--

(A) basic life support (BLS) vehicle;

(B) advanced life support (ALS) vehicle;

(C) mobile intensive care unit (MICU);

(D) MICU rotor-wing and MICU fixed-wing air medical vehicles; or

(E) specialized emergency medical service vehicle.

[(35) Emergency medical services (EMS) volunteer provider--An EMS provider that has at least 75% of the total personnel as volunteers and is a nonprofit organization. See §157.11 of this title regarding fee exemption.]

(58) [(36)] Emergency medical services [(EMS)] volunteer--EMS personnel who provide emergency prehospital or interfacility care in affiliation with a licensed EMS provider or a registered first responder [First Responder] organization (FRO) without remuneration, except for reimbursement of [for] expenses.

(59) Emergency medical services volunteer provider--An EMS provider that has at least 75 percent of the total personnel as volunteers and is a nonprofit organization. See §157.11 of this chapter regarding fee exemption.

(60) [(37)] Emergency medical technician (EMT)--An individual who is certified by the department as minimally proficient in performing [to perform] emergency prehospital care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

(61) [(38)] Emergency medical technician-paramedic (EMT-P)--An individual who is certified by the department as minimally proficient in performing [to provide] emergency prehospital or interfacility care in a health care facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility, by providing advanced life support that includes initiation and maintenance under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

[(39) Emergency medical services vehicle--]

[(A) basic life support (BLS) vehicle;]

[(B) advanced life support (ALS) vehicle;]

[(C) mobile intensive care unit (MICU);]

[(D) MICU rotor wing and MICU fixed wing air medical vehicles; or]

[(E) specialized emergency medical service vehicle.]

[(40) Emergency Medical Task Force (EMTF) - A unit specially organized to provide coordinated emergency medical response operation systems during large scale EMS incidents.]

(62) [(41)] Emergency prehospital care--Care provided to the sick and injured within a health care facility's emergency or urgent care clinical setting, including a [hospital emergency room and a] freestanding emergency medical care facility, by EMS personnel, before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(63) Emergency transfer--An event in which a patient at a facility requires emergency transport to another facility for stabilization or definitive care.

(64) En route--When an EMS vehicle is responding to an EMS dispatch or transporting to a receiving facility.

(65) Event--A variation from the established care management guidelines or system operations such as delays in response, delays in care, complications, or death. An event creates a need for review of the care to identify opportunities for improvement.

(66) Event resolution--An event, as described in paragraph (65) of this section, that is identified and reviewed to determine if opportunities for improvement in care or the system exist, with a specific action plan tracked with data analysis to demonstrate that the plan reached the desired outcomes to meet the desired goal, and the improved outcomes are sustained.

(67) Extraordinary emergency--A serious, unexpected event or situation requiring immediate action to reduce or minimize disruption to established health care services within the EMS and trauma care system.

(68) Field triage--The process of determining which facility is most appropriate for patients based on injury severity, time-sensitive disease factors, and facility availability. Refer to paragraph (104) of this section.

[(42) Facility triage - The process of assigning patients to an appropriate trauma facility based on injury severity and facility availability.]

(69) Financially indigent--An uninsured or underinsured patient unable to pay for the trauma services rendered based on the hospital's eligibility system.

(70) [(43)] Fixed location--The address as it appears on the initial or [and/or] renewal EMS provider license application in which the patient care records[,] and administrative offices are [will be] located.

[(44) General trauma facility - A hospital designated by the department as having met the criteria for a Level III and Level IV trauma facility as described in §157.125 of this title. General trauma facilities provide resuscitation, stabilization, and assessment of injury victims and either provide treatment or arrange for appropriate transfer to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.]

(71) [(45)] Governmental entity--A county, a city or town, a school district, or a special district or authority created in accordance with the Texas Constitution, including a rural fire prevention district, an emergency services district, a water district, a municipal utility district, and a hospital district.

(72) Governor's EMS and Trauma Advisory Council (GETAC)--A committee appointed by the Governor of Texas that provides professional recommendations to the EMS/Trauma System Section regarding EMS and trauma system development and serves as a forum for stakeholder input. GETAC reviews and recommends

changes to rules, assesses the need for EMS and health care resources in rural areas of the state, develops a strategic plan for refining the educational requirements for certification and maintaining certification as EMS personnel, regional system development, and advances the trauma and emergency health care system of Texas. GETAC is supported by various committees defined by the council.

(73) [(46)] Health care entity--A first responder, EMS provider, physician, nurse, hospital, designated trauma facility, or a rehabilitation program.

(74) [(47)] Inactive EMS provider status--The period when a licensed EMS provider is not able to respond or be response-ready for [response ready to] an emergency or non-emergency medical dispatch.

(75) [(48)] Industrial ambulance--Any vehicle owned and operated by an industrial facility as defined in the Texas Transportation Code §541.201, and used for initial transport or transfer of company employees who become urgently ill or injured on company premises to an appropriate health care [medical] facility.

(76) Injury severity score (ISS)--An anatomical scoring system that provides an overall score for trauma patients. The ISS standardizes the severity of trauma injuries based on the three worst abbreviated injury scales (AIS) from the body regions. These regions are the head and neck, face, chest, abdomen, extremity, and external as defined by the Association for the Advancement of Automotive Medicine (AAAM). The highest abbreviated injury score in the three most severely injured body regions have their scores squared, then added together to define the patient's ISS.

- (A) ISS of 1-9 is considered moderate trauma injury.
- (B) ISS of 10-15 is a major trauma injury.
- (C) ISS of 16-24 is a severe trauma injury.
- (D) ISS of 25 or greater is a critical trauma injury.

(77) [(49)] Interfacility care--Care provided while transporting a patient between health care [medical] facilities.

[(50)] Lead trauma facility - A trauma facility which usually offers the highest level of trauma care in a given area, and which includes receipt of major and severe trauma patients transferred from lower level trauma facilities. It also includes on-going support of the regional advisory council and the provision of regional outreach, prevention, and trauma educational activities to all trauma care providers in the trauma service area regardless of health care system affiliation.]

(78) [(51)] Legal entity name--The name of the lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to:

- (A) enter into agreements or contracts;
- (B) assume obligations;
- (C) incur and pay debts;
- (D) sue and be sued in its own right; and
- (E) to be accountable for illegal activities.

(79) Level of harm--A classification system that defines the impact of an event to the patient. There are five levels of harm used to define the impact to the patient as defined by the American Society for Health Care Risk Management:

(A) No harm - The patient was not symptomatic, or no symptoms were detected, and no treatment or intervention was required.

(B) Mild harm - The patient was symptomatic, symptoms were mild, loss of function or harm was either minimal or intermediate but short-term, and no interventions or only minimal interventions were needed.

(C) Moderate harm - The patient was symptomatic, required intervention such as additional operative procedure, therapeutic treatment, or an increased length of stay, required a higher level of care, or may experience permanent or long-term loss of function.

(D) Severe harm - The patient was symptomatic, required life-saving or other major medical or surgical intervention, or may experience shortened life expectancy, and may experience major permanent or long-term loss of function.

(E) Death - The event was a contributing factor in the patient's death.

(80) Levels of review--Describes the levels of performance improvement review for an event in the quality improvement or performance improvement patient safety plan. There are four levels of review:

(A) Primary level of review - Initial investigation of identified events by the program's performance improvement personnel to capture the event details and to validate and document the timeline, contributing factors, and level of harm. The program manager usually addresses system issues with no level of harm, including identifying the opportunities for improvement and action plan appropriate for the event, keeping the trauma medical director (TMD) updated. This must be written in the facility's performance improvement plan.

(B) Secondary level of review - The level of review by the TMD in which the program personnel prepare the documentation and facts for the review. The program medical director reviews the documentation and either agrees or corrects the level of harm, defines the opportunities for improvement with action plans, or refers to the next level of review.

(C) Tertiary level of review - The third level of review by the program to evaluate care practices and compliance to defined management guidelines, identify opportunities for improvement, and define a CAP. Minutes capturing the event, discussion and identified opportunities for improvement with action plans must be documented.

(D) Quaternary level of review - The highest level of review, which may be conducted by an entity external to the program as an element of the performance improvement plan.

(81) [(52)] Licensee--A person who holds a current paramedic license from the department, [Texas Department of State Health Services (department)] or a person who uses, maintains, or operates EMS vehicles and provides EMS personnel to provide emergency medical services, [EMS] and who holds an EMS provider license from the department.

(82) Major Level II trauma facility--A hospital surveyed by a department-approved survey organization that meets the state requirements and ACS standards for a Level II trauma facility as described in §157.125 of this chapter. The hospital is designated by the department; provides care to moderate, severe, and critical trauma patients; provides educational opportunities on trauma-related topics for health care professionals and the public; implements injury prevention and outreach initiatives; participates in its local RAC; submits data to the State Trauma Registry, TQIP, and the NTDB; and has appropriate services for dealing with stressful events for emergency/trauma care providers.

[(53)] Major trauma facility - A hospital designated by the department as having met the criteria for a Level II trauma facility as

described in §157.125 of this title. Major trauma facilities provide similar services to the Level I trauma facility although research and some medical specialty areas are not required for Level II facilities; provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.}]

(83) [(54)] Major trauma patient--A person with injuries, or potential injuries, who may [severe enough to] benefit from treatment at a trauma facility. These patients may or may not present with alterations in vital signs or level of consciousness or with obvious significant injuries [(see severe trauma patient)], but they have been involved in an event that produces [incident which results in] a high index of suspicion for significant injury and potential [and/or] disability. Co-morbid factors such as age or [and/or] the presence of significant medical problems are [should] also [be] considered. These patients [should] initiate a system response to include field [system's or health care entity's trauma response, including prehospital] triage to the most appropriate [a] designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an ISS [injury severity score] of 10-15 [9 or above].

(84) [(55)] Medical control--The supervision of prehospital EMS [emergency medical service] providers by a licensed physician. This encompasses on-line (direct voice contact) and off-line (written protocol and procedural review).

(85) [(56)] Medical Director--The licensed physician who provides medical supervision to the EMS personnel of a licensed EMS provider or a recognized FRO [First Responder Organization] under the terms of the Medical Practice [Practises] Act (Texas Occupations Code[;] Chapters 151 - 165) and rules promulgated by the Texas Medical Board; may also [- Also may] be called "off-line medical control." [referred to as off-line medical control.}]

(86) [(57)] Medical oversight--The assistance and management given to health care providers and [and/or] entities involved in regional EMS/trauma systems planning by a physician or group of physicians designated to provide technical assistance.

(87) [(58)] Medical supervision--Direction given to EMS [emergency medical services] personnel by a licensed physician under the terms of the Medical Practice Act[;] (Texas Occupations Code[;] Chapters 151-165) and rules promulgated by the Texas Medical Board [pursuant to the terms of the Medical Practice Act].

(88) [(59)] Mobile intensive care unit [(MICU)]--A vehicle that is designed for transporting the sick or injured, [and that] meets the requirements of the advanced life support vehicle, and [which] has sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way communication with at least one paramedic on the vehicle when providing EMS.

(89) National EMS Compact--The agreement among states to allow the day-to-day movement of EMS personnel across state boundaries in the performance of their duties.

(90) National EMS Information System (NEMSIS)--A universal standard for how patient care information resulting from an EMS response is collected.

(91) National Trauma Data Bank (NTDB)--The national repository for trauma registry data, defined by the ACS with inclusion criteria and data elements required for submission.

(92) National Trauma Data Standards (NTDS)--The American College of Surgeons' standard data elements with definitions that are required for submission to the NTDB, as defined in paragraph (91) of this section.

(93) [(60)] Off-line medical director [direction] --The licensed physician who provides approved protocols and medical supervision to the EMS personnel of a licensed EMS provider under the terms of the Medical Practice [Practises] Act (Texas Occupations Code [;] Chapters 151 - 165) and [a] rules promulgated by the Texas Medical Board [(22 Texas Administrative Code, §197.3)].

(94) [(61)] Online course--A directed learning process comprising [; comprised of] educational information (articles, videos, images, web links), communication (messaging, discussion forums) for virtual learning [with a process] and measures to evaluate the student's [some way to measure a students'] knowledge.

(95) On-scene time--The time the EMS vehicle, equipment, and staff arrive at the location of a dispatch for EMS, as stated in Texas Health and Safety Code §773.050 concerning Minimum Standards.

(96) [(62)] Operational name--Name under which the business or operation is conducted and presented to the world.

(97) [(63)] Operational policies--Policies and procedures that [which] are the basis for the provision of EMS and that [which] include [; but are not limited to] such areas as vehicle maintenance[;] proper maintenance and storage of supplies, equipment, medications, and patient care devices; complaint investigations; multi-casualty [investigation; multicasualty] incidents[;] and hazardous materials; but do not include personnel or financial policies.

(98) Operations Committee--Committee that provides administrative oversight for a program or organization and is responsible for the approval of protocols, patient management guidelines, or operational changes within the program or system that have the potential to impact care practices before implementing the change to the program or organization.

(99) Operative or surgical intervention--Any surgical procedure provided to address trauma injuries for patients taken directly from the scene, emergency department, or other hospital location to an operating suite for patients meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria.

(100) [(64)] Out of service vehicle--The period when a licensed EMS provider [Provider] vehicle is unable to respond or be response-ready [response ready] for an emergency or non-emergency response.

(101) Performance Improvement and Patient Safety (PIPS) plan--The written plan and processes for evaluating patient care, system response, and adherence to established patient management guidelines; defining variations from care or system response; assigning the level of harm and level of review; identifying opportunities for improvement; and developing the CAP. The CAP outlines data analysis and measures to track the action plan to ensure the desired changes are met and maintained to resolve the event. The medical director, program manager, and administrator have the authority and oversight of PIPS.

(102) Plan of correction (POC)--A report submitted to the department by the facility detailing how the facility will correct one or multiple requirements defined as "not met" during a trauma designation site survey review that is reported in the survey summary or documented in the self-attestation.

[(65) Person--An individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.]

[(66) Prehospital triage--The process of identifying medical/injury acuity or the potential for severe injury based upon physi-

ological criteria, injury patterns, and/or high-energy mechanisms and transporting patients to a facility appropriate for their medical/injury needs. Prehospital triage for injury victims is guided by the prehospital triage protocol adopted by the regional advisory council (RAC) and approved by the department.]

(103) [(67)] Practical exam--An [Sometime referred to as psychomotor, is an] evaluation [exam] that assesses the person's [subject's] ability to perceive instructions and perform motor responses, also referred to as a psychomotor exam.

(104) Prehospital triage--The process of identifying medical/injury acuity or the potential for severe injury based upon physiological criteria, injury patterns, and high-energy mechanisms and transporting patients to a facility appropriate for the patient's medical/injury needs. Prehospital triage for injured patients or time-sensitive disease events is guided by the approved prehospital triage guidelines in the trauma and emergency health care system plan prehospital triage protocol adopted by the RAC and approved by the department. May also be referred to as "field triage" or "prehospital field triage."

(105) Primary EMS provider response area--The geographic area in which an EMS provider routinely provides EMS as agreed upon by a local or county governmental entity or by contract.

(106) Primary Level III stroke facility--A hospital that is designated by the department and meets the department-approved national stroke standards of care for a Primary Stroke Center, participates in its RAC, participates in the regional stroke plan, and submits data as requested by the department.

(107) [(68)] Protocols--A detailed, written set of instructions by the EMS provider's [Provider] medical director, which may include delegated standing medical orders, to guide patient care or the performance of medical procedures as approved.

[(69) Primary EMS provider response area--The geographic area in which an EMS agency routinely provides emergency EMS as agreed upon by a local or county governmental entity or by contract.]

(108) [(70)] Public safety answering point (PSAP)--The call center responsible for answering calls to an emergency telephone number for ambulance services; sometimes called "public safety access point [;]" or "dispatch center."

(109) [(71)] Quality management--Quality assessment [assurance], quality improvement, and [and/or] performance improvement activities. See definition PIPS in paragraph (101) in this section.

[(72) Regional Advisory Council (RAC) - An organization serving as the Department of State Health Services recognized health care coalition responsible for the development, implementation and maintenance of the regional trauma and emergency health care system within the geographic jurisdiction of the Trauma Service Area. A Regional Advisory Council must maintain §501(e)(3) status.]

[(73) Regional EMS/trauma system - A network of health-care providers within a given trauma service area (TSA) collectively focusing on traumatic injury as a public health problem, based on the given resources within each TSA.]

[(74) Regional medical control--Physician supervision for prehospital emergency medical services (EMS) providers in a given trauma service area or other geographic area intended to provide standardized oversight, treatment, and transport guidelines, which should, at minimum, follow the regional advisory council's regional EMS/trauma system plan components related to these issues and 22 Texas Administrative Code, §197.3 (relating to Off-line Medical Director)].

[(75) Recertification--The procedure for renewal of emergency medical services certification.]

(110) [(76)] Receiving facility--A health care facility to which an EMS vehicle may transport a patient who requires prompt continuous medical care, or a facility that is receiving a patient being transferred for definitive care.

(111) Recertification--The procedure for renewal of EMS certification.

(112) [(77)] Reciprocity--The recognition of certification or privileges granted to an individual from another state or recognized EMS system.

(113) Regional Advisory Council (RAC)--An identified trauma service area (TSA) that has established bylaws and is approved by the department as the coordinating agency responsible for system development; coordination of health care services; and responsible for the development, implementation, and maintenance of the regional trauma and emergency health care system plan, performance criteria, and self-assessment within the geographic jurisdiction of the TSA.

(114) Regional Advisory Council Performance Improvement Plan--A written plan of the RAC's processes to review identified or referred events, identify opportunities for improvement, define action plans and data required to correct the event, and establish measures to evaluate the action plan through to event resolution.

(115) Regional medical control--Physician supervision for prehospital EMS providers in a given TSA or other geographic area intended to provide standardized oversight, treatment, and transport guidelines, which should, at minimum, follow the RAC's regional EMS/trauma system plan components related to these issues and 22 Texas Administrative Code, §197.3 (relating to Off-line Medical Director).

(116) [(78)] Relicensure--The procedure for renewal of a paramedic license as described in §157.40 of this chapter [title] (relating to Paramedic Licensure); the procedure for renewal of an EMS provider license as described in §157.11 of this chapter [title].

(117) [(79)] Response pending status--The status of an EMS vehicle that just delivered a patient to a final receiving facility[;] and for which the dispatch center has another EMS response waiting [that EMS vehicle].

(118) [(80)] Response ready--When an EMS vehicle is equipped and staffed in accordance with §157.11 of this chapter [title] (relating to Requirements for a Provider License) and is immediately available to respond to any emergency call 24 hours per day, 7 [seven] days per week (24/7).

(119) Rounding--The continual patient assessment of the progression of care to ensure management guidelines are followed, identify potential complications or variances in care, ensure measures to facilitate the patient and family's goals of care and inclusion in the care plan, and facilitate patient discharge planning and understanding of post-discharge instructions.

(120) Rural county--A county with a population of less than 50,000 based on the latest estimated federal census population figures.

(121) [(81)] Scope of practice or services--The procedures, actions, and processes that [an] EMS personnel are permitted to undertake in keeping with the terms of their professional license or certification and approved by their EMS provider's medical director; or the types of services and the resources to provide those services that a facility has available.



(122) [(82)] Severe trauma patient--A person with injuries or potential injuries defined as high risk for mortality or disability and meets facility trauma activation guidelines and meets NTDB registry inclusion criteria that benefit from definitive [require] treatment at a designated [tertiary] trauma facility. These patients may be identified by an alteration in vital signs or [and/or] level of consciousness or by the presence of significant injuries and must [shall] initiate a [system's and/or health care entity's highest] level of trauma response defined by the facility, including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an ISS [injury severity score] of 16-24 [15 or above].

(123) Simulation training--Training that is typically scenario-based or skill-based utilizing simulated patients or system events to improve or test knowledge, competencies, or skills.

[(83) Shall - Mandatory requirements.]

(124) [(84)] Site survey--An on-site review of a trauma or stroke facility applicant to determine if it meets the criteria for a particular level of designation.

(125) [(85)] Sole provider--The only licensed EMS [emergency medical service] provider in a geographically contiguous service area and in which the next closest provider is greater than 20 miles from the limits of the area.

(126) [(86)] Specialized EMS [emergency medical services] vehicle--A vehicle that is designed for responding to and transporting sick or injured persons by any means of transportation other than by standard automotive ground ambulance or rotor or fixed-wing aircraft [fixed wing air craft] and that has sufficient staffing, equipment, and supplies to provide for the specialized needs of the patient transported. This category includes[; but is not limited to,] watercraft [water craft], off-road vehicles, and specially designed, configured, or equipped vehicles used for transporting special care patients such as critical neonatal or burn patients.

(127) [(87)] Specialty resource centers--Entities that care for specific types of patients such as [trauma,] pediatric, [stroke,] cardiac, [hospitals] and burn injuries [units] that have received certification, categorization, verification, or other forms [form] of recognition by an appropriate agency regarding their capability to definitively treat these types of patients.

(128) [(88)] Staffing plan--A document that [which] indicates the overall working schedule patterns of EMS personnel or hospital personnel.

(129) [(89)] Standard of care--Care equivalent to what any reasonable, prudent person of like education or certification level would have given in a similar situation, based on locally, regionally, and nationally documented evidence-based practices or [adopted standard] adopted standard EMS [emergency medical services] curricula as adopted by reference in §157.32 of this chapter; also refers to the documented standards of care that reflect evidence-based practice [title (relating to Emergency Medical Services Training and Course Approval)].

(130) State EMS Registry--State repository for the collection of EMS response data as defined by Chapter 103 of this title (relating to Injury Prevention and Control).

(131) State Trauma Registry--State repository for the collection of reportable injuries that meet the state inclusion criteria as defined by Chapter 103 of this title.

(132) Stroke--A time-sensitive medical condition that occurs when the blood supply to the brain is reduced or blocked, caused by a ruptured blood vessel or clot, preventing brain tissue oxygenation.

(133) Stroke activation--The process of mobilizing the stroke care team when a patient screens positive for stroke symptoms; may be referred to as a "stroke alert" or "code stroke."

(134) Stroke facility--A hospital that has successfully completed the designation process and is capable of resuscitating and stabilizing, transferring, or providing definitive treatment to stroke patients and actively participates in its local RAC and system plan.

(135) Stroke Medical Director (SMD)--A physician that meets the department's requirements for the stroke medical director and has the authority and oversight for the stroke program, including the performance improvement process, data management, and outcome reviews.

(136) Stroke Program Manager (SPM)--A registered nurse that meets the requirements for the stroke program manager and has the authority and oversight for the stroke program, including the performance improvement process, data management, and outcome reviews.

(137) [(90)] Substation--An EMS provider station location that is not the fixed station and [which] is likely to provide rapid access to a location to which the EMS vehicle may be dispatched.

(138) Telemedicine medical service--A health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or technology as defined in Texas Occupations Code §111.001.

(139) Tertiary exam--A documented reassessment of the admitted trauma patient within 24 hours of admission, which includes a detailed primary and secondary head-to-toe evaluation combined with the reassessment of pertinent labs and images, to identify new injuries that may require further evaluation. In situations where the patient's mental status is altered, or distracting injuries are present, the tertiary evaluation may need to be repeated multiple times until the mental status clears or the distracting injury lessens.

(140) Transport mode--As documented on the patient care record, the usage or not of red lights and sirens when responding to an EMS dispatch and when transporting to a receiving facility.

(141) Transport time--The time from when a patient is transported by EMS from the scene location to a receiving facility.

(142) [(91)] Trauma--An injury or wound to a living body caused by the application of an external force or violence, including burn injuries, and meets the trauma program's trauma activation guidelines and meets NTDB registry inclusion criteria. Poisonings, near-drownings, and suffocations, other than those due to external forces, are to be excluded from this definition.

(143) Trauma activation guidelines--Established criteria that identifies the potential injury risk to the human body and defines the resources and response times required to evaluate, resuscitate, and stabilize the trauma patient. The guidelines must meet the national recommendations, but each trauma program defines the activation guidelines for their facility. The facility chooses to have one activation level, two activation levels, or three activation levels.

(A) The highest level of trauma activation is commonly based on physiological changes in the patient's level of consciousness,

airway or potential respiratory compromise, hypotension or signs of shock, significant hemorrhage, or evidence of severe trauma.

(B) The secondary level of trauma activation is commonly based on the patient's physiological stability with anatomical injuries or mechanisms of injury that have the potential for serious injuries.

(C) The third level of trauma activation is designed for low-energy or single-system injuries that may require specialty service evaluation and intervention.

(144) Trauma administrator--Administrator responsible for the facility oversight, funding, contracts, and collaborative leadership of the program, and serves as an interface with the chief executive team as defined by the facility's organizational structure.

(145) Trauma and emergency health care system plan--The inclusive system that refers to the care rendered after a traumatic injury or time-sensitive disease or illness where the optimal outcome is the critical determinant. The system components encompass epidemiology, risk assessments, surveillance, regional leadership, system integration, business/finance models, prehospital care, definitive care facilities, system coordination for patient flow, prevention and outreach, rehabilitation, emergency preparedness and response, system performance improvement, data management, and research. These components are integrated into the system plan.

(146) Trauma care--Care provided to an injured patient meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria and the continuum of care throughout the system, including discharge and follow-up care or transfer.

(147) Trauma Designation Review Committee--Committee responsible for reviewing trauma designation appeals, reviewing requirement exception and waiver requests, and outlining specific requirements not met in order to identify potential opportunities to improve future rule amendments.

(148) [(92)] Trauma facility--A hospital that has successfully completed the designation process and[;] is capable of resuscitating and stabilizing or transferring or providing [stabilization and/or] definitive treatment to patients who meet trauma activation criteria, [of critically injured persons] and actively participates in its local RAC and system plan [a regional EMS/trauma system].

(149) Trauma-informed care--Care that utilizes the core principles of safety, trustworthiness, collaboration, empowerment, and peer support to foster patient-centered care and engages the patient in their plan of care; practices that prevent "secondary trauma" for the patient.

(150) Trauma Medical Director (TMD)--A physician who meets the requirements and demonstrates the competencies and leadership for the oversight and authority of the trauma program as defined by the level of designation, and who has the authority and oversight for the trauma program, including the performance improvement and patient safety processes, trauma registry, data management, peer review processes, outcome reviews, and participation in the RAC and system plan.

(151) Trauma patient--Any injured person who has been evaluated by EMS, a registered nurse, or a physician and meets trauma activation guidelines and meets NTDB registry inclusion criteria; and requires care in a designated trauma facility based on local, regional, or national standards.

(152) Trauma Program Manager (TPM)--A registered nurse who in partnership with the TMD and hospital administration is responsible for oversight and authority of the trauma program as

defined by the level of designation, including the trauma performance improvement and patient safety processes, the trauma registry, data management, injury prevention, outreach education, outcomes reviews, and research as appropriate to the level of designation. The TPM is responsible for regional participation and system planning, to include mass casualty response.

(153) Trauma Quality Improvement Program (TQIP)--The ACS risk-adjusted benchmarking program that uses submitted data to evaluate specific types of injuries and events to compare cohorts' outcomes with other trauma centers; assists in defining opportunities for improvement in specific patient cohorts.

(154) Trauma registrar--An individual who meets the requirements and whose job responsibilities include trauma patient data abstraction, trauma registry data entry, injury coding, and injury severity scoring, in addition to registry report writing and data management skills specific to the trauma registry and trauma program.

[(93) Trauma nurse coordinator/trauma program manager - A registered nurse with demonstrated interest, education, and experience in trauma care and who, in partnership with the trauma medical director and hospital administration, is responsible for coordination of trauma care at a designated trauma facility. This coordination should include active participation in the trauma performance improvement program, the authority to positively impact trauma care of trauma patients in all areas of the hospital, and targeted prevention and education activities for the public and health care professionals.]

[(94) Trauma patient - Any critically injured person who has been evaluated by a physician, a registered nurse, or emergency medical services personnel, and found to require medical care in a trauma facility based on local, regional or national medical standards.]

(155) [(95)] Trauma registry--A trauma facility [statewide] database that captures required elements of [which documents and integrates medical and system information related to the provision of] trauma care for each patient [by health care entities].

(156) [(96)] Trauma service area (TSA) [Service Area]--Described in §157.122 of this chapter [An organized geographical area of at least three counties administered by a regional advisory council for the purpose of providing prompt and efficient transportation and/or treatment of sick and injured patients].

(157) Uncompensated trauma care--The sum of "charity care" and "bad debt." Contractual adjustments in reimbursement for trauma services based upon an agreement with a payor (including Medicaid, Medicare, Children's Health Insurance Program (CHIP), or other health insurance programs) are not uncompensated trauma care.

(158) Urban county--A county with a population of 50,000 or more based on the latest estimated federal census population figures.

(159) Verification--Process used by the ACS to review a facility seeking trauma verification to validate that the defined standards are met with documented compliance for successful trauma center verification. If a Level I or Level II facility is not verified by the ACS, the department cannot designate the facility.

(160) [(97)] When in service--The period of time when an EMS vehicle is responding to an EMS dispatch, at the scene, or en route [when enroute] to a facility with a patient.

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 January 2, 2024.

TRD-202400013  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: February 18, 2024  
For further information, please call: (512) 535-8538



## SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.123, 157.125, 157.130, 157.131

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals are authorized by Texas Government Code Chapter 531; and Texas Health and Safety Code Chapters 773 and 1001.

*§157.123. Regional Emergency Medical Services/Trauma Systems.*

*§157.125. Requirements for Trauma Facility Designation.*

*§157.130. Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund.*

*§157.131. Designated Trauma Facility and Emergency Medical Services Account.*

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 January 2, 2024.

TRD-202400014  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: February 18, 2024  
For further information, please call: (512) 535-8538



25 TAC §§157.123, 157.125, 157.128, 157.130

### STATUTORY AUTHORITY

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

and Safety Code Chapter 773 (Emergency Health Care Act), which authorizes the commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code Chapter 773, Subchapter G, which provides for the authority to adopt rules related to emergency medical services and trauma services; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new sections are authorized by Texas Government Code Chapter 531; and Texas Health and Safety Code Chapters 773 and 1001.

*§157.123. Regional Advisory Councils.*

(a) The department shall recognize a Regional Advisory Council (RAC) as the coordinating entity for the development and advancement of the regional trauma and emergency health care system within the defined trauma service area (TSA) as described in §157.122 of this subchapter (relating to Trauma Service Areas).

(1) The department shall recognize only one RAC for each TSA.

(2) Trauma, prehospital, perinatal, stroke, cardiac, disaster response, and emergency health care stakeholders in the TSA must be eligible for participation or membership in the RAC.

(b) A RAC must meet the following department requirements to be recognized as a RAC:

(1) maintain incorporation as an entity that is exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code, and to be eligible to distribute the emergency medical services (EMS), Uncompensated Care and TSA allotments;

(2) submit required documentation to the department that includes, at a minimum, the following:

(A) a summary of regional trauma, prehospital, pediatric, perinatal, stroke, cardiac, and emergency health care system activities;

(B) evidence of an annual summary of the EMS, trauma, and emergency health care system performance improvement plan;

(C) a completed regional self-assessment within the first year of the RAC's contract with the department and a current trauma and emergency health care system plan during the second year of the department contract with documented evidence the performance criteria are met, as outlined in Texas Health and Safety Code §773.122 and §780.004;

(i) the initial performance criteria and initial regional self-assessment are used for the years of 2024 and 2025; and

(ii) the inclusive performance criteria and inclusive regional self-assessment are used for the year of 2026 and continuing years;

(3) maintain external financial audits and financial statements as defined in contract; and

(4) maintain a current website with regional bylaws, board members, completed self-assessment, and current trauma and emergency health care system plan posted.

(c) Each RAC must develop and maintain a regionally specific comprehensive trauma and emergency health care system plan that integrates trauma, prehospital, pediatric, perinatal, stroke, cardiac, and emergency health care into the plan and is revised at a minimum of every two years utilizing the completed regional self-assessment. The plan must include all counties within the TSA and must be based on current industry standards and guidelines.

(1) The system plan must address the following elements:

(A) trauma, prehospital, pediatric, perinatal, stroke, and cardiac epidemiology data resources available;

(B) integration of regional stakeholders, identified coalitions, and community partners pertinent to the priorities and needs identified through the regional self-assessment;

(C) regional guidelines for prehospital field triage and destination, treatment, transport, and transfer of patients with time-sensitive health care injuries or illnesses;

(D) prevention and outreach activities guided by the trauma, prehospital, pediatric, perinatal, stroke, and cardiac data available;

(E) system coordination and patient flow;

(F) meaningful participation in regional disaster preparedness, planning, response, recovery, after-action review, data tracking needs, and support of the hospital preparedness stakeholders, including the identified health care coalition and the department;

(G) identification of system-wide health care education for trauma, prehospital, pediatric, perinatal, stroke, cardiac, and the emergency health care system sponsored or coordinated through the RAC;

(H) execution of a systems performance improvement plan that aligns with the department's trauma and emergency health care system performance improvement plan, and includes regional outcome data;

(I) current pediatric readiness capabilities for the regional prehospital and hospital environment and identifies opportunities to improve pediatric readiness within the region;

(J) integration of public health and business community stakeholders; and

(K) guidelines to support regional research projects.

(2) All health care entities and identified coalition partners should participate in the regional planning process.

(d) A RAC must collect from each hospital continual data within their TSA to facilitate emergency preparedness and response planning for a public health disaster, public health emergency, or outbreak of communicable disease, and report the data to the department at least monthly via the electronic reporting system specified by the department, consistent with Texas Health and Safety Code §§81.027, 81.0443, 81.0444, and 81.0445.

(1) The data collected must include all adult and pediatric data specific to:

(A) general beds available and occupied;

(B) intensive care unit (ICU) beds available and occupied;

(C) emergency department visits in the last 24 hours;

(D) hospital admissions in the last 24 hours;

(E) ventilators available and in use; and

(F) hospital deaths in the last 24 hours.

(2) The department may request more or less frequent reporting or may request different information from individual RACs to adequately respond to any public health disaster, public health emergency, or outbreak.

(3) RACs must make the collected data publicly available by posting the data on the RAC's internet website during any public health disaster or public health emergency and, when asked by the department, during outbreaks not associated with a public health disaster or emergency.

(e) A RAC with at least one county within the region located on the international border of Texas and at least one county within the region that is adjacent to the Gulf of Mexico must provide guidelines and protocols related to trauma patient transfer and related services that meet the following requirements:

(1) The RAC must develop an advisory committee composed of equal representation from designated trauma facilities within the RAC.

(2) The advisory committee must develop regional protocols for managing the dispatch, triage, transport, and transfer of patients.

(A) The advisory committee must periodically review patient transfers ensuring the applicable protocols are met.

(B) Each hospital and EMS provider operating within this TSA must collect and report to the RAC data on patients transferred outside of the TSA following the developed and approved regional protocols.

(C) The advisory committee and activities must be integrated into the regional trauma and health care system plan.

(f) A RAC must meet the defined performance criteria to ensure the mission of the regional system is maintained. A RAC must:

(1) notify the department and RAC membership within five days of the loss of capabilities to maintain the infrastructure to oversee and maintain the regional systems as required by the provisions within subsections (a) and (b) of this section or the department contract;

(2) provide the department with a plan of correction (POC) no more than 90 days from the onset of the deficiency for the RAC; and

(3) comply with the provisions of subsections (a) and (b) of this section, all current state and system standards as described in this chapter, and all guidelines and procedures as set forth in the regional trauma and emergency health care system plan.

(g) If a RAC chooses to relinquish services, it must provide at least a 30-day written advance notice to the department, all RAC membership, RAC coalition partners, and county judges within the impacted TSA.

(1) The RAC must submit a written plan to the department for approval before the 30-day notice to relinquish services.

(2) The RAC funding and assets must be dissolved in accordance with state and federal requirements.

(3) The department must consider options of realigning the TSA with another RAC to continue services.

(h) The department has the authority to schedule conferences, in-person or virtual, to review, inspect, evaluate, and audit all RAC

documents to validate the department RAC performance criteria are met.

§157.125. Requirements for Trauma Facility Designation.

(a) The department designates hospital applicants as trauma facilities, which are part of the trauma and emergency health care system.

(b) The facility seeking trauma designation submits a designation application to the department. The department reviews the facility application documents for the appropriate level of designation. The complete designation application must include the following:

(1) an application packet for trauma facility designation and an annual summary of the trauma performance improvement and patient safety (PIPS) plan;

(2) a completed department designation assessment questionnaire;

(3) the documented trauma designation site survey summary report that includes findings of requirements met and medical record reviews;

(4) evidence of validation by the survey organization that the designation requirements are successfully met; and

(5) full payment of the non-refundable, non-transferrable designation fee.

(c) The department's designation unit reviews the designation application and determines the level of designation requirements are met and forwards the approval for designation to the Consumer Protection Division (CPD) Associate Commissioner who awards the designation to the facility.

(d) Eligibility requirements for trauma designation.

(1) Health care facilities eligible for trauma designation include:

(A) a hospital in Texas, licensed or otherwise, in accordance with Chapter 133 of this title (relating to Hospital Licensing);

(B) a hospital owned and operated by the State of Texas;

or  
(C) a hospital owned and operated by the federal government, in Texas.

(2) Each hospital must demonstrate the capability to stabilize and transfer or treat an acute trauma patient, have written trauma management guidelines for the hospital, have a written operational plan, and have a written trauma PIPS plan.

(3) Each hospital operating on a single hospital license with multiple locations (multi-location license) may apply for trauma designation separately by physical location for each designation.

(A) Hospital departments or services within a hospital must not be designated separately.

(B) Hospital departments located in a separate building that is not contiguous with the designated facility must not be designated separately.

(C) Each non-contiguous emergency department of a hospital operating on a single hospital license must recognize, respond, resuscitate, and transfer patients using the same trauma activation guidelines as the main hospital for trauma patients.

(e) A facility is defined under subsection (d) of this section as a single location where inpatients receive hospital services and inpatient

care. If there are multiple buildings covered under a single hospital license, each facility location where inpatients receive hospital services and care may choose to seek designation.

(1) Each facility location must be considered separately for designation. The department determines the designation level for each facility based on the facility's ability to demonstrate designation requirements are met.

(2) Each facility must submit a separate trauma designation application based on its resources and the level of designation the facility is seeking.

(3) A facility with multiple locations that is applying for designation at one location may have other locations where the hospital provides services apply separately for designation if they all are under a single hospital license.

(4) Trauma designation is issued for the physical location and to the legal owner of the operations of the designated facility and is non-transferable.

(f) Facilities seeking trauma designation must meet department-approved requirements and have them validated by a department-approved survey organization.

(g) The four levels of trauma designation are:

(1) Comprehensive trauma facility designation (Level I). The facility, including a free-standing children's facility, must:

(A) meet the current American College of Surgeons (ACS) trauma verification standards for Level I and receive a letter of verification from ACS;

(B) meet the state trauma facility requirements;

(C) have the Trauma Medical Director (TMD) and Trauma Program Manager (TPM) actively participate and meet the participation requirements for their local RAC;

(D) have appropriate services for dealing with stressful events available to emergency/trauma care providers;

(E) submit trauma data to the State Trauma Registry, defined in §103.2(14) of this title (relating to Definitions); and

(F) annually submit a 12-month trauma performance improvement summary report to the department.

(2) Major trauma facility designation (Level II). The facility, including a free-standing children's facility, must:

(A) meet the current ACS trauma verification standards for Level II and receive a letter of verification from the ACS;

(B) meet the state trauma facility requirements;

(C) have the TMD and TPM actively participate in their local RAC;

(D) have appropriate services for dealing with stressful events available to emergency/trauma care providers;

(E) submit trauma data to the State Trauma Registry;

and

(F) annually submit a 12-month performance improvement summary report to the department.

(3) Advanced trauma facility designation (Level III). The facility, including a free-standing children's facility, must:

(A) meet the current ACS trauma verification standards for Level III and receive a letter of verification from the ACS, if utilizing the ACS as their survey organization, or complete a department-approved survey-organization survey;

(B) meet the state trauma facility requirements;

(C) have the TMD and TPM actively participate and meet the participation requirements for their local RAC;

(D) have appropriate services for dealing with stressful events available to emergency/trauma care providers;

(E) submit trauma data to the State Trauma Registry;  
and

(F) annually submit a 12-month performance improvement summary report to the department.

(4) Basic trauma facility designation (Level IV). The facility, including a free-standing children's facility, must:

(A) meet the current ACS trauma verification standards for Level IV and complete a site survey conducted by a department-approved organization or complete a facility self-assessment and meet with the department;

(B) meet the state trauma facility requirements;

(C) have the TMD and TPM actively participate and meet the participation requirements for their local RAC;

(D) have appropriate services for dealing with stressful events available to emergency/trauma care providers;

(E) submit trauma data to the State Trauma Registry;  
and

(F) annually submit a 12-month performance improvement summary report to the department.

(h) A Level IV facility that admits trauma patients to their intensive care unit (ICU) or performs operative interventions on injured patients meeting their trauma activation guidelines and meeting National Trauma Data Bank (NTDB) registry inclusion criteria and have a projected injury severity score (ISS) of 11 or greater must meet the Level III ACS verification standards for the laboratory, blood bank, operating suite, ICU, and rehabilitation.

(i) Level IV facilities will continue to utilize the most current ACS criteria in addition to the state trauma facility requirements to achieve designation.

(j) All facilities seeking trauma designation must meet the following requirements:

(1) Facilities must have documented evidence of participation in their RAC:

(A) evidence of submitting quarterly trauma registry data for the past three years; and

(B) evidence the TMD and TPM are participating in the trauma system planning and regional disaster planning through the RAC.

(2) Facilities must have evidence of quarterly trauma registry submissions to the State Trauma Registry for patients that meet NTDB registry inclusion criteria, following the NTDS definitions.

(3) Facilities must demonstrate trauma registry performance measures for the following:

(A) data validations and correction of issues identified;  
and

(B) measures to ensure accurate coding and ISS and that all patient profiles submitted to the State Trauma Registry have an ISS.

(4) Facilities must maintain a written trauma operational plan for the program to include:

(A) description of the scope of services available to support trauma care;

(B) trauma program authority and oversight;

(C) trauma population evaluated and treated by the trauma program to identify those patients routinely admitted and those patients routinely transferred for definitive care;

(D) trauma activation guidelines that meet the national recommendations;

(E) trauma management guidelines based on evidence-based practice;

(F) trauma policies and procedures;

(G) description of the trauma program staffing;

(H) trauma medical staff credentialing and education requirements;

(I) measures for rounding on admitted trauma patients to complete a tertiary exam and to facilitate the continuum of care through discharge or transfer;

(J) data management procedures to ensure all performance improvement documents and registry documents are secured to maintain confidentiality;

(K) measures to promote a safe culture;

(L) documented transfer guidelines with evidence of medical and nursing staff education on trauma transfers;

(M) resources available for trauma patient population inpatient areas, including the operating suite, ICU, general units, and rehabilitation services;

(N) evidence of staff orientation, skills credentialing, and ongoing education for all areas providing care to injured patients that meet trauma activation guidelines and meet NTDB registry inclusion criteria;

(O) ancillary services available to support the injured patients who meet trauma activation guidelines and meet NTDB registry inclusion criteria;

(P) psychosocial support services for the trauma patient and families;

(Q) trauma operations committee with defined goals and objectives, members, minutes, and attendance requirements;

(R) processes to ensure all trauma designation requirements are monitored for compliance;

(S) trauma registry procedures;

(T) injury prevention resources;

(U) outreach education resources;

(V) TMD and TPM participation in the RAC;

(W) processes to provide EMS feedback and transfer follow-up feedback;

(X) measures to support trauma research as appropriate for the level of designation; and

(Y) succession planning for the TMD, TPM, and trauma registrar.

(5) The trauma program's written operational plan and all associated documents must be approved by the trauma operations committee and forwarded to the hospital's governing body for review and approval.

(6) Chief Executive Officer (CEO), Chief Nursing Officer (CNO), Chief Operating Officer (COO), and Chief Medical Officer (CMO), and the trauma administrator have documented evidence of implementing measures to continually promote a safe culture.

(7) The hospital's CEO, CNO, COO, CMO, and the trauma administrator have documented evidence of implementing trauma-informed care practices in all areas of receiving, assessing, evaluating, and caring for injured patients, and psychosocial support or wellness programs for staff.

(8) The hospital's CEO, CNO, COO, Chief Financial Officer (CFO), and the trauma administrator are responsible for providing adequate resources to ensure the trauma program's performance improvement and patient safety processes and trauma registry maintain concurrent operations.

(9) The hospital's CEO, CMO, trauma administrator, and TMD have measures in place to:

(A) monitor the trauma physicians' contract deliverables, ensuring adequate trauma coverage, with backup coverage when needed;

(B) ensure there are defined requirements for credentialing, education, training, and timeliness of response to trauma activations;

(C) ensure attendance at required meetings, including RAC meetings;

(D) ensure disaster mass casualty response requiring surge intensive care or operating room capabilities; and

(E) ensure all other physician designation requirements are met.

(10) The hospital's CEO, CNO, COO, CFO, and trauma administrator, in conjunction with the TMD and TPM, establish processes to monitor and track:

(A) trauma fees and trauma patient uncompensated care;

(B) the operational cost of the trauma program;

(C) data required to complete the uncompensated care application; and

(D) how the uncompensated care funds are used to improve the facility's trauma program and trauma care.

(11) Written trauma management guidelines specific to the hospital that align with evidence-based practices and current national standards must be reviewed a minimum of every three years by the trauma operations committee. Guidelines must be established for the following:

(A) trauma activation and response time based on national recommendations;

(B) trauma resuscitation and documentation;

(C) consultation services response;

(D) admission and transfer;

(E) burn injury management;

(F) management of trauma patients with a defined or suspected neurologic deficit due to spinal cord injury, including neurogenic shock;

(G) management of patients with mild, moderate, and severe traumatic brain injury;

(H) hemorrhage control and management of shock;

(I) complex orthopedic pelvic, acetabular, or long bone fractures, hemodynamically unstable pelvic fractures, fractures with the potential for vascular compromise, and partial or complete amputation of a long bone extremity;

(J) screening, management, and appropriate interventions or referral for both suspected and confirmed abuse of all patient populations;

(K) measures to prevent over-imaging for patients requiring transfer, and processes to share medical images with the receiving facility;

(L) pain management for all populations;

(M) massive transfusion;

(N) management of the acutely injured pregnant patient that is greater than 20 weeks gestation;

(O) providing screening, interventions, and resources for substance use and misuse and mental health;

(P) management guidelines for morbidly obese patients;

(Q) transfer processes to ensure that when the evaluating physician defines an acutely injured patient who meets trauma activation guidelines and meets NTDB registry inclusion criteria with a projected ISS of 11 or greater, the transfer must be to a higher-level trauma facility or specialty resource facility such as a burn center. If the patient is not transferred to a higher level of trauma facility:

(i) the transfer must be reviewed through the trauma performance improvement and patient safety process by the TMD for appropriateness of transfer and the patient's outcome; and

(ii) the TMD's review must include feedback from the accepting facility;

(R) if greater than 15 percent of the patients meeting trauma activation guidelines are less than 15 years-of-age, the facility must have pediatric management guidelines, and if 15 percent of the patients meeting trauma activation guidelines are 65 years or older, the facility must have geriatric trauma management guidelines;

(S) patient and family-centered care;

(T) documentation standards pertinent to the care of trauma patients in all nursing units providing care to the trauma patient; and

(U) processes to measure and report adherence must be integrated into the trauma PIPS plan and aggregately reported through the trauma operations committee.

(12) The trauma program must have provisions for the availability of all necessary equipment and services to administer the appropriate level of care and support for the injured patient meeting the hospital's trauma activation guidelines and meeting NTDB registry inclusion criteria through the continuum of care to discharge or transfer.

(13) Adult trauma facilities must meet and maintain the Emergency Medical Services for Children's Pediatric Readiness Criteria as evidenced by the following:

(A) annual completion of the online Pediatric Readiness Survey (<https://pedsready.org>), including a written corrective action plan (CAP) for identified opportunities for improvement that is monitored through the trauma PIPS plan until resolution;

(B) pediatric equipment and resources immediately available at the facility, and staff with defined and documented competency skills and training on the pediatric equipment;

(C) education and training requirements for Emergency Nursing Pediatric Course (ENPC) or Pediatric Advanced Life Support (PALS) for the nurses responding to pediatric trauma activations;

(D) assessments and documentation include Glasgow Coma Score (GCS); complete vital signs to include temperature, heart rate, respirations, and blood pressure; pain assessment; and weight recorded in kilograms;

(E) serial vital signs, GCS, and pain assessments are completed and documented for the highest level of trauma activations or when shock, a traumatic brain injury, or multisystem injuries are identified;

(F) pediatric imaging guidelines and processes to monitor for over imaging; and

(G) documented evidence that the trauma program has completed a minimum of one quarterly pediatric trauma resuscitation simulation with medical staff participation, including a completed critique that identifies opportunities for improvement that is integrated into the trauma performance improvement initiatives and tracked until the identified opportunities are corrected, and an adult trauma facility that has evidence of evaluating and managing 200 or more patients less than 15 years of age with an ISS of 9 or greater are exempt from this requirement of pediatric trauma simulations.

(14) Free-standing children's trauma facilities must have resources and equipment immediately available for adult trauma resuscitations, adherence to the nursing requirements for Trauma Nurse Core Course (TNCC) or Advanced Trauma Care for Nurses (ATCN), documented evidence that the trauma program has completed a minimum of one quarterly adult trauma resuscitation simulation with medical staff participation, including a completed critique that identifies opportunities for improvement that is integrated into the trauma performance improvement initiatives and tracked until the identified opportunities are corrected. Free-standing children's trauma facilities with evidence of evaluating and managing 200 adult patients 15 years or older with an ISS of 9 or greater are exempt from this requirement for adult trauma simulations.

(15) Rural Level IV trauma facilities in a county with a population less than 30,000 may utilize telemedicine resources with an Advanced Practice Provider (APP) available to respond to the trauma patient's bedside within 15 minutes of notification, with written resuscitation and trauma management guidelines that are monitored through the trauma performance improvement and patient safety processes.

(A) The APP must be current in Advance Trauma Life Support (ATLS), annually maintain an average 16 hours of trauma-related continuing medical education and demonstrate adherence to the trauma patient management guidelines and documentation standards.

(B) The on-call physician must respond within 30 minutes, when requested.

(C) The facility must have a documented telemedicine physician credentialing process.

(D) All assessments, physician orders, and interventions initiated through telemedicine must be documented in the patient's medical record.

(16) Telemedicine in trauma facilities in a county with a population of 30,000 or more, if utilized, must have a documented physician credentialing process, written trauma protocols for utilization of telemedicine that include physician response times, and measures to ensure the trauma management guidelines and evidence-based practice are monitored through the trauma performance improvement and patient safety processes.

(A) Telemedicine cannot replace the requirement for the trauma on-call physician to respond to the trauma activations in-person, to conduct inpatient rounds, or to respond to the inpatient units, when requested.

(B) All telemedicine assessments, physician orders, and interventions initiated through telemedicine must be documented in the patient's medical record.

(C) Telemedicine services or the telemedicine physician may be requested to assist in trauma performance improvement committee reviews.

(17) The TMD must define the role and expectations of the hospitalist or intensivist in providing care to the admitted injured patient that meets trauma activation guidelines and meets NTDB registry inclusion criteria.

(18) The trauma program has an identified administrator or executive leader who assists with the trauma program budget, oversight of trauma contracts, trauma billing, and securing transfer and transport agreements, and who attends a minimum of 50 percent of the trauma operations committee meetings annually. This individual serves as a trauma liaison to the CEO.

(19) A trauma registered nurse is a participating member of the nurse staffing committee.

(20) The facility maintains medical records that facilitate the documentation of trauma patient arrival, level of activation, physician response and team response times, EMS time-out, resuscitation, assessments, vital signs, GCS, serial evaluation of needs, interventions, patient response to interventions, reassessments, and re-evaluation through all phases of care to discharge or transfer, including:

(A) integration of the EMS patient care records, including the EMS wristband tracking number; and

(B) substance misuse screening and interventions.

(21) The facility must have an organized, effective trauma service that is recognized in the medical staff bylaws and approved by the governing body. Medical staff credentialing must include a process for requesting and granting delineation of privileges for the TMD to oversee the providers participating in trauma call coverage, the trauma panel, and trauma management through all phases of care.

(22) The facility must identify a TMD responsible for the provision of trauma care. The TMD must be credentialed and privileged by the facility for the treatment of trauma patients through all phases of care to discharge or transfer. The TMD must have authority and oversight of the trauma program and be dedicated to only one trauma facility. The TMD must be a physician who meets the following criteria:



(A) Level I, II, III and non-rural Level IV trauma facilities must have a TMD who:

(i) is a trauma or general surgeon that is board-certified or board-eligible;

(ii) demonstrates knowledge, expertise, and experience in caring for all types of trauma injuries; and

(iii) preferably, has completed a trauma fellowship.

(B) Rural Level IV facilities that do not routinely admit patients meeting trauma activation guidelines and meeting NTDB registry inclusion criteria to their facility may choose to have a surgeon that is board-certified or board-eligible or an emergency medicine physician that is board-certified or board-eligible, or a family medicine physician that is board-certified or board-eligible and current in ATLS to serve as the facility's TMD:

(i) if the individual serving as the Level IV TMD is not a surgeon or emergency medicine physician or family medicine physician that is board-certified or board-eligible, the physician must be current in ATLS; and

(ii) the physician must annually maintain 16 hours of trauma-related continuing medical education.

(C) Regularly and actively participate in trauma care at the trauma facility where TMD services are provided, including taking trauma call monthly or providing coverage in the emergency department for Level IV facilities utilizing an emergency medicine or family medicine physician as the TMD.

(D) Maintains current verification in ATLS or a department-recognized equivalent course, and preferably, is an ATLS instructor.

(E) Demonstrates effective administrative skills and oversight of the trauma PIPS plan, chairs the secondary level of performance reviews, chairs the trauma operations committee, chairs the trauma multidisciplinary peer review committee, and communicates and collaborates with trauma liaisons for emergency medicine, orthopedics, neurosurgery, critical care, radiology, anesthesia, rehabilitation, and other surgical and medical specialists.

(F) Has the responsibility for credentialing the trauma service surgeons participating in the call schedule, advanced practice providers participating in trauma care, and trauma liaisons, or appropriate physicians for the Level IV facilities, utilizing established and approved guidelines.

(G) Is a member of the facility's disaster planning and preparedness committee with a specific focus on mass casualty, multiple casualties, and events requiring response planning and patient flow management for potential surges in the operating suite or ICU.

(H) Collaborates with the trauma service surgeons participating in the call schedule, advanced practice providers, trauma liaisons, TPM, trauma administrator, and nursing leaders to develop the trauma management guidelines for the trauma facility that are consistent with national evidence-based practice guidelines.

(I) Participates in the RAC trauma committee, disaster preparedness activities, and medical director committee as defined by the RAC bylaws.

(J) Has a documented job description that defines the TMD's authority and oversight of the trauma program through all phases of care.

(K) Completes a trauma performance improvement and patient safety course every four years or as updated; a course on the role

of the TMD at least once; the Federal Emergency Management Agency (FEMA) Independent Study (IS) 100, 200, and 700 courses at least once or as updated; and a course on hospital preparedness, planning, and response to a disaster as defined by the ACS standards at least once.

(L) Provides or facilitates annual training for trauma surgeons, trauma liaisons, or other physicians (for Level IV facilities) on the facility's mass casualty response and focuses on the develop of surge capacity and capabilities for resuscitation, operating room, ICU, patient flow coordination, and job action sheets, which may be completed through table-top simulation training or other educational measures in collaboration with the TPM, emergency department medical director, and the facility's emergency management leader.

(23) Each designated trauma facility must have an identified TPM responsible for monitoring trauma patient care throughout the continuum of care, from pre-hospital management to trauma activation, inpatient admission, rounding during inpatient stay, and transfer or discharge, to include transfer follow-up as appropriate. The role must be only for that facility and cannot cover multiple facilities. The TPM has the following authority and responsibility to:

(A) identify and address trauma performance improvement and patient safety issues through all phases of care in the trauma facility, including validating and documenting identified events and preparing them for the secondary level of review, and implementing and tracking the action plans to address opportunities for improvement or managing the personnel completing these job functions;

(B) perform trauma registry data abstraction, entry, coding, and validation, injury prevention activities, and outreach education activities, and participate in RAC activities;

(C) organize, track, and follow-through on the trauma performance improvement and patient safety processes to ensure resolution and reporting;

(D) comply with the trauma registry processes outlined in the trauma operations plan and data submission requirements to the State Trauma Registry;

(E) oversee the injury prevention, outreach education, and research initiatives of the trauma program in conjunction with the TMD;

(F) co-chair the trauma operations committee;

(G) record the minutes of the trauma multidisciplinary peer review committee discussion;

(H) attend specific facility-wide meetings representing the trauma program;

(I) participate in the RAC trauma committee, disaster preparedness activities, and other committees as defined by the RAC bylaws;

(J) assist with the orientation and education of staff in areas providing trauma care;

(K) serve as the trauma liaison with the facility risk and quality departments;

(L) maintain certification in TNCC or ATCN, and ENPC or PALS; complete the Advancement of Automotive Medicine (AAAM) Injury Scaling Course, as it is updated; complete a TPM course at least once; and complete a trauma performance improvement course every four years, or as updated;

(M) select to attend an alternate course on data management, rather than the AAAM Injury Scaling Course, and have processes in place for continual support for the trauma registry services, which

may include outsourcing, when functioning at a Level IV rural trauma facility with an annual volume of fewer than 75 patients meeting NTDB registry inclusion criteria;

(N) demonstrate expertise in trauma care, and have administrative organization skills;

(O) complete the FEMA IS 100, 200, and 300 courses and a disaster course on hospital preparedness, planning, and response, with the option that Level IV facilities may choose alternate trainings to the IS 300 and to the disaster course on hospital preparedness, planning, and response;

(P) routinely collaborate with the TMD, trauma liaisons, nursing leaders, staff, and other resources to identify opportunities for trauma facility improvements;

(Q) routinely participate or assist with trauma care at the facility;

(R) have a documented job description that defines the TPM's authority and oversight of the trauma program through all phases of care;

(S) be a full-time employee of the facility to ensure that the TPM is current with the facility's policies and procedures and available during business hours to address trauma-related issues to ensure concurrent processes and the hours dedicated to the trauma program are based on the number of injured patients who meet trauma activation guidelines and meet NTDB registry inclusion criteria; and

(T) have an organizational structure that allows the TPM to assess and review trauma care from admission to discharge, provide recommendations to improve care through all phases of care, and a reporting structure to an administrator that has the authority to recommend and monitor facility system changes and oversees the trauma program.

(24) Rural Level IV or Critical Access Hospital (CAH) facilities that annually have 75 or fewer patients that meet trauma activation guidelines, meet NTDB registry inclusion criteria, and registry submissions demonstrate evidence that they do not admit these patients to the hospital for injury management may choose to utilize a part-time registered nurse in the TPM role, or to integrate the TPM responsibilities with the CNO, as long as the trauma performance improvement and trauma registry processes are concurrent, and resources are available to respond to the facility for high trauma volume or high trauma acuity.

(25) The TMD, in conjunction with the trauma liaisons, defines the criteria and credentialing guidelines for the trauma service surgeons and specialty surgeons covering the trauma call schedule. The criteria must include:

(A) board-certification or board-eligibility in a defined specialty;

(B) adherence to trauma activations guidelines and response times;

(C) participation in the trauma PIPS plan;

(D) compliance with ATLS and continuing medical education if not board-certified or board-eligible;

(E) participation and attendance for trauma surgeons and trauma liaisons at the trauma operations committee and trauma multidisciplinary peer review committee meetings maintaining a minimum of 50 percent participation;

(F) participation for trauma surgeons and trauma liaisons in outreach education and injury prevention initiatives;

(G) attendance at assigned facility-wide committees such as the medical staff committee, blood utilization committee, resuscitation committee, critical care committee, pharmacy committee, or prehospital committee;

(H) adherence to transfer guidelines;

(I) adherence to diversion guidelines;

(J) adherence to established evidence-based practice or trauma management guidelines;

(K) adherence to supervision expectations; and

(L) specific activation guidelines, established in collaboration with orthopedic surgery and neurosurgery, which require a 30-minute response to orthopedic and neurosurgical trauma injuries and include monitoring compliance and reporting aggregate response summaries at the operations committee.

(26) The TMD is responsible for the trauma call schedule for the trauma and general surgeons, and for collaborating with trauma liaisons and other specialty services to complete their trauma call schedule and to ensure trauma facility coverage is adequate and that individuals are not on-call for two facilities at the same time. Trauma or general surgeons responsible for responding to trauma activations must be dedicated to no more than one trauma facility while they are on-call.

(A) In Level III facilities, if the specialty physician on trauma call is covering two facilities, there must be a documented contingency plan. The facility must have documented guidelines for on-call practices. This process must be monitored through the trauma PIPS plan and reported through the trauma operations committee.

(B) In Level IV facilities that utilize an emergency medicine physician or family medicine physician as their TMD and do not routinely admit patients to the ICU or operative suite that meet their trauma activation guidelines and meet NTDB registry inclusion criteria, the TMD is responsible for assisting with scheduling physician coverage in the emergency department to ensure trauma requirements are followed.

(27) The trauma facility must maintain a continuous trauma PIPS plan. The plan must be data-driven and must:

(A) define variances in care or events for review, including system issues, delays in care, hospital events such as complications, and all trauma deaths;

(B) define the levels of harm;

(C) define levels of review;

(D) identify opportunities for improvement;

(E) establish action plans to address the opportunities for improvement;

(F) monitor the action plan until the desired change is met and sustained;

(G) identify opportunities to establish a concurrent PIPS plan;

(H) meet staffing standards that meet the ACS standards for performance improvement personnel; and

(I) utilize terminology for classifying morbidity and mortality with the terms:

(i) morbidity or mortality without opportunity;

(ii) morbidity or mortality with opportunity for improvement; and

(iii) morbidity or mortality with regional opportunity for improvement.

(28) The trauma PIPS plan must be approved by the TMD, TPM, and the trauma operations committee and disseminated to all departments providing care to the trauma patient to ensure they are knowledgeable of their role in the plan and the data they share at the trauma operations committee.

(29) The TMD must chair the secondary level of performance review, the trauma multidisciplinary peer review committee, and co-chair the trauma operations committee with the TPM.

(30) The trauma PIPS plan must outline the roles and responsibilities of the trauma operations committee and its membership.

(A) The required members of the trauma operations committee include:

(i) TMD and TPM;

(ii) performance improvement personnel and lead registry staff, if utilized;

(iii) administrator or executive leader;

(iv) nursing managers or leaders for units that provide trauma care;

(v) trauma surgeons, trauma liaisons, and representatives for the trauma APPs;

(vi) ancillary departments that support the trauma program, such as diagnostic radiology, interventional radiology, laboratory, blood bank, respiratory therapy, pharmacy, rehabilitation services, and EMS representatives, as appropriate; and

(vii) managed care contract and billing leaders that attend the committee meeting at least twice a year to review trauma finances and billing status, to share current activities, and to identify opportunities for improvements. Attendance may be in-person or virtually.

(B) Trauma facilities that participate in benchmarking programs must share the facility's benchmark reports with the trauma operations committee to identify successes and opportunities for improvement, develop action plans for the identified opportunities, and monitor the action plan outcomes.

(31) The trauma program must define who will attend the trauma multidisciplinary peer review committee, have documentation that reflects their attendance, and monitor attendance to validate a minimum of 50 percent attendance.

(32) The trauma facility must complete a 12-month summary of the facility's trauma PIPS plan, share the report with its facility quality program, and submit the report to the department.

(33) The trauma facility must document and include in its trauma PIPS plan the external review of the trauma verification and designation pre-review questionnaire, site survey activities, the site survey summary report, including the medical record reviews, and all communication with the department.

(34) Trauma facilities must submit required trauma data every 90 days or quarterly to the State Trauma Registry and have documented evidence of data validation and correction of identified errors or blank fields.

(A) The facility must have procedures that identify the trauma registry inclusion criteria for the Texas reporting requirements. All trauma facilities must include patients meeting NTDB registry inclusion criteria.

(B) Level I, II, and III trauma facilities must submit the validated trauma registry data to the NTDB each quarter.

(C) The trauma registry processes must be concurrent. Registry data abstraction, data entry, and coding must begin during the patient's hospital admission and be completed within 60 days of the patient's hospital discharge, transfer, or death. This requirement must be met at a minimum of 80 percent.

(D) The trauma registry must have sufficient personnel and technical infrastructure support to ensure concurrent data abstraction and complete data entry within the 60-day timeline.

(E) The trauma program must have documented procedures for trauma registry validation, trauma registry data submission to the State Trauma Registry and NTDB as appropriate, and to request data from the facility's trauma registry that are approved by the TMD and TPM and are reviewed at the trauma operations committee.

(35) The trauma facility must meet the current ACS standards for staffing requirements for the trauma registry.

(A) All trauma registrars must have a documented job description with defined core functions and an organizational structure that reports to the TPM.

(B) All trauma registrars must complete the AAAM Injury Scaling Course, a trauma registry course, and the current International Classification of Diseases (ICD) coding class within 12 months of starting their role as a trauma registrar.

(C) Rural Level IV trauma facilities that have 75 or fewer injured patients meeting NTDB registry inclusion criteria and do not admit trauma patients for intensive care or trauma operative interventions may have the trauma registrar attend an alternate data management course or outsource their registry requirements.

(D) Trauma facilities that utilize a pool of trauma registrars must have an identified trauma registrar from the pool that is assigned to the facility to ensure data requests are addressed in a timely manner.

(E) The EMS wristband tracking number must be included in the registry abstraction and submission of data to the State Trauma Registry.

(36) The trauma facility must have education requirements, certification requirements, skills competency requirements, and evidence of trauma continuing education for trauma nursing staff providing care for patients meeting trauma activation guidelines and meeting NTDB registry inclusion criteria that are monitored for compliance.

(A) There must be documented role-specific orientation plans for new staff for all units that provide trauma care.

(B) Registered nurses assigned to care for arriving patients that meet trauma activation guidelines must have current TNCC or ATCN, ENPC or PALS, and Advanced Cardiac Life Support certifications (ACLS). Those that are new to the facility or the facility's trauma resuscitation area must meet these requirements within 12 months of their hiring date.

(C) There must be documented evidence that the highest level of trauma activation established by the facility has two registered nurses with the required education, certifications, and training responding to the activation.

(D) Nurses providing care to the trauma patient through the continuum of care must have documented evidence of trauma training and education for the trauma population they care for, training in trauma-informed care, and access to trauma-related continuing education.

(37) The trauma facility must provide outreach training programs for trauma-related continuing education for staff, community trauma providers, APPs, nurses, EMS, and other staff participating in trauma care or trauma system development.

(A) Level I trauma facilities must have documented evidence of outreach education to the rural facilities in their regions and contiguous region, if a Level I trauma facility is not available in the contiguous region, to include:

- (i) trauma management guidelines for all injuries;
- (ii) designation assistance;
- (iii) transfers; and
- (iv) trauma registry assistance.

(B) The outreach education job functions may be integrated into the TPM's job descriptions for the Level III and IV facilities.

(C) Level III and IV facilities may assist with RAC educational activities or collaborate with other health care systems to provide outreach education.

(38) The trauma facility must have an individual responsible for injury prevention and public education (IPPE).

(A) The Level III and IV facilities may integrate the IPPE job functions into the TPM job description, and IPPE activities may be integrated with RAC activities or provided in collaboration with other health care facilities.

(B) Trauma facilities must participate in all statewide IPPE initiatives, such as the Stop the Bleed course, and provide the appropriate documentation to demonstrate their activities.

(39) The trauma facility must have a comprehensive facility all-hazard disaster response and business continuity plan with procedures for establishing incident command and department-specific guidelines or job action sheets that guide actions and responses.

(A) All trauma program surgeons, trauma liaisons, trauma program personnel, operating suite leaders, and critical care medical director and nursing leaders must complete a mass casualty response training on their role and potential job functions and a job action sheet, to ensure competency regarding measures for surge capacity, capabilities, and patient flow management from resuscitation to inpatient admission, operative suite, and critical care during a multiple casualty or mass casualty event.

(B) The trauma program must have documented evidence of an annual mass casualty or a no-notice multiple casualty simulation training that integrates EMS and is planned by the TMD, emergency department medical director, TPM, trauma administrator, operating suite leaders, critical care leaders, and facility emergency management leaders.

(40) The trauma facility must have a process in place to provide trauma patient outcomes and feedback to EMS providers.

(A) The facility must have documented guidelines to provide EMS time-out for the arriving injured patient that are a collaborative outcome between the TMD, emergency department medical director, and the EMS medical directors.

(B) Trauma patient outcomes and feedback data must be handled in compliance with the Health Information Portability Accountability Act (HIPAA) and relevant state law.

(C) Processes must be established and agreed to between the TMD and the EMS medical directors for the top three EMS transporting agencies to receive trauma patient outcomes, feedback, and identified opportunities for improvement for the patients they transport to the facility on a scheduled basis.

(D) Trauma facilities must provide EMS feedback within 30 days of arrival on trauma patients the EMS providers transported to the facility, as requested.

(E) Feedback must include the first 24 hours of care, resuscitation disposition, injury diagnosis available, operative interventions, and demographic information.

(F) All identified EMS opportunities for improvement are shared with the specific transporting EMS provider following HIPAA guidelines.

(k) A facility seeking trauma designation or renewal of designation must submit the completed designation application packet, have the required documents available at the time of the site survey, and submit the survey summary and medical record reviews following the completed site survey.

(1) A complete application packet contains the following:

(A) a trauma designation application for the requested level of designation;

(B) a completed department pre-review questionnaire and documentation that no potential conflict of interest exists;

(C) full payment of the designation fee and department remit form submitted to the department Cash Branch per the designation application instructions;

(D) evidence of the TMD and TPM attendance at RAC meetings throughout the designation cycle;

(E) evidence of documented data validation and quarterly submission to the State Trauma Registry and NTDB for the past 12 months;

(F) the documentation in subparagraphs (A) - (D) of this paragraph must be submitted to the department and department-approved survey organization no later than 45 days before the facility's scheduled site survey.

(2) The facility must have the required documents available and organized for the actual site survey review process, including:

(A) documentation of a minimum of 12 months of trauma performance improvement and patient safety reviews, including minutes and attendance of the trauma operations meetings and the trauma multidisciplinary peer review committee meetings, all trauma-documented management guidelines or evidence-based practice guidelines, and all trauma-related policies, procedures, protocols, and diversion times;

(B) evidence of 12 months of trauma registry data abstraction and data entry, with completed registry files demonstrating 80 percent of files completed within 60 days of patient discharge, transfer, or death;

(C) documentation of all injury prevention, outreach education, public education, and research activities; and

(D) documentation to reflect the Texas designation requirements and that ACS standards for verification are met.

(3) Not later than 90 days after the trauma site survey, the facility must submit to the department the following documentation:

(A) the documented trauma designation site survey summary report that includes the requirements met and not met, and the medical record reviews; and

(B) a POC, if required by the department, which addresses all designation requirements defined as "not met" in the trauma designation site survey summary report and must include:

(i) a statement of the cited designation requirement not met;

(ii) a statement describing the corrective action taken by the facility seeking trauma designation to meet the requirement;

(iii) the title of the individuals responsible for ensuring the corrective actions are implemented and monitored;

(iv) the date the corrective actions are implemented;

(v) a statement on how the corrective action will be monitored and what data is measured to identify change;

(vi) documented evidence that the POC is implemented within 60 days of the survey date; and

(vii) any subsequent documents requested by the department.

(4) The application includes full payment of the non-refundable, non-transferrable designation fee listed:

(A) For Level I and Level II trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$5,000 and a lower limit of \$4,000.

(B) For Level III trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$2,500 and a lower limit of \$1,500.

(C) For Level IV trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$1000 and a lower limit of \$500.

(5) All application documents except the designation fee will be submitted electronically to the department.

(l) Facilities seeking initial trauma designation must complete a scheduled conference call with the department and include the facility's CEO, CNO, COO, trauma administrative or executive leader, TMD, and TPM before scheduling the designation site survey. The following information must be provided to the department before the scheduled conference call with the department:

(1) job descriptions for the trauma administrator, TMD, TPM, and trauma registrar;

(2) trauma operational plan;

(3) trauma PIPS plan;

(4) trauma activation and trauma management guidelines;  
and

(5) trauma registry procedures.

(m) Facilities seeking designation renewal must submit the required documents described in subsection (l) of this section to the department no later than 90 days before the facility's current trauma designation expiration date.

(n) The application will not be processed if a facility seeking trauma designation fails to submit the required application documents and designation fee.

(o) A facility requesting designation at a different level of care or experiencing a change in ownership or a change in physical address must notify the department and submit a complete designation application packet and application fee.

(p) Facilities will schedule a designation site survey with a department-approved survey organization. All initial designation site surveys must be performed in person unless approval for virtual review is given by the department.

(1) Facilities requesting Level I and II trauma facility designation must request a verification site survey through the ACS. This includes facilities seeking pediatric Level I and II designation that are in the facility's main campus and those that are pediatric stand-alone facilities.

(2) Level III facilities must request a site survey through either the ACS trauma verification program or through a department-approved survey organization.

(3) Level IV facilities must request a site survey with a department-approved survey organization or follow the defined departmental process.

(4) The facility must notify the department of the date of the scheduled site survey a minimum of 60 days before the survey.

(5) The facility is responsible for any expenses associated with the site survey.

(6) The department, at its discretion, may appoint a department observer to accompany the survey team with the observer costs borne by the department.

(q) The survey team composition must be as follows:

(1) Level I or Level II facilities must be reviewed by a multidisciplinary team, consistent with current ACS standards, and include, at a minimum, two trauma or general surgeons with trauma expertise, an emergency medicine physician, and a TPM, all currently active in a verified trauma facility that currently participates in the management or oversight of trauma patients and practice outside of Texas. All aspects of the site survey process must follow the department survey guidelines.

(2) Level I or Level II adult and pediatric facilities must be reviewed by a multidisciplinary team, consistent with current ACS standards, and include, at a minimum, a pediatric surgeon, a trauma or general surgeon with trauma expertise, a pediatric emergency medicine physician, and a pediatric TPM, all currently active in a verified or designated trauma facility that currently participates in the management or oversight of pediatric trauma patients and practice outside of Texas. All aspects of the site survey process must follow the department survey guidelines.

(3) Level III facilities must be reviewed by a multidisciplinary team with trauma expertise and current participation in the management or oversight of trauma patients at a Level I, II, or III trauma designated facility. All aspects of the site survey process must follow the department survey guidelines.

(A) Level III facilities evaluating 1,000 or more patients per year meeting NTDB registry inclusion criteria must be reviewed by two trauma or general surgeons, an emergency medicine physician, and a TPM.

(B) Level III facilities evaluating 300 to 999 patients per year meeting NTDB registry inclusion criteria must be reviewed by two trauma or general surgeons, or a trauma surgeon and emergency medicine physician, and a TPM.

(C) Level III facilities evaluating 299 or fewer patients per year meeting NTDB registry inclusion criteria must be reviewed by a trauma or general surgeon, and a TPM.

(4) Level IV facilities that evaluate and admit patients who meet NTDB registry inclusion criteria must be reviewed by a multi-disciplinary team with trauma expertise, all currently participating in trauma management or oversight at a Level I, II, or III designated facility. All aspects of the site survey process must follow the department survey guidelines.

(A) Level IV facilities that evaluate and admit 1,000 or more patients per year meeting NTDB registry inclusion criteria must be reviewed by two trauma or general surgeons, an emergency medicine physician, and a TPM, all currently participating in trauma patient management or oversight at a Level I, II, or III designated facility.

(B) Level IV facilities that evaluate and admit 300 to 999 patients per year meeting NTDB registry inclusion criteria must be reviewed by a trauma or general surgeon, an emergency medicine physician, or two trauma surgeons or general surgeons, and a TPM, all currently participating in trauma patient management or oversight at a Level I, II, or III designated facility.

(C) Level IV facilities that evaluate and admit 100 to 299 patients per year meeting NTDB registry inclusion criteria must be reviewed by a trauma or general surgeon and a TPM, currently participating in trauma patient management or oversight at a Level I, II, or III designated facility.

(D) Level IV facilities that evaluate and admit 99 or fewer patients per year meeting NTDB registry inclusion criteria risk must be reviewed by a trauma or general surgeon, or an emergency medicine physician, or a TPM, currently participating in trauma patient management or oversight at a Level I, II, or III designated facility.

(E) Rural Level IV or CAH facilities that evaluate fewer than 75 patients per year meeting NTDB registry inclusion criteria and do not admit these patients to their facility for trauma management, intensive care, or operative intervention will follow the department self-assessment survey guidelines and meet with the department to complete their designation survey.

(5) In Level III and Level IV facilities, the second surgeon may be replaced with an orthopedic surgeon for those facilities with predominately orthopedic trauma cases or a neurosurgeon for those facilities with neurotrauma cases. This individual must currently participate in trauma patient management at a designated Level I, II, or III trauma facility.

(r) Trauma facilities seeking designation or redesignation and department-approved survey organizations must follow the department survey guidelines and ensure all surveyors follow these guidelines.

(1) All members of the survey team for Level III or IV, except department staff, cannot be from the same TSA or a contiguous TSA of the facility's location. There must be no business or patient care relationship or any known conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(2) The facility must not accept surveyors with any known conflict of interest. If a conflict of interest is present, the facility seeking trauma designation must decline the assigned surveyor through the survey organization.

(A) A conflict of interest exists when the surveyor has a direct or indirect financial, personal, or other interest which would limit or could reasonably be perceived as limiting the surveyor's ability to serve in the best interest of the public.

(B) The conflict of interest may include a surveyor who, in the past four years:

(i) has trained or supervised key hospital or medical staff in residency or fellowship;

(ii) collaborated professionally with key members of the facility's leadership team;

(iii) was employed in the same health care system in state or out of state;

(iv) participated in a designation consultation with the facility;

(v) had a previous working relationship with the facility or facility leader;

(vi) conducted a designation survey for the facility;

or

(vii) is the EMS medical director for an agency that routinely transports trauma patients to the facility.

(3) If a designation survey occurs with a surveyor who has a known conflict of interest, the trauma designation site survey summary report and medical record review may not be accepted by the department.

(4) A survey organization must complete an application requesting to perform designation surveys in Texas and be approved by the department. Each organization must renew its application every four years.

(s) Level I, II, and III facilities using the ACS verification program who do not receive a letter of verification and facilities surveyed by a department-approved survey organization with four or more requirements not met must schedule a conference call with the department.

(t) If a health care facility seeking re-designation fails to meet the requirements outlined in subsection (j) of this section, the original designation will expire on its expiration date. The facility must wait six months and begin the process again if they choose to continue as a designated trauma facility.

(u) If a facility disagrees with the designation level awarded by the department, the CEO, CNO, or COO may request an appeal, in writing, sent to the EMS/Trauma Systems Section Director not later than 30 days after receiving a designation award.

(1) All written appeals are reviewed quarterly by the EMS/Trauma Systems Section Director in conjunction with the Trauma Designation Review Committee.

(A) The Trauma Designation Review Committee consists of the following individuals for trauma designation appeals, exception requests, or contingent designation survey summaries:

(i) Chair of Governor's EMS and Trauma Advisory Council (GETAC);

(ii) Immediate past-chair of GETAC;

(iii) Chair of the GETAC Trauma Systems Committee;

(iv) Chair of the GETAC EMS Medical Directors Committee;

(v) Chair of the GETAC Pediatric Committee;  
(vi) Current President of the Texas Trauma Coordinators Forum;

(vii) three individuals who each have a minimum of 10 years of trauma facility oversight as an administrator, medical director, program manager or director, or program liaison, all selected by the current Chair of GETAC and approved by the EMS/Trauma Systems Section Director and CPD Associate Commissioner; and

(viii) three department representatives from the EMS/Trauma Systems Section.

(B) The Trauma Designation Review Committee meetings are closed to maintain confidentiality for all reviews.

(C) The GETAC Chair and the Chair of the Trauma System Committee are required to attend the Trauma Designation Review Committee, in addition to a minimum of five of the other members, to conduct meetings with the purpose of reviewing trauma facility designation appeals, exception requests, and contingent designation survey summaries that identify requirements not met. Agreement of a majority of the members present is required.

(2) If the Trauma Designation Review Committee supports the department's designation determination, the EMS/Trauma Systems Section Director will give written notice of the review and determination to the facility not later than 30 days after the committee's recommendation.

(3) If the Trauma Designation Review Committee recommends a different level of designation, it will provide information to support a designation change to the department. The department reviews the recommendation and determines the approved level of designation. Additional actions, such as a focused review, re-survey, or submission of information and reports to maintain designation, may be required by the department for identified designation requirements that are not met or are partially met.

(4) If a facility disagrees with the Trauma Designation Review Committee's recommendation and department's awarded level of designation, the facility may request a second appeal review with the department's CPD Associate Commissioner in writing and electronically submit to the EMS/Trauma Systems Section no later than 15 days after the date of the department's designation notice. If the CPD Associate Commissioner disagrees with the Trauma Designation Review Committee's recommendation, the CPD Associate Commissioner decides the appropriate level designation awarded. The department sends a notification letter of the second appeal decision within 30 days of receiving the second appeal request.

(5) If the facility continues to disagree with the second level of appeal, the facility has a right to a hearing in the manner referenced for contested cases in Texas Government Code Chapters 1 and 2001.

(v) All designated facilities must follow the exceptions and notifications process outlined in the following paragraphs.

(1) A designated trauma facility must provide written or electronic notification of any significant change to the trauma program impacting the capacity or capabilities to manage and care for a trauma patient. The notification must be provided to the following:

(A) all EMS providers that transfer trauma patients to or from the designated trauma facility;

(B) the hospitals to which it customarily transfers out or from which it transfers in trauma patients;

(C) applicable RACs; and

(D) the department.

(2) If the designated trauma facility is unable to meet the requirements to maintain its current designation, it must submit to the department a documented POC and a request for a temporary exception to the designation requirements. Any request for an exception must be submitted in writing from the facility's CEO and define the facility's timeline to meet the designation requirements. The department reviews the request and the POC and either grants the exception with a timeline based on access to care, including geographic location, other levels of trauma facilities available, transport times, impact on trauma outcomes, and the regional trauma system, or denies the exception. If the facility is not granted an exception or it does not meet the designation requirements at the end of the exception period, the department will elect one of the following:

(A) review the exception request with the Trauma Designation Review Committee with consideration of geographic location, access to trauma care in the local area of the facility, and impact on the regional system;

(B) re-designate the facility at the level appropriate to its revised capabilities;

(C) outline an agreement with the facility to satisfy all designation requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or

(D) accept the facility's surrender of its trauma designation certificate.

(3) If the facility is relinquishing its trauma designation, the facility must provide 30 days written advance notice of the relinquishment to the department. The facility informs the applicable RACs, EMS providers, and facilities to which it customarily transfers out or from which it transfers in trauma patients. The facility is responsible for continuing to provide trauma care services or ensuring a plan for trauma care continuity for 30 days following the written notice of relinquishment of its trauma designation.

(w) A designated trauma facility may choose to apply for a higher level of designation at any time. The facility must follow the initial designation process described in subsection (j) of this section to apply for a higher level of trauma designation. The facility cannot claim or advertise the higher level of designation until the facility has received written notification of the award of the higher level of designation.

(x) A hospital providing trauma services must not use or authorize the use of any public communication or advertising containing false, misleading, or deceptive claims regarding its trauma designation status. Public communication or advertising is deemed false, misleading, or deceptive if the facility uses these, or similar, terms:

(1) trauma facility, trauma hospital, trauma center, functioning as a trauma center, serving as a trauma center, or similar terminology if the facility is not currently designated as a trauma center or designated trauma center at that level; or

(2) comprehensive Level I trauma center, major Level II trauma center, advanced Level III trauma center, basic Level IV trauma center, or similar terminology in its signs, website, advertisements, social media, or in the printed materials and information it provides to the public that is different than the current designation level awarded by the department.

(y) During a virtual, on-site, or focused designation review conducted by the department or a survey organization, the department or surveyor has the right to review and evaluate the following documentation to validate that designation requirements are met in this section and the Texas Health and Safety Code Chapter 773:

- (1) trauma patient records;
- (2) trauma performance improvement plan and process documents;
- (3) appropriate committee documentation for attendance, meeting minutes, and documents demonstrating why the case was referred, the date reviewed, pertinent discussion, and any actions taken specific to improving trauma care and outcomes; and
- (4) documents relevant to trauma care in a designated trauma facility or facility seeking trauma facility designation to validate evidence that designation requirements are met.

(z) The department and department-approved survey organizations must comply with all relevant laws related to the confidentiality of such records.

§157.128. Denial, Suspension, and Revocation of Trauma Facility Designation.

(a) An applicant [applicant/healthcare] facility's trauma application for designation may be denied, or a [healthcare] facility's trauma designation may be suspended or revoked for failure to meet designation requirements, and [; but not limited to;] the following reasons:

- (1) failure to comply with the statute and this chapter [these sections];
- (2) willful preparation or filing of false reports or records;
- (3) fraud or deceit in obtaining or attempting to obtain designation status;
- (4) failure to submit trauma data to the State Trauma [Texas EMS/Trauma] Registry;
- (5) failure to maintain required licenses, designations, and accreditations or when disciplinary action has been taken against the health care [healthcare] facility by a state or national licensing agency;
- (6) failure to have appropriate staff, [or] equipment, or resources required for designation routinely available [as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation)];
- ~~(7) abuse or abandonment of a patient;~~
- (7) [8] unauthorized disclosure of medical or other confidential information;
- (8) [9] alteration or inappropriate destruction of medical records; or
- (9) [10] refusal to render care because of a patient's race, color, gender, [sex, creed,] national origin, sexual preference, age, disability [handicap], medical problem, or inability to pay.[; or]

~~[(11) criminal conviction(s) as described in the Occupations Code, Chapter 53, Subchapter B.]~~

(b) Intermittent [Occasional] failure of a [healthcare] facility to meet designation criteria shall not be grounds for denial, suspension, or revocation by the department [Office of EMS/Trauma Systems Coordination (office)], if the circumstances under which the failure occurred:

- (1) do not reflect an overall deterioration in quality of trauma care; and

(2) are corrected within a reasonable timeframe by the [healthcare] facility.

(c) If the department [office] proposes to deny, suspend, or revoke a designation, the department must [office shall] notify the [healthcare] facility at the address shown in the current department records [of the department]. The notice must [shall] state the alleged facts that warrant the proposed action and state that the [healthcare] facility has an opportunity to appeal the proposed action through the Trauma Designation Review Committee as described in §157.125(u) of this subchapter or request a hearing in the manner referenced for contested cases in Texas [accordance with] Government Code[;] Chapter 2001.

(1) A request for a hearing shall be in writing and submitted to the department [Office of EMS/Trauma Systems Coordinator] and postmarked within 15 days of the date the notice was sent.

(2) If the healthcare facility fails to timely submit a written request for a hearing, it will be deemed to have waived the opportunity for a hearing and the proposed action will be ordered.

(d) Six months after the denial of an applicant [applicant/healthcare] facility's designation, the applicant [applicant/healthcare] facility may reapply for [trauma] facility designation [as described in §157.125 of this title].

(e) One year after the revocation of a [healthcare] facility's designation, the [healthcare] facility may reapply for designation [as described in §157.125 of this title]. The department [office] may deny designation if the department [office] determines that the reason for the revocation continues to exist or if the facility otherwise does not continuously meet the designation requirements.

(f) The department will inform the facility of the potential funding implications related to the designation denial, suspension, or revocation as outlined in:

(1) Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, Subchapter J, Division 4, §355.8052 and §355.8065; and

(2) Section 157.130 of this subchapter (relating to Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Services Account).

§157.130. Funds for Emergency Medical Services, Trauma Facilities, and Trauma Care Systems, and the Designated Trauma Facility and Emergency Services Account.

(a) Allocations determination under Texas Health and Safety Code §773.122 and Chapter 780.

(1) Department determination. The department determines each year:

(A) eligibility criteria for emergency medical services (EMS), trauma service area (TSA), and hospital allocations; and

(B) the amount of EMS, TSA, and hospital allocations based on language described in Texas Health and Safety Code §773.122 and Chapter 780.

(2) Eligibility requirements. To be eligible for funding from the accounts, all potential recipients must maintain the regional participation requirements.

(3) Extraordinary emergency funding.

(A) To be eligible to receive extraordinary emergency funding, an entity must meet the following requirements:



(i) be a licensed EMS provider, a designated trauma facility, or a recognized first responder organization (FRO);

(ii) submit a completed application and any additional documentation requested by the department; and

(iii) provide documentation of active participation in its local Regional Advisory Council (RAC).

(B) Incomplete applications will not be considered for extraordinary emergency funding.

(4) EMS allocation.

(A) The department will contract with each eligible RAC to distribute the county funds to eligible EMS providers based within counties that are aligned with the relevant TSA.

(i) The department will evaluate submitted support documents per the contract statement of work. Awarded funds must be used in addition to current operational EMS funding of eligible recipients and must not supplant the operational budget.

(ii) Funds are allocated by county to be awarded to eligible providers in each county. Funds are non-transferable to other counties within the RAC if there are no eligible providers in a county.

(B) Eligible EMS providers may contribute funds for a specified purpose within the TSA when:

(i) all EMS providers received communication regarding the intent of the contributed funds;

(ii) the EMS providers voted and approved by majority vote to contribute funds; and

(iii) all EMS providers that did not support contributing funds for the specific purpose receive their total funding.

(C) To be eligible for funding from the EMS allocation, providers must:

(i) maintain and comply with all licensure requirements as described in §157.11 of this chapter (relating to Requirements for an EMS Provider License);

(ii) follow RAC regional protocols regarding patient destination and transport in all TSAs in which they operate (verified by each RAC);

(iii) follow actual patient referral patterns of each RAC to which it provides services, if the provider is licensed in a county or contracted to provide EMS in a contiguous county in a neighboring TSA;

(iv) notify the RACs of any potential eligibility to receive funds and meet the RAC's participation requirements, if a provider is contracted to provide EMS within a county of any one TSA and whose county of licensure is another county not in or contiguous with that TSA; and

(v) provide the department evidence of a contract or letter of agreement with each additional county government or taxing authority in which EMS is provided in any county beyond its county of licensure.

(D) Inter-facility transfer letters of agreement and contracts or mutual aid letters of agreement and contracts do not meet this requirement.

(E) Contracts or letters of agreement must be submitted to the department on or before the stated department contract deadline of the respective year and provide evidence of continued coverage

throughout the effective contract dates for which the eligibility of the EMS provider is being considered.

(F) EMS providers with contracts or letters of agreement on file with the department that meet the effective contract dates do not need to resubmit a copy of the contract or letter of agreement unless it has expired or will expire before the effective date of the next contract.

(G) The submitted contracts or letters of agreement must include effective dates to determine continued eligibility.

(H) EMS providers are responsible for ensuring that all necessary portions of their contracts or letters of agreement have been received by the department on or before the listed deadline to be considered for eligibility.

(I) Air ambulance providers must meet the same requirements as ground transport EMS providers to be eligible to receive funds from a specific county other than the county of licensure.

(J) If an EMS provider is licensed in a particular county for a service area that is considered a geo-political subdivision and whose boundary lines cross multiple county lines, it will be considered eligible for the EMS Allocation for all counties overlapped by that geo-political subdivision's boundary lines. Verification from local jurisdictions will be requested for every county that comprises the geo-political subdivision to determine funding eligibility for each county. The eligibility of EMS providers whose county of licensure is in a geo-political subdivision other than those listed in clauses (i) - (v) of this subparagraph will be evaluated on a case-by-case basis. Geo-political subdivisions include:

(i) municipalities;

(ii) school districts;

(iii) emergency service districts (ESDs);

(iv) utility districts; or

(v) prison districts.

(5) TSA allocation.

(A) The department will contract with eligible RACs to distribute the funds for the operation of the 22 TSAs and for equipment, communications, education, and training for the areas.

(B) To be eligible to distribute funding on behalf of eligible recipients in each county to the TSA, a RAC must be:

(i) officially recognized by the department as described in §157.123 of this subchapter (relating to Regional Advisory Councils);

(ii) in compliance with all RAC performance criteria and expectations, have a current RAC self-assessment, and have a current regional trauma and emergency health care system plan; and

(iii) incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments by being listed as an exempt organization under Section 501(c)(3).

(C) The TSA allocation distributed under this paragraph will be based on the relative geographic size and population of each TSA and on the relative amount of trauma care provided.

(6) Hospital allocation. The department will distribute funds to designated trauma facilities to subsidize a portion of uncompensated trauma care provided or to enhance the facility's delivery of trauma care.

(A) Funds distributed from the hospital allocations will be made based on:

(i) the hospital being designated as a trauma facility by the department as defined in Texas Health and Safety Code Chapter 773;

(ii) the percentage of the hospital's uncompensated trauma care cost for patients who meet the National Trauma Data Bank (NTDB) registry inclusion criteria relative to the total uncompensated trauma care cost reported for the identified patient population by qualified facilities that year;

(iii) availability of funds; and

(iv) submission of a complete application to the department within the stated time frame. Incomplete applications will not be considered.

(B) Additional information may be requested by the department to determine eligibility for funding.

(C) A designated trauma facility in receipt of funding from the hospital allocation that fails to maintain its designation as required in §157.125 of this subchapter (relating to Requirements for Trauma Facility Designation) must return to the department all hospital allocation funds received in the prior 12 months within 90 days of failure to maintain trauma designation.

(D) The department may grant an exception to subparagraph (C) of this paragraph if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(E) A facility must have no outstanding balance owed to the department or other state agencies before receiving any future disbursements from the hospital allocation.

(7) Department allocations. The department's process for funding allocations defined in this subsection applies to the account defined in Texas Health and Safety Code Chapter 780 and includes designated trauma facilities and those in active pursuit of trauma designation in the funding allocation.

(8) Department unawarded designation. An undesignated facility in active pursuit of designation but that has not been awarded a trauma designation by the department pursuant to Texas Health and Safety Code §780.004(i) must return to the account all funds received from the hospital allocation, plus a penalty of 10 percent of the awarded amount.

(b) Calculation methods. Calculation of county portions of the EMS allocation, the RAC portions of the TSA allocation, and the hospital allocation will be the following:

(1) EMS allocation.

(A) EMS allocation will be derived by adjusting the weight of the statutory criteria to ensure, as closely as possible, that:

(i) 40 percent of the funds go to urban counties; and

(ii) 60 percent of the funds go to rural counties.

(B) An individual county's portion of the EMS allocation will be based on its geographic size, population, and the number of emergency health care runs, multiplied by adjustment factors determined by the department, so that the distribution approximates the required percentages for urban and rural counties.

(C) The formula will be:

(i) the county's population multiplied by an adjustment factor;

(ii) plus, the county's geographic size multiplied by an adjustment factor;

(iii) plus, the county's total emergency health care runs multiplied by an adjustment factor;

(iv) divided by 3; and

(v) multiplied by the total EMS allocation.

(D) The adjustment factors will be manipulated so that the distribution approximates the required percentages for urban and rural counties.

(E) Total emergency health care runs will be the number of emergency patient care records electronically transmitted to the department in a given calendar year by EMS providers.

(2) TSA allocation.

(A) The TSA allocation will be based on its relative geographic size, population, and trauma care provided as compared to all other TSAs.

(B) The formula will be:

(i) the TSA's percentage of the state's total population;

(ii) plus, the TSA's percentage of the state's total geographic size;

(iii) plus, the TSA's percentage of the state's total trauma care;

(iv) divided by 3; and

(v) multiplied by the total TSA allocation.

(C) Total trauma care will be the number of trauma patient records electronically transmitted to the department in a given calendar year by EMS providers and hospitals.

(3) Hospital allocation.

(A) Distributions, including unexpended portions of the EMS and TSA allocations, are determined by an annual application process.

(B) An annual application must be submitted each fiscal year. Incomplete applications will not be considered for the hospital allocation calculation.

(C) Based on the information provided in the approved application, each facility will receive allocations as follows:

(i) An equal amount, not to exceed 20 percent of the available hospital allocation, to reimburse designated trauma facilities and those facilities in active pursuit of designation under the program and not located in a rural county as defined in §157.2 of this chapter (relating to Definitions).

(ii) Any funds not allocated in paragraphs (1) and (2) of this subsection will be included in the distribution formula in subparagraph (E) of this paragraph.

(D) If the total cost of uncompensated trauma care for patients meeting NTDB registry inclusion criteria exceeds the amount appropriated from the account, minus the amount referred to in subparagraph (C)(i) of this paragraph, the department will allocate funds based on a facility's percentage of uncompensated trauma care costs in

relation to the total uncompensated trauma care cost reported by qualified hospitals for the funding year.

(E) The hospital allocation formula for trauma designated facilities will be:

(i) the facility's reported costs of uncompensated trauma care;

(ii) minus any collections received by the facility for any portion of the facility's uncompensated trauma care previously reported for the purposes of this section;

(iii) divided by the total reported costs of uncompensated trauma care by eligible facilities;

(iv) multiplied by the total money available after reducing the amount to be distributed in subparagraph (C)(i) of this paragraph.

(F) The reporting period of a facility's uncompensated trauma care must apply to costs incurred during the preceding calendar year.

(c) Loss of funding eligibility. If the department finds that an EMS provider, RAC, or hospital has violated Texas Health and Safety Code Chapter 773 or fails to comply with this chapter, the department may withhold account monies for a period of one to three years, depending upon the seriousness of the infraction.

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 January 2, 2024.

TRD-202400015

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 18, 2024

For further information, please call: (512) 535-8538



## CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to Subchapter U, §§229.370 - 229.374, relating to Permitting Retail Food Establishments; and amendments to Subchapter Z, §§229.470 - 229.474, relating to Inspection Fees for Retail Food Establishments.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to update definitions, citations, and other language in 25 TAC Chapter 229, Subchapters U and Z due to the 2021 adoption-by-reference of the 2017 U.S. Food and Drug Administration Food Code in 25 TAC Chapter 228, Retail Food Establishments.

The proposal also removes references to "child care center" in §§229.371, 229.372, and 229.471 since permitting and inspections of food service operations of child care centers transferred to HHSC Regulatory Services Division. Those rules are in 26 TAC Chapter 746 and minimum standards for food preparation and food service are in §746.3317.

### SECTION-BY-SECTION SUMMARY

The proposed amendments include non-substantive editorial changes and revisions to improve clarity that are not specifically enumerated here.

The proposed amendments replace "these sections" and "these rules" for "this subchapter" throughout the subchapters.

### SUBCHAPTER U, PERMITTING RETAIL FOOD ESTABLISHMENTS

The proposed amendment to §229.371, concerning Definitions, adds language to reference the applicability of definitions contained in §228.2. The amendment revises definitions for "food establishment," "nonprofit organization," "retail food store," and "school food establishment." The definitions of "bed and breakfast extended," "bed and breakfast food establishment," "mobile food unit," "outfitter operation," "pushcart," and "roadside food vendor" are removed to avoid redundancy. The definitions of "child care center," "department," "person," and "potentially hazardous food" are removed as these definitions are no longer necessary. A new definition is added for "time and temperature control for safety food (TCS food)." The updated definitions provide clarity to the rule language and ensure consistency in interpretation of the rules.

The proposed amendment to §229.372(a)(3)(A) changes the deadline for a mobile food unit to comply with minimum standards before paying a new permit fee from one to two years.

The proposed amendment to §229.372(a)(5) removes the rule language regarding the permitting of child care centers providing food service and replaces it with new language regarding "use fees" for permit applications submitted through Texas.gov.

The proposed amendment removes §229.372(a)(8) regarding the verification of gross annual volume of food sales.

The proposed amendment adds language regarding food establishments that are not required to pay a fee or obtain a permit to §229.372(b)(2). The language is moved from the definition of "food establishment" in renumbered §229.371(2).

The proposed amendment adds §229.372(d)(6) requiring an applicant to provide any other information DSHS may need to issue a retail food establishment permit.

The proposed amendment removes §229.372(e) since it is included in §229.372(c).

The proposed amendment to renumbered §229.372(e)(1) and (2) adds language stating the fees for temporary food establishment single-event and multiple-event permit applications are non-refundable.

The proposed amendment to renumbered §229.372(f) clarifies the application process for an owner of two or more establishments.

The proposed amendment to renumbered §229.372(h) changes the address to the current website.

The proposed amendment of renumbered §229.372(j) removes change of "ownership" as a trigger for amendment of a permit and clarifies fee amounts for amendments of current permits.

The proposed amendment removes §229.372(l) to avoid redundancy, since Texas.gov fees are included in §229.372(a)(5).

The proposed amendment to §229.373 removes language about obtaining printed copies of 25 TAC Chapter 228 and changes the address to the current website.

The proposed amendment to §229.374(b) adds a reference to Texas Government Code Chapter 2001, Administrative Procedure Act, concerning formal hearing procedures.

#### SUBCHAPTER Z, INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

The proposed amendment to §229.471, concerning Definitions, adds language to reference the applicability of definitions contained in §228.2. The amendment revises definitions for "food establishment," "nonprofit organization," and "school food establishment." The definitions of "mobile food unit," "pushcart," and "roadside food vendor" are removed to avoid redundancy. The definitions of "child care center," "department," "person," and "potentially hazardous food" are removed as these definitions are no longer necessary. A new definition is added for "time and temperature control for safety food (TCS food)." The updated definitions provide clarity to the rule language and ensure consistency in interpretation of the rules.

The proposed amendment to moves language from §229.472(a)(1)(A) to renumbered §229.472(a)(1) and adds language specifying the fee for inspection of a school food establishment is non-refundable.

The proposed amendment removes §229.472(a)(1)(B) concerning requiring applications for school food establishment inspections to be submitted annually between September 15 and October 31.

The proposed amendment adds language regarding food establishments that are not required to pay a fee or obtain a permit to new §229.472(d). The language is moved from the definition of "food establishment" in renumbered §229.471(3).

The proposed amendment to renumbered §229.472(g) changes the address to the current website.

The proposed amendment removes §229.472(g), concerning Texas Online.

The proposed amendment to §229.473 removes language about obtaining printed copies of 25 TAC Chapter 228 and changes the address to the current website.

The proposed amendment to §229.474 revises the reference to the Administrative Procedure Act.

#### FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined for each year of the first five years the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined during the first five years the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will not create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

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

Christy Havel Burton, Chief Financial Officer, has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

#### PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined for each year of the first five years the rules are in effect, the public benefit will be retail food permitting and inspection application rules that are clear, up-to-date, and aligned with program policies and procedures.

Christy Havel Burton has also determined for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules will not require these persons to alter their current business practices.

#### REGULATORY ANALYSIS

DSHS has determined this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to DSHS Consumer Protection Division, Food and Drug Section, Retail Food Safety Operations, Mail Code 1987, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, hand-delivered to 1100 West 49th Street, Austin, Texas 78756, or by email to [foodestablishments@dshs.texas.gov](mailto:foodestablishments@dshs.texas.gov).

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

midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R014" in the subject line.

## SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

### 25 TAC §§229.370 - 229.374

#### STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Health and Safety Code §437.0056 and §437.0125, which direct the Executive Commissioner of HHSC to adopt rules necessary for the implementation of food safety laws; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by the health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed amendments implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 437 and 1001.

#### §229.370. Purpose.

The purpose of this subchapter [these sections] is to implement Texas Health and Safety Code[.] Chapter 437, which requires the department to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations.

#### §229.371. Definitions.

All definitions found in §228.2 of this title (relating to Definitions) are applicable to this subchapter. The following words and terms, when used in this subchapter [these sections], shall have the following meanings, unless the context clearly indicates otherwise.[.]

[(1) Bed and breakfast extended means:]

[(A) an establishment with more than seven rooms for rent; or]

[(B) that provides for food service other than breakfast to overnight guests; and]

[(C) for the purposes of these rules, such facilities are classified as food establishments.]

[(2) Bed and breakfast food establishment means:]

[(A) an establishment that provides food service other than to its overnight guests;]

[(B) the establishment must meet the rules and regulations applicable to retail food establishments; and]

[(C) for the purposes of these rules, such facilities are classified as food establishments.]

[(3) Child care center--Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for on-site consumption. A child care center is classified as a food establishment.]

[(4) Department--The Department of State Health Services.]

(1) [(5)] Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(2) [(6)] Food establishment--

(A) A food establishment is an [An] operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as:

(I) a restaurant [~~food service establishment~~];

(II) a retail food store;

(III) a satellite or catered feeding location;

(IV) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;

(V) a market;

(VI) a vending machine location;

(VII) a self-service food market [~~remote catered operations~~];

(VIII) a conveyance used to transport people;<sup>[.]</sup>

(IX) an institution; or

(X) a food bank; and

(ii) [~~that~~] relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service [~~that is~~] provided by common carriers.

[(A) The term includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments; where consumption is on or off the premises; and regardless of whether there is a charge for the food.]

(B) A food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility supplying a vending machine location or satellite feeding location unless the vending machine or feeding location is permitted by the regulatory authority; and

(ii) an operation conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) A food establishment does not include:

(i) an establishment offering only prepackaged foods that are not time and temperature control for safety (TCS) foods;

(ii) a produce stand only offering whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in §228.2(5) of this title (relating to Definitions); or

(vi) a private home receiving catered or home-delivered food.

[(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a Bed and Breakfast Limited facility as defined in these rules; or a private home.]

[(C) All definitions found in §228.2 of this title (relating to Definitions) under the Retail Food rules are applicable to these sections except that, for purposes of obtaining a permit and payment of fees only, the term "food establishment" does not include:]

[(i) food establishments permitted and inspected under authority granted to Home-Rule or Type A General-Law Municipalities;]

[(ii) federally inspected food establishments on federal property;]

[(iii) correction facilities under the inspection of the Texas Department of Criminal Justice;]

[(iv) nursing homes under the inspection authority of Long Term Care Regulatory in the Texas Department of Human Services;]

[(v) hospitals under the inspection of the Health Facility Licensure Division in the department and which do not serve food to the general public;]

[(vi) food establishments on state campuses inspected by state college or university personnel in accordance with the requirements of §229.373 of this title (relating to Minimum Standards for Permitting and Operation);]

[(vii) food establishments licensed under the Health and Safety Code, Chapter 431, as manufacturers of food, provided the fee for licensure exceeds the permit fee required under §229.372 of this title (relating to Permitting Fees and Procedures);]

[(viii) food establishments under the inspection of the Texas Department of Mental Health and Mental Retardation;]

[(ix) nonprofit organizations as defined in these rules. Nonprofit organizations which meet the definition of "manufacturers of food" under Health and Safety Code, Chapter 431, or the definition of "food salvage establishments" under Health and Safety Code, Chapter 432, are not exempt from licensure in those categories;]

[(x) food and beverage vending machines; and]

[(xi) mobile food units permitted and inspected under the authority granted to Home-Rule or Type A General-Law Municipalities and which operate only within their respective jurisdictions. Except for units which handle only pre-packaged non-potentially hazardous foods, a mobile food unit is classified as a food establishment, regardless of whether or not food preparation occurs on the unit.]

(3) [(7)] Food Service Establishment--A food establishment as defined in these rules.

[(8) Mobile food unit--A vehicle-mounted mobile food establishment designed to be readily moveable.]

(4) [(9)] Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing a 501(c)(3) [501(C)] exemption under the Internal Revenue Code; or a religious organization [organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(i)].

[(10) Outfitter operation--Any operations such as trail rides or river raft trips where food is offered to patrons and which operates out of a central preparation location or food establishment. An outfitter operation is classified as a food establishment.]

(5) [(11)] Permit holder--The person [that is] legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and who possesses a valid permit to operate a food establishment.

[(12) Person--An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.]

[(13) Potentially hazardous food--A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of Clostridium botulinum; or in raw shell eggs, the growth of Salmonella enteritidis.]

[(14) Pushcart--A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous foods requiring a limited amount of preparation as authorized by the regulatory authority. A pushcart is classified as a mobile food unit.]

(6) [(15)] Retail food store--A food establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises [off-premise] consumption. The term includes delicatessens offering [that offer] prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, non-TCS food products [nonpotentially hazardous foods]; roadside markets offering [that offer] only unprocessed fresh fruits and fresh vegetables [for sale]; or farmers markets; except [that], for the purposes of obtaining a permit and payment of fees only, the term "retail food store" does not include establishments permitted and inspected under authority granted to municipalities [Home-Rule and Type A General-Law Municipalities].

[(16) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public roadway or highway. Foods shall not be prepared or processed by roadside food vendors. A roadside vendor is classified as a food establishment.]

(7) [(17)] School food establishment--A food service establishment where food is prepared and intended for service primarily to students in [institutions of learning including, but not limited to,] public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is [classified as] a food establishment and may include concession stands located on the school premises or other school-sponsored venues. School food establishments are managed and operated under the supervision of school district employees.

(8) [(18)] Temporary food establishment--A food establishment operating [that operates] for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(9) Time and temperature control for safety food (TCS food)--A food requiring time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS food may include a food containing protein and moisture and that is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products; pasteurized and unpasteurized milk and dairy products; raw seed sprouts; baked goods that require refrigeration, including cream

or custard pies or cakes; and ice products. The term does not include a food using TCS food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

§229.372. Permitting Fees and Procedures.

(a) Permitting fees.

(1) A person who operates a food establishment shall obtain a permit from the department and pay a permit fee for each establishment unless specifically exempted under subsection (b) or (c) of this section. All permit fees are nonrefundable. Permits are issued for a two-year term. The fees are based on gross annual volume of sales as follows:

(A) for an establishment with gross annual volume of food sales of \$0 - \$49,999.99, the fee is \$250;

(B) for an establishment with gross annual volume of food sales of \$50,000 - \$149,999.99, the fee is \$500; or

(C) for an establishment with gross annual volume of food sales of \$150,000 or more, the fee is \$750.

(2) A person who contracts with a school to provide food services on a for-profit basis shall obtain a permit and pay a permit fee for each school where food services are provided. Permits are issued for a two-year term. The permit fee is \$250.

(3) A person who operates a mobile food unit shall obtain a permit from the department for each mobile food unit operated.

(A) Each mobile food unit shall be inspected and ~~comply [be in compliance]~~ with §228.221 of this title (relating to Mobile Food Units)~~]~~ and pay a nonrefundable permit fee before a permit is issued. If a request for inspection is not received or if the mobile food unit does not meet the minimum standards contained in §228.221 of this title within two years [one year] of paying the permit fee, a new fee shall be paid.

(B) Mobile food unit permits [Permits] are issued for a two-year term. The permit fee is \$250.

(4) Each roadside food vendor shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a two-year term. The permit fee is \$250.

(5) For all initial and renewal applications submitted through Texas.gov, the department is authorized to collect fees in amounts determined by the Department of Information Resources to recover costs associated with using Texas.gov.

~~[(5) Each child care center providing food services shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a two-year term. The permit fee is \$250.]~~

(6) If the license or permit category changes during the license or permit period, the license or permit shall be renewed in the proper category at the time of the renewal.

(7) An establishment required to be licensed as a food manufacturer under Texas [the] Health and Safety Code~~]~~ Chapter 431, and also required to be permitted under this subchapter ~~[Chapter]~~, will be issued only one license or permit. The license or permit fee to be paid will be the higher fee of the two applicable fees.

~~[(8) Gross annual volume of food sales may be verified by data from the Texas Comptroller of Public Accounts.]~~

(b) Exemptions from permit and fees.

(1) Food establishments permitted and inspected by a county or public health district under ~~[the]~~ Texas Health and Safety

Code~~]~~ Chapter 437, provided ~~[the]~~ inspections are based on the requirements of §229.373 of this subchapter ~~[title]~~ (relating to Minimum Standards for Permitting and Operation), are exempted from obtaining a permit and ~~[from]~~ paying a fee to the department.

(2) The following meet the definition of "food establishment" in §229.371 of this subchapter (relating to Definitions), but are not required to pay a fee or obtain a Retail Food Establishment permit under this subchapter:

(A) food establishments permitted and under the inspection authority granted to municipal health departments;

(B) food establishments on federal property under federal inspection authority;

(C) food establishments under the inspection authority of state college or university personnel in accordance with the requirements of §229.373 of this subchapter;

(D) food establishments licensed under Texas Health and Safety Code Chapter 431, as manufacturers of food, provided the fee for licensure exceeds the permit fee required under this section;

(E) food establishments under the inspection authority of the Texas Health and Human Services Commission (HHSC) Regulatory Services Division;

(F) facilities under the inspection authority of the HHSC Regulatory Services Division;

(G) hospitals under the inspection authority of the HHSC Regulatory Services Division and that do not serve food to the general public;

(H) correctional facilities under the inspection authority of the Texas Department of Criminal Justice;

(I) nonprofit organizations as defined in §229.371(3) of this subchapter; (Nonprofit organizations which meet the definition of "manufacturers of food" under Texas Health and Safety Code Chapter 431, or the definition of "food salvage establishments" under Texas Health and Safety Code Chapter 432, are not exempt from licensure in those categories.)

(J) food and beverage vending machines; and

(K) mobile food units permitted and inspected under the authority granted to municipalities and which operate only within their respective jurisdictions. (Except for units which handle only pre-packaged, non-TCS foods, a mobile food unit is classified as a food establishment, regardless of whether food preparation occurs on the unit.)

(c) Nonprofit fee exemption. Nonprofit organizations as defined in §229.371(3) ~~[§229.371(9)]~~ of this subchapter ~~[title]~~ (relating to Definitions) are exempt from payment of the permit fee. Nonprofit organizations shall comply with the requirements of §229.373 of this subchapter ~~[title]~~. The department shall provide guidelines for the safe handling of foods prepared by nonprofit organizations. Any civic or fraternal organization, charity, lodge, association, proprietorship, corporation, or church not meeting the definition of "nonprofit organization" shall ~~[must]~~ obtain a permit, pay the required fee, and comply with the requirements.

(d) Application for permit. The permit application shall be ~~[completed]~~ on a form furnished by the department and shall contain the following information:

(1) the name under which the establishment operates [business is operated];

(2) the mailing address and street address of the establishment;

(3) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and the name and address of its registered agent in the State; or if any other type of association, the names of the principals of such association;

(4) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship, shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity; ~~and~~

(5) the signature of the owner, operator, or other authorized person; ~~and~~[-]

(6) any other information the department may require issuing a permit.

~~[(e) Nonprofit organizations. A nonprofit organization is exempt from the permit fee. Internal Revenue Service documentation of nonprofit status shall be provided if requested by the department to verify an exemption.]~~

~~[(f) Temporary food establishments. An organizer of an event at which a temporary food establishment operates [is operated] shall obtain a permit for each temporary food establishment. In the absence of an event organizer, each temporary event operator shall obtain a permit. The application and permit fee for a temporary food establishment must be submitted to the department at least 30 days before [prior to] the event. The permit fees are as follows.~~

(1) Single-event permit. The permit fee is \$50 and is valid for the duration of a single event not to exceed 14 consecutive days from the initial effective date specified in the permit application. The fee is non-refundable.

(2) Multiple-event permit. A multiple-event permit is [Multiple-event permits are] issued for a two-year term and the permit fee is \$200. The fee is non-refundable.

~~[(g) Two or more establishments. Each establishment shall submit an application even if it is owned by the same person. [If a person owns or operates two or more establishments, each establishment shall be permitted separately by listing the name and address of each establishment on separate application forms.]~~

~~[(h) Pre-permit inspection. The department may conduct a pre-permit inspection to determine [for the purpose of determining] compliance with this subchapter [these rules].~~

~~[(i) Issuance of a permit. The department may issue a permit or a renewal permit for an establishment based on compliance with [specified in] Chapter 228 of this title (relating to Retail Food Establishments), and payment of all fees. Copies of the permit application are available by sending a request to [may be obtained from] the department at[-] 1100 West 49th Street, Austin, Texas 78756-3182 or by downloading online at: <https://www.dshs.texas.gov/retail-food-establishments/permitting-information-retail-food-establishments> [<http://www.dshs.state.tx.us/license.shtml>].~~

(1) The permit or proof of permit shall be posted in a location in the food establishment ~~[that is]~~ conspicuous to consumers.

(2) Permits for mobile food units, including pushcarts and roadside food vendors, shall be displayed on the unit [units] at all times.

(3) A permit shall only be issued when all past due and delinquency fees are have been paid. This applies to any delinquent penalties due under an order issued by the department.

~~(i) [Renewal of a permit.~~

(1) The permit holder shall submit a renewal application and permit fees before [prior to] the expiration date of the permit. A person filing [who files] a renewal application after the expiration date shall pay an additional \$100 as a delinquency fee.

(2) The department may renew a permit if the applicant is compliant [in compliance] with Chapter 228 of this title, and all fees are paid.

~~(3) Failure to [A person who does not] submit a renewal application and permit fee before [prior to] the expiration date, while continuing [and who continues] to operate, is a [in] violation of Texas Health and Safety Code[-] Chapter 437, and is subject to enforcement proceedings under that chapter, and §229.374 of this subchapter [title] (relating to Refusal, Revocation, or Suspension of a Permit; Administrative Penalties).~~

~~(j) [(k) Amendment of permit.~~

(1) Fee. A permit amendment [~~that is amended~~], including a change of name or physical location[-] ownership, or a notification of a change in location] of a [permitted] food establishment requiring a permit [required] under Texas Health and Safety Code[-] §437.0125, shall pay [will require submission of fees] as follows: [~~outlined in subsection (a) of this section.~~

(A) for an establishment with gross annual volume of food sales of \$0 - \$49,999.99, the fee is \$125;

(B) for an establishment with gross annual volume of food sales of \$50,000.00 - \$149,999.99, the fee is \$250;

(C) for an establishment with gross annual volume of food sales of \$150,000.00 or more, the fee is \$375; or

(D) for each mobile food unit, roadside vendor, school food establishment, or central preparation facility, the fee is \$125.

(2) Change of location. A permit is not transferrable to another location for any non-mobile food establishment [~~upon change of location with the exception of a permit issued to an operator of a mobile food unit or roadside food vendor~~].

~~[(l) Texas Online. Applicants may submit applications and renewal applications for a permit under these sections electronically by the Internet through Texas Online at [www.texasonline.state.tx.us](http://www.texasonline.state.tx.us). The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.]~~

~~§229.373. Minimum Standards for Permitting and Operation.~~

All food establishments shall be operated in accordance with the requirements specified in Chapter 228 of this title (relating to Retail Food Establishments). Copies may be [obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be] downloaded from [the following website]: <https://www.dshs.texas.gov/retail-food-establishments/statutes-laws-retail-food-establishments> [<http://www.dshs.state.tx.us/license.shtml>].

~~§229.374. Refusal, Revocation, or Suspension of a Permit; Administrative Penalties.~~

(a) Basis. The department may refuse an application for a permit or may revoke or suspend a permit for violations of [the requirements of] §229.372 of this subchapter [title] (relating to Permitting Fees and Procedures) or §229.373 of this subchapter [title] (relating to



Minimum Standards for Permitting and Operation), or for interference with a department representative in the performance of their duties under this subchapter [these sections].

(b) Hearings. Any hearings for the refusal, revocation, or suspension of a permit are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) or under the provisions of the Texas Government Code Chapter 2001, Administrative Procedure Act.

(c) Reinstatement. A former permit holder may apply for reinstatement of a suspended permit by demonstrating [that] corrections and controls are [have been] implemented to prevent future violations [recurrence of violative conditions]. The department may reinstate the permit after the department has determined [that] the food establishment no longer poses a risk to public health and safety. The department may also require employees of a food establishment to successfully complete a department-accredited [department accredited] training course on food safety principles before [prior to the] reinstatement of the permit.

(d) Administrative penalties. Administrative penalties<sup>;</sup> as provided in Texas [the] Health and Safety Code<sup>;</sup> §437.018, and in §229.261 of this chapter [title] (relating to Assessment [assessment] of Administrative [or Civil] Penalties), may be assessed for violations [violation] of this subchapter [these sections].

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 January 2, 2024.

TRD-202400003

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 18, 2024

For further information, please call: (512) 834-6753



## SUBCHAPTER Z. INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

### 25 TAC §§229.470 - 229.474

#### STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Health and Safety Code §437.0056 and §437.0125, which direct the Executive Commissioner of HHSC to adopt rules necessary for the implementation of food safety laws; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by the health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed amendments implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 437 and 1001.

#### §229.470. Purpose.

The purpose of this subchapter [these sections] is to implement Texas Health and Safety Code<sup>;</sup> Chapter 437, which authorizes the department to collect fees and to conduct inspections requested or required by certain food establishments when exempt [exempted] from permitting by the department.

#### §229.471. Definitions.

All definitions found in §228.2 of this title (relating to Definitions) are applicable to this subchapter. The following words and terms, when used in this subchapter [these sections], shall have the following meanings, unless the context clearly indicates otherwise.<sup>;</sup>

~~{(1) Child care center--Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for on-site consumption. A child care center is classified as a food establishment.}~~

~~{(2) Department--The Department of State Health Services.}~~

~~(1) [(3)] Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.~~

~~(2) [(4)] Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.~~

~~(3) [(5)] Food establishment--~~

(A) A food [Føød] establishment is [means] an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as:

(I) [(†)] [such as] a restaurant;

(II) a retail food store;

(III) a satellite or catered feeding location;

(IV) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;

(V) a market;

(VI) a vending machine location;

(VII) a self-service food market;

(VIII) a conveyance used to transport people;

(IX) an institution; or

(X) a food bank; and

(ii) [that] relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service [that is] provided by common carriers.

(B) A food [Føød] establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility supplying [that supplies] a vending machine location or satellite feeding location unless the vending machine or feeding location is permitted by the regulatory authority; and

(ii) an operation [that is] conducted in a mobile, stationary, temporary, or permanent facility or location and<sup>;</sup> where consumption is on or off the premises<sup>;</sup> and] regardless if [of whether] there is a charge for the food.

(C) A food [Føød] establishment does not include:

(i) an establishment offering [that offers] only prepackaged foods that are not time and temperature control for safety (TCS) foods [potentially hazardous];

(ii) a produce stand [that] only offering [offers] whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one located on the premises of a food establishment;

(iv) a cottage food production operation;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;]

(iv) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;]

(v) [(vi)] a bed and breakfast limited [Bed and Breakfast Limited facility] as defined in §228.2(5) [§228.2] of this title (relating to Definitions); or

(vi) [(vii)] a private home receiving [that receives] catered or home-delivered food.

(D) All definitions found in Chapter 228 of this title (relating to Retail Food) are applicable to these sections except that, for purposes of inspection or payment of inspection fees only, the term "food establishment" does not include:]

(i) food establishments permitted and inspected under authority granted to Home-Rule or Type A General-Law Municipalities;]

(ii) federally inspected food establishments on federal property;]

(iii) food establishments at correction facilities under the inspection authority of the Texas Department of Criminal Justice;]

(iv) food establishments on state campuses inspected by state college or university personnel in accordance with the requirements of §229.373 of this chapter (relating to Minimum Standards for Permitting and Operation);]

(v) food establishments licensed under the Health and Safety Code, Chapter 431, as manufacturers of food;]

(vi) mobile food units permitted and inspected under the authority granted to Home-Rule or Type A General-Law Municipalities and which operate only within their respective jurisdictions.;

(4) [(6)] Food service establishment--A food establishment as defined in these rules.

(5) [(7)] Group residence--A private or public housing corporation or institutional facility providing [that provides] living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(8) Mobile food establishment--A vehicle mounted food establishment that is readily moveable.;

(6) [(9)] Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing a 501(c)(3) [501(C)] exemption under the Internal Revenue Code; or a religious organization [organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(i)]. Nonprofit organizations are exempt [exempted] from obtaining a permit as specified in §229.372(c) [§229.372(e)] of this chapter [title] (relating to Permitting Fees and Procedures). Nonprofit organizations are not exempt [exempted] from the payment of an inspection fee as required

under §229.472 of this subchapter (relating to Inspection Fees and Procedures) [title].

(10) Person--An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.;

(11) Potentially hazardous food--]

(A) Potentially hazardous food (PHF) means a food that requires time and temperature control for safety (TCS) to limit pathogen growth or toxin production.;

(B) Potentially hazardous food includes:]

(i) an animal food (a food of animal origin), including fresh shell eggs, that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subparagraph (A) of this paragraph; and]

(ii) a food whose pH/a<sub>w</sub> interaction is designated as PHF/TCS in one of the tables listed in subparagraph (D) of this paragraph, unless a product assessment or vendor documentation acceptable to the regulatory authority is provided.;

(C) Potentially hazardous food does not include:]

(i) an air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae;]

(ii) a food whose pH/a<sub>w</sub> interaction is designated as non-PHF/non-TCS in one of the tables in subparagraph (D) of this paragraph;]

(iii) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;]

(iv) a food for which a product assessment, including laboratory evidence, demonstrates that time and temperature control for safety is not required and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or]

(v) a food that does not support the growth of microorganisms as specified under subparagraph (A) of this paragraph even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.;

(D) Potentially hazardous food does not include food that, because of pH, water activity (a<sub>w</sub>) or the interaction of pH and a<sub>w</sub>, is considered non-PHF/non-TCS in Table A or B below. Guidance for using the tables is provided in the document entitled "Using pH, a<sub>w</sub> or the Interaction of pH and a<sub>w</sub> to Determine If a Food Requires Time/Temperature Control for Safety (TCS)". Copies of the guidance document may be downloaded from the following website: <http://www.dshs.state.tx.us>, or may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182.;

(i) Table A.;

(ii) Table B.;

(12) Pushcart--A non self-propelled mobile food unit limited to serving nonpotentially hazardous food or potentially hazardous

foods requiring a limited amount of preparation as authorized by the regulatory authority. A pushcart is a mobile food unit. A pushcart does not include non self-propelled units owned and operated within a retail food store.]

~~[(13) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public roadway or highway. Foods shall not be prepared or processed by a roadside food vendor. A roadside vendor is classified as a mobile food establishment.]~~

~~(7) [(44) School food establishment--A food service establishment where food is prepared or served and intended for service primarily to students in [institutions of learning including, but not limited to,] public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is [classified as] a food establishment and may include concession stands located on the school premises or other school-sponsored venues. School food establishments are managed and operated under the supervision of school district employees.~~

~~(8) [(45) Temporary food establishment--A food establishment operating [that operates] for a period of no more than 14 consecutive days in conjunction with a single event or celebration.~~

~~(9) Time and temperature control for safety food (TCS food)--A food requiring time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS food may include a food containing protein and moisture and that is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products; pasteurized and unpasteurized milk and dairy products; raw seed sprouts; baked goods requiring refrigeration, including cream or custard pies or cakes; and ice products. The term does not include a food using TCS food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.~~

~~§229.472. Inspection Fees and Procedures.~~

~~(a) Inspection fees. A person operating [who operates] a non-permitted food establishment, who [that] requests an inspection be conducted by the department, shall pay an inspection fee for each inspection of the establishment. All inspection fees are nonrefundable.~~

~~(1) A school food establishment requesting [that requests] two inspections per year shall pay for both inspections before the first inspection is conducted by the department.~~

~~[(A)] The school food establishment fee is \$300 for two inspections. The fee is non-refundable.~~

~~[(B)] An application and inspection fee must be submitted between September 15 and October 31 annually.]~~

~~(2) A person operating [who operates] a non-permitted food establishment that is not a school food establishment shall pay an inspection fee for each inspection of the establishment.~~

~~(A) The inspection fee is \$150 per inspection.~~

~~(B) An application and inspection fee must be submitted to the department at least 6 weeks before [prior to] the earliest desired inspection date.~~

~~(b) Non-permitted food establishments, other than schools, inspection fee requirement. Non-permitted food establishments, that are nonprofit organizations as defined in §229.471(7) [§229.471(9)] of this subchapter [title] (relating to Definitions), are not exempt~~

~~[exempted] from paying [the payment of] an inspection fee as required under subsection (a) of this section. Nonprofit organizations are exempt [exempted] from obtaining a permit as specified in §229.372(c) [§229.372(e)] of this chapter [title] (relating to Permitting Fees and Procedures). Nonprofit organizations shall comply with [the requirements of] §229.473 of this subchapter [title] (relating to Minimum Standards for Permitting and Operation). Any civic or fraternal organization, charity, lodge, association, proprietorship, corporation, or church not meeting the definition of "nonprofit organization" shall [must] obtain a permit, pay the required fee, and comply with the requirements for permitted food establishments. Internal Revenue Service documentation of nonprofit status shall be provided, if requested by the department.~~

~~(c) Food establishments under the jurisdiction of county health departments or public health districts. The department shall not inspect or collect an inspection fee from food establishments permitted or inspected by a county or public health district under [the] Texas Health and Safety Code[;] Chapter 437, or food establishments permitted or inspected under authority granted to municipalities [Home-Rule or Type A General-Law Municipalities].~~

~~(d) Exemptions from fees. The following meet the definition of "food establishment" in §229.471 of this subchapter, but are not required to pay a fee to the department or obtain a Retail Food Establishment inspection under this subchapter:~~

~~(1) food establishments permitted and inspected under authority granted to municipalities;~~

~~(2) food establishments inspected by state college or university personnel in accordance with the requirements of §229.373 of this chapter (relating to Minimum Standards for Permitting and Operation);~~

~~(3) food establishments licensed under Texas Health and Safety Code Chapter 431, as manufacturers of food, provided the fee for licensure exceeds the permit fee required under §229.372 of this chapter;~~

~~(4) food establishments under the inspection authority of the Texas Health and Human Services Commission (HHSC) Regulatory Services Division;~~

~~(5) facilities under the inspection authority of the HHSC Regulatory Services Division;~~

~~(6) hospitals under the inspection authority of the HHSC Regulatory Services Division and that do not serve food to the general public;~~

~~(7) federally inspected food establishments on federal property;~~

~~(8) correctional facilities under the inspection authority of the Texas Department of Criminal Justice; and~~

~~(9) mobile food units permitted and inspected under the authority granted to municipalities and which operate only within their respective jurisdictions. (Except for units which handle only pre-packaged, non-TCS foods, a mobile food unit is classified as a food establishment, regardless of whether food preparation occurs on the unit.)~~

~~(c) [(d)] Application for inspection request. The inspection request shall be submitted on an application [shall be completed on a] form furnished by the department and shall contain the following information:~~

~~(1) the name under which an establishment [the business] is operated;~~

(2) the mailing address and street address of the establishment; and

(3) the signature of the owner, operator, or other authorized person.

(f) [(e)] Two or more establishments. If a person owns or operates two or more establishments, each establishment shall request inspections separately by listing the name and address of each establishment on separate application forms. A school district may submit a single application and attach a listing of each school food establishment requesting inspection [to be inspected].

(g) [(f)] Application form. Copies of the application for inspection request form may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or online at <https://www.dshs.texas.gov/retail-food-establishments/permitting-information-retail-food-establishments> [[www.dshs.state.tx.us/fdlicense.shtm](http://www.dshs.state.tx.us/fdlicense.shtm)].

[(g) Texas Online. Applicants may submit an application for inspection request under these sections electronically by the Internet through Texas Online at [www.texasonline.state.tx.us](http://www.texasonline.state.tx.us), when available. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.]

§229.473. *Minimum Standards for Permitting and Operation.*

All food establishments shall be operated in accordance with the requirements of [specified in] Chapter 228 of this title (relating to Retail Food Establishments). Copies may be [obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be] downloaded from [the following website]: <https://www.dshs.texas.gov/retail-food-establishments/statutes-laws-retail-food-establishments> [[www.dshs.texas.gov/foodestablishments](http://www.dshs.texas.gov/foodestablishments)].

§229.474. *Refusal of Inspection Request; Administrative Penalties.*

(a) Basis. The department may refuse an application for an inspection if there are outstanding [for] violations of the requirements of §229.472 of this subchapter [title] (relating to Inspection Fees and Procedures) or §229.473 of this subchapter [title] (relating to Minimum Standards for Permitting and Operation), or for interference with a department representative in the performance of their duties under this subchapter [these sections].

(b) Hearings. Hearings [Any hearings] for the refusal of an inspection are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) or under the provisions of the Texas Government Code[;] Chapter 2001, [the] Administrative Procedure [Procedures] Act.

(c) Administrative penalties. Administrative penalties[; as provided] in Texas [the] Health and Safety Code[;] §437.018, and in §229.261 of this chapter [title] (relating to Assessment of Administrative Penalties), may be assessed for violations [violation] of this subchapter [these sections] or of [requirements specified in] Chapter 228 of this title (relating to Retail Food Establishments).

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

Filed with the Office of the Secretary of State on January 2, 2024.  
TRD-202400004

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 18, 2024

For further information, please call: (512) 834-6753

◆ ◆ ◆  
CHAPTER 265. GENERAL SANITATION  
SUBCHAPTER L. PUBLIC SWIMMING  
POOLS AND SPAS

**25 TAC §265.190**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §265.190, concerning Safety Features for Pools and Spas.

BACKGROUND AND PURPOSE

The purpose of the proposal is to revise the requirement for pool and spa signs. The changes to the rule clarify that prohibiting persons under the age of 14 years from being in a pool or spa without adult supervision applies only to pools and spas where a lifeguard is not required or provided.

The changes are needed because previous amendments to Chapter 265, Subchapter L, effective January 2021, inadvertently left out the key phrase, "where no lifeguard is required or provided" from signage requirements on signs stating that persons under the age of 14 may not be in a pool or spa without adult supervision. Recent repeal and adoption of new Chapter 265, Subchapter L, effective January 2023, to comply with House Bill (H.B.) 2205, 87th Legislature, Regular Session, 2021, also failed to include the key phrase. DSHS has received legislative inquiries and public comments regarding the applicability of this signage requirement to public pools and spas with lifeguards present, and the unintended consequences of omitting this key phrase from the signage requirements.

The proposed amendment also clarifies lighting requirements and makes editorial changes for clearer language throughout the rule.

SECTION BY SECTION

The amendment adds the key phrase, "where no lifeguard is required or provided" to the figures for required signs reading: "Persons under the age of 14 must not be in the pool without adult supervision" and "Persons under the age of 14 must not be in the spa without adult supervision." The figure at §265.190(h)(4) is removed. The signage requirement is found in figures §265.190(e)(5) and new §265.190(g)(1). Edits to the rule text in §265.190(e)(5) and §265.190(g)(4) delete the term "subchapter" and replace it with "section" to specify the date for compliance with the signage requirements is the effective date of the section and not the subchapter.

The amendment revises §265.190(i) to clarify lighting requirements for a pool or spa operating at night.

The amendment includes editorial changes for clearer language throughout the rule.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined, for each year of the first five years the rule will be in effect, enforcing

or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

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

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule:

- is necessary to protect the health, safety, and welfare of the residents of Texas;
- does not impose a cost on regulated persons; and
- is amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

#### PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DSHS Associate Commissioner, Consumer Protection Division, has determined, for each year of the first five years the rule is in effect, the public will benefit from the amendment. The amended rule eliminates a burdensome and unnecessary requirement for owners of public pools and spas having a lifeguard present to post signs prohibiting persons under the age of 14 from being in a pool or spa without adult supervision. This benefit applies for newly constructed pools and spas and pools and spas with new signage. The amendment eliminates a requirement preventing pool and spa access for children under the age of 14 without adult supervision even when a lifeguard is present. The amendment also eliminates safety signage inconsistent with public pool and spa rules in other states.

Christy Havel Burton has also determined, for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. Pool and spa signage in the proposed rule is required for pools and spas constructed on or after the effective date of the amended

section or, for pools and spas constructed before the effective date of the amended section, whenever they replace their signage.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to the Environmental Operations Branch Rules Coordinator, DSHS, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, hand delivered to the Environmental Operations Branch Rules Coordinator, DSHS, Mail Code 2835, 1100 West 49th Street, Austin, Texas 78756 or by e-mail to EHGRulesCoordinator@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R011" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code §341.002, which authorizes the Executive Commissioner of HHSC to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; and by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies 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 amendment implements Texas Health and Safety Code Chapters 341 and 1001; and Texas Government Code Chapter 531.

§265.190. *Safety Features for Pools and Spas.*

(a) Safety rope and float lines and floor markings.

(1) Class A pools not being used for competitive events or lap swimming must have a rope and float line.[:]

(A) A rope and float line must be located [provided] between 1 and 2 feet from the 5-foot depth location, toward [on] the shallow end of the pool. Floats [water side of the 5-foot depth and floats] must be spaced at no more [not greater] than 7-foot intervals and secured so they do [will] not slide or bunch. The size of [up, and] the stretched rope and float line must [be a size to] provide a good handhold and be strong enough to support the load [loads] normally imposed by users.[: and]

(B) A rope and float line must be [be securely] fastened securely to a wall or deck anchor [anchors] made of corrosion-resistant material [corrosion-resisting materials of the type] that is recessed or removable and does not create a hazardous [must have no] projection [that will constitute a hazard] when the line is removed.

(2) Class B pools [that are] over 5 feet [5-feet] deep must have:

(A) a permanent method to mark the transition point of the pool floor from the shallow area to the deep area using a color contrasting with the bottom of the pool, such as a 4-inch minimum width row of floor tile [or other permanent method using a color contrasting with the bottom of the pool at the transition point of the pool floor from the shallow area to the deep area of the pool];

(B) a rope and float line located between 1 and 2 feet from [on the shallow water side of] the 5-foot depth location, toward the shallow end of the pool and floats must be spaced at no more [not greater] than 7-foot intervals and secured so they do [will] not slide or bunch [up]; and

(i) the size of the stretched rope and float line must [be a size to] provide a good handhold and be strong enough to support the load [loads] normally imposed by users; and

(ii) the rope and float line may be removed when the pool is used for lap swimming or [for] competitive events; and

(C) the rope and float line is [rope and float lines] securely fastened to a wall or deck anchor [anchors] made of corrosion-resistant material [corrosion-resisting materials of the type] that is recessed or removable and does not create a hazardous [must have no] projection [that will constitute a hazard] when the line is removed.

(3) Class C pools [that are] over 5 feet [5-feet] deep must have a permanent method to mark the transition point of the pool floor from the shallow area to the deep areas using a color contrasting with the bottom of the pool, such as a 4-inch minimum width row of floor tile [or other permanent method using a color contrasting with the bottom of the pool at the transition point of the pool floor from the shallow area to the deep area of the pool].

(A) A rope and float line may [also] be used in addition to the transition line and must be located [provided] between 1 and 2 feet from [on the shallow water side of] the 5-foot depth location, toward the shallow end of the pool. Floats [The floats] must be spaced at no more [not greater] than 7-foot intervals and secured so they do [will] not slide or bunch [up]. The size of the stretched rope and float line must provide [be a size to offer] a good handhold and be strong enough to support the load [loads] normally imposed by users.

(B) Rope and float lines must be securely fastened to a wall or deck anchor [anchors] made of corrosion-resistant material [corrosion-resisting materials of the type] that is recessed or removable and does not create a hazardous [must have no] projection [that will constitute a hazard] when the line is removed.

(4) Wave pools, surf pools, and waterslide landing pools are not required to provide a safety rope on the shallow side of the change in floor slope.

(b) Depth markers.

(1) Depth markers [in pools and spas constructed or renovated after the effective date of the rules of this subchapter or that are being replaced] must be placed in the top 4-1/2 inches of the pool or spa wall just under the coping and be positioned to be read by a user while in the pool or spa.

(2) There must be no less than two depth markers for each pool or spa, regardless of size and shape.

(3) Depth markers must be permanent with numbers and letters no less than 4 inches in height and be clearly marked in a color contrasting the background of the deck and vertical wall of the pool or spa.

(4) Depth markers must be spaced uniformly around the perimeter of the pool or spa in intervals of no more than 25 feet.

(5) Deck depth markers must be slip-resistant and positioned to be read while standing on the deck of the pool or spa.

(6) Depth markers must have units of measurement that either spell out "feet" or "inches" or abbreviate "FT," "IN," or fractions of a foot.

{(e)} Depth markers in spas. Spa depth markers must comply with the following:-

{(1)} There must be no less than two depth markers for each spa, regardless of spa size and shape.-

{(2)} Depth markers in spas must be permanent in nature with numbers and letters not less than 4 inches in height and must be clearly marked in a color contrasting to the background on which they are applied both on the deck and on the vertical wall of the spa.-

{(3)} Depth markers in spas on the vertical wall must be positioned in the top 4-1/2 inches of the spa wall and be positioned to be read by a user while in the spa.-

{(4)} Depth markers in spas must be spaced at not more than 25-foot intervals and must be uniformly located around the perimeter of the spa.-

{(5)} Deck depth markers for spas must be positioned to be read while standing on the deck and must be slip-resistant.-

{(6)} Depth markers for spas must have units of measurement that either spell out "feet" or "inches" or abbreviate "FT," "IN," or fractions of a foot.-

(c) [(d)] Deck "NO DIVING" marker and symbol. Where a [no] diving marker [markers] and symbol are [symbols are] required in pools, the marker [markers] and symbol [symbols] must comply with the requirements in the International Swimming Pool and Spa Code (ISPSA) and [with the following]:

(1) The no diving marker and symbol must [may] not be less than 4 inches in height. The no diving symbol must consist of a diver's profile in a circle with a 45-degree slash through the diver.

(2) The color of the letters and symbol must be permanent and contrast with the background [on which they are applied, and the color must be permanent in nature].

(3) The no diving marker [markers] and symbol [symbols] on the deck must be slip resistant.

(4) The no diving marker and symbol on the deck must be within 18 inches of the water's edge and positioned to be read while standing on the deck facing the water.

(5) If a permanent structure above the pool deck is within 5 feet of the water's surface, the 4-inch no diving marker and symbol must be on [affixed to] the structure so [that] the warning is visible to persons attempting [who may attempt] to use the structure for diving. The no diving marker and symbol [and warning] are not required on diving boards or diving platforms, Americans with Disabilities Act-compliant [ADA-compliant] chair lifts, slide flumes, lifeguard stands, or bridges over the water.

(6) The no diving marker and symbol are [is] not required on the interior tile line of a pool or [in a] spa.

(d) [(e)] Starting platforms. Starting platforms must be used during official competition only or when there is direct supervision by the team coach, a qualified instructor, or a lifeguard. Starting platforms

must be removed or secured to prevent inadvertent use without direct supervision [when the starting platforms are not directly supervised].

(c) ~~[(f)]~~ Certain safety requirements for pools [Safety signage]. In addition to safety signs required in the ISPSC, the following pool [additional] safety signs and operational procedures [signs] are required [for pools as follows].

(1) Signs must be [in the pool yard], securely mounted as applicable, [and] readily visible to the pool user, and [must] be posted within the pool yard unless otherwise stated within this subchapter.

(2) Sign panels and lettering must be durable for the weather conditions [and the message surface must be clean and smooth and readily accept paint or precut lettering adhesives].

(3) Branding [Theming] or artwork applied to signs must not distract from [invade] the message panel, and signs must have a distinct border.

(4) Safety signs can be combined on one sign or posted individually [Multiple signs may be used or messages may be combined on one sign].

(5) Safety signs for pools constructed on or after the effective date of this section [subchapter] or safety signs [that are] replaced at pools constructed before the effective date of this section, [subchapter] must comply [be in compliance] with Figure: 25 TAC §265.190(c)(5) [Figure: 25 TAC §265.190(f)(5)].  
Figure: 25 TAC §265.190(c)(5)  
[Figure: 25 TAC §265.190(f)(5)]

(6) In areas of Texas where most [the majority of] residents are non-English speakers [speaking; in addition to signs in English], signs and other written warnings or information required by [the rules in] this subchapter may be posted in the predominant language, in addition to English.

(7) Variations of the language of the required safety signs in Figure: 25 TAC §265.190(c)(5) [Figure: 25 TAC §265.190(f)(5)] are allowed if the language of the safety signs is substantially equivalent to the language in Figure: 25 TAC §265.190(c)(5) [Figure: 25 TAC §265.190(f)(5)] and [if] local swimming pool and spa regulatory officials [that regulate swimming pools and spas] approve the variation [variations] before the sign is posted in the pool yard.

(f) ~~[(g)]~~ Rescue equipment. A pool must have at least one ring buoy with throwing rope and a reaching pole for every 2000 square feet of pool surface area up to 6000 square feet. A [If the] pool with more than [has over] 6000 square feet of surface area must have an additional ring buoy, throw rope, and reaching pole [must be provided] for each additional 4000 square feet of surface area or fraction thereof. Reaching [The reaching] poles and ring buoys with rope must be visible and readily accessible from all areas of the pool yard.

(1) The reaching pole must be light, strong, non-telescoping, and at least 12 feet long. The pole must be constructed of fiberglass or other material that does not conduct electricity and must have a body hook or shepherd's crook with blunted ends attached.

(2) The throwing rope must be 1/4-inch to 3/8-inch in diameter and[; with a length] at least two-thirds the maximum width of the pool in length. A USCG-approved ring buoy[; maximum 24-inches in diameter;] must be attached to the throwing rope.

(g) ~~[(h)]~~ Certain safety requirements for spas.

(1) Safety signs, [Signs] for spas constructed on or after the effective date of this section [subchapter] or safety signs [that are] replaced at spas constructed before the effective date of this section, [subchapter] must be securely mounted, [and] readily visible to spa

users, and [must be] inside the spa enclosure, as required in Figure: 25 TAC §265.190(g)(1) [Figure: 25 TAC §265.190(h)(4), Required Spa Signs].

Figure: 25 TAC §265.190(g)(1)

(2) Safety signs can be combined on one sign or posted individually.

(3) Variations of the language of the required safety signs in Figure: 25 TAC §265.190(g)(1) [Figure: 25 TAC §265.190(h)(4)] are allowed if the language of the safety signs is substantially equivalent to the language in Figure: 25 TAC §265.190(g)(1) [Figure: 25 TAC §265.190(h)(4)] and [if] local swimming pool and spa regulatory officials [that regulate swimming pools and spas] approve the variation [variations] before the sign is posted in the pool yard or spa yard.

(4) Safety signs for spas constructed on or after the effective date of this section [subchapter], or safety signs [that are] replaced at spas [pools] constructed before [prior to] the effective date of this section [subchapter], must comply [be in compliance] with Figure: 25 TAC §265.190(g)(1) [Figure: 25 TAC §265.190(h)(4)].  
[Figure: 25 TAC §265.190(h)(4)]

(h) ~~[(i)]~~ Emergency summoning device. A pool or spa must have a minimum of one emergency telephone, emergency monitoring contact device, or alternative communication system that is capable of immediately summoning emergency services and that is readily accessible, within 200 feet of the water, and [is] functioning when [at all times] the pool or spa is open for use. An emergency summoning device for [Where] a pool or spa with [has] a seasonal operation schedule[; the emergency summoning device] must function [be functioning] 24 hours a day during the [entire] season the pool or spa is [will be] in use. Clear operating instructions for the emergency summoning device must be posted [provided].

(1) The [A] fixed-location telephone, emergency monitoring device, or alternative communication system must be visible, easily identified by users, and have no obstruction to access[; and have some method of identification that enables the telephone or other device or system to be easily identified by users].

(2) The [A] telephone or emergency monitoring device must not be answered by an on-site office. An alternative communication system may be [must not be] answered by an on-site office if the [unless the alternative communication] system complies with paragraph (5) of this subsection.

(3) The [A] telephone must be capable of making calls to 911 dispatch or to an emergency service.

(4) When activated, the [An] emergency monitoring contact device[; when activated,] must directly connect to a 24-hour monitoring service, [or directly to] 911 dispatch, or [to] emergency medical services.

(5) An alternative communication system contacting [that eontacts] an on-site office may be used if the pool or spa is in a remote area with limited or delayed emergency medical services response times and [there are] employees on-site [that] are trained and certified or licensed to perform emergency medical intervention when the pool or spa is open for use.

(6) A cell phone [that is] dedicated for use at the pool or spa, [that is] mounted in the pool yard or spa yard for public use, and labeled as the emergency phone may be used if the cell phone is activated by a service provider, has [is provided with] a permanent power supply, and can reach [is capable of reaching] the emergency service provider or 911 emergency services.

(7) A sign must be posted above the emergency summoning device [whether it is a phone, emergency monitoring device, or alternative communication device] with the precise location of the pool or spa, such as an address, building number, Global Positioning System (GPS) [GPS] location, or other location identifying information in letters a minimum of 1-inch in height.

(i) ~~[(j)]~~ Lighting at pools and spas. A pool or spa operating at night must have lighting providing visibility to all areas of the pool or spa while standing on the deck at the water's edge. [Lighting at pools and spas that operate before sunrise and after sunset must be provided a minimum 30 minutes before sunrise and a minimum of 30 minutes after sunset or while the pool or spa is open.]

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 January 2, 2024.

TRD-202400005  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: February 18, 2024  
For further information, please call: (512) 834-6787





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 15. TEXAS STATE BOARD OF PHARMACY

#### CHAPTER 291. PHARMACIES

##### SUBCHAPTER A. ALL CLASSES OF PHARMACIES

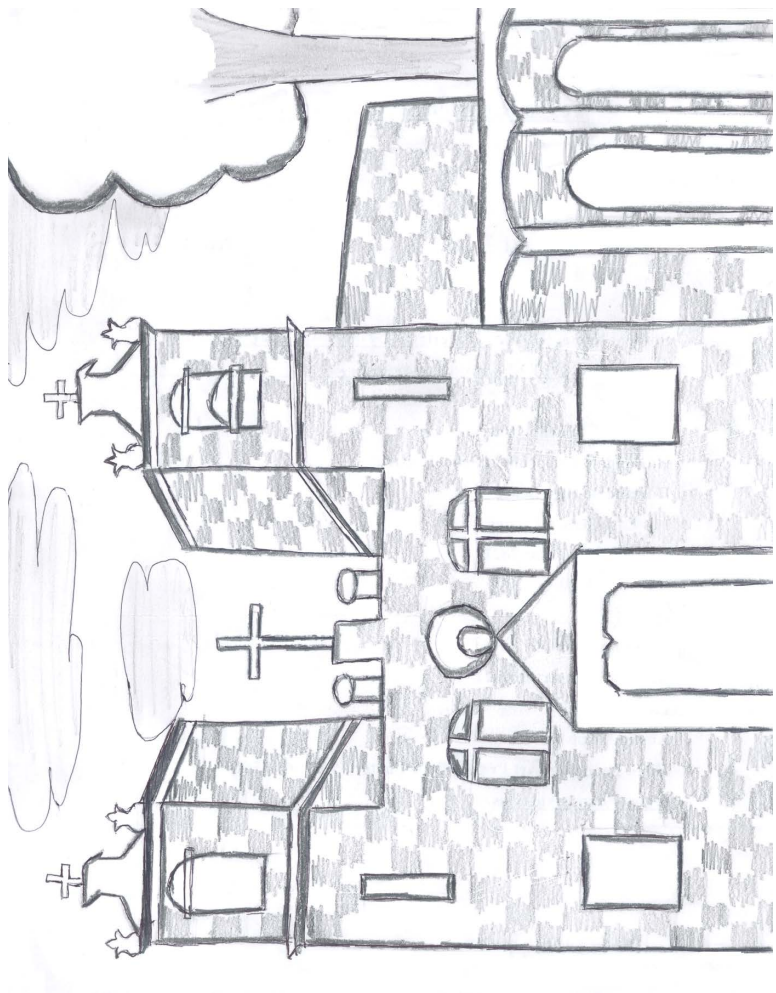
###### 22 TAC §291.12

Proposed new §291.12, published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3037), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 2, 2024.

TRD-202400016





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

##### 1 TAC §353.1315

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), adopts an amendment to §353.1315, concerning the Rural Access to Primary and Preventive Services Program.

Section 353.1315 is adopted without change to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6688), and therefore will not be republished.

##### BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to pursue modifications to the Rural Access to Primary and Preventive Services (RAPPS) to simplify the program structure, provide additional details concerning certain enrollment-related processes and procedures, and reduce the administrative burden of operating the program for HHSC and participating providers.

HHSC sought and received authorization from the Centers for Medicare & Medicaid Services to create RAPPS for state fiscal year (SFY) 2022 as part of the financial and quality transition from the Delivery System Reform Incentive Payment program (DSRIP). HHSC has not made significant modifications to RAPPS since its inception in SFY 2022. Directed payment programs authorized under 42 C.F.R. §438.6(c), including RAPPS, are expected to continue to evolve over time so that the program can continue to advance the quality goal or objective the program is intended to impact.

HHSC has determined that RAPPS contains certain provisions that pose administrative complexity that may impede HHSC's and the participating providers' ability to use the program to advance a quality goal or strategy. HHSC, therefore, adopts certain clarifying amendments and other modifications with the intention of reducing administrative complexity and burden for participants. The adopted amendment also consolidates RAPPS into a single component paid via Component 1 only for SFY 2025 and after. All payments will be directed to be paid by the managed care organization (MCO) as a lump sum payment based on a scorecard issued by HHSC. This adopted rule amendment reduces the administrative burden on providers and MCOs, as the payments will no longer be made via the claim adjudication

process and will be exclusively made via the monthly scorecard outside of the claims process.

The adopted amendment determines the network status of an enrolling provider for an entire program period based on the submission of supporting documentation at the time of enrollment.

HHSC adopts several other minor clarifying or grammatical amendments to improve the readability of the rule text.

##### COMMENTS

The 31-day comment period ended December 18, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 January 5, 2024.

TRD-202400057

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 25, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 487-3480

##### 1 TAC §353.1320

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1320, concerning the Directed Payment Program for Behavioral Health Services.

The amendment to §353.1320 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6691). This rule will be republished.

## BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to pursue modifications to the Directed Payment Program for Behavioral Health Services (DPP BHS) to simplify the program structure, provide additional details concerning certain enrollment-related processes and procedures, and reduce the administrative burden of operating the program for HHSC and participating providers.

HHSC sought and received authorization from the Centers for Medicare and Medicaid Services to create DPP BHS for state fiscal year 2022 as part of the financial and quality transition from the Delivery System Reform Incentive Payment program. HHSC has not made significant modifications to DPP BHS since its inception in state fiscal year 2022.

Directed payment programs authorized under 42 C.F.R. §438.6(c), including DPP BHS, are expected to continue to evolve over time so that the program can continue to advance the quality goal or objective the program is intended to impact.

HHSC has determined that DPP BHS contains certain provisions that pose administrative complexity that may impede HHSC's and the participating providers' ability to use the program to advance a quality goal or strategy. HHSC, therefore, amends and modifies the program rule to reduce administrative complexity and burden for participants.

The rule amendment also consolidates DPP BHS into a single component to be paid via a scorecard, Component One only, for state fiscal year 2025 and after, so all payments will be paid by managed care organizations (MCOs) as a lump sum payment based on a scorecard issued by HHSC. This rule amendment reduces the administrative burden on providers and MCOs, as the payments will no longer be made via the claim adjudication process and will be exclusively made via the monthly scorecard outside of the claims process.

HHSC is changing the eligible provider classes to only have one eligible provider class now that all participating providers have achieved a Certified Community Behavioral Health Clinic (CCBHC) certification.

HHSC will determine the network status of an enrolling provider for an entire program period based on the submission of supporting documentation through the enrollment process.

HHSC included other minor clarifying or grammatical revisions to improve the readability of the rule text.

## COMMENTS

The 31-day comment period ended December 18, 2023.

During this period, HHSC received feedback regarding the proposed rule amendment from two commenters, including the Texas Council of Community Centers and My Health My Resources of Tarrant County.

Comment: One commenter supports combining all funding into Component One and requiring participants to be CCBHC certified. They also support the new process to verify network status

and would like more details about the process and responsibilities of providers and MCOs. They suggest continued consideration of the option to add CCBHC codes to the Medicaid fee schedule and eliminate the program.

Response: HHSC acknowledges the comment. HHSC is committed to allowing reasonable, flexible options for MCOs to verify network status and will keep the option of implementing CCBHC billing codes open for future consideration. No revision to the rule text was made in response to this comment.

Comment: One commenter supports changes to the payment structure but encourages HHSC to explore the use of CCBHC billing codes and a payment structure similar to Demonstration states, believing these actions will ease the transition to Demonstration and that use of standard CCBHC codes will assist the commenter's agency in using their electronic health record.

Response: HHSC acknowledges the comment. HHSC will keep the options of implementing CCBHC billing codes, as well as aligning to the payment structure of other states, open for future consideration. No revision to the rule text was made in response to this comment.

A minor editorial change was made to §353.1320(e)(1)(A) inserting "program" after "the" to clarify that participants may not join the program after the enrollment period closes.

## STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

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

§353.1320. *Directed Payment Program for Behavioral Health Services.*

(a) Introduction. This section establishes the Directed Payment Program for Behavioral Health Services (DPP BHS). DPP BHS is designed to incentivize behavioral health providers to improve quality, access, and innovation in the provision of medical and behavioral health services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1322 of this subchapter (relating to Quality Metrics for the Directed Payment Program for Behavioral Health Services).

(1) Average Commercial Reimbursement (ACR) gap--The difference between what an average commercial payor is estimated to pay for the services and what Medicaid actually paid for the same services.

(2) Certified Community Behavioral Health Clinic (CCBHC)--A clinic certified by the state in accordance with federal

criteria and with the requirements of the Protecting Access to Medicare Act of 2014 (PAMA).

(3) CCBHC cost-reporting gap--The difference between what Medicaid pays for services and what the reimbursement would be based on the CCBHC cost-reporting methodology.

(4) Community Mental Health Center (CMHC)--An entity that is established under Texas Health and Safety Code §534.0015 and that:

(A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility.

(B) Provides 24-hour-a-day emergency care services.

(C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission.

(5) Intergovernmental transfer (IGT) notification--Notice and directions regarding how and when IGTs should be made in support of DPP BHS.

(6) Local Behavioral Health Authority (LBHA)--An entity that is designated under Texas Health and Safety Code §533.0356.

(7) Program period--A period of time for which the Texas Health and Human Services (HHSC) contracts with participating managed care organizations (MCOs) to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year.

(8) Providers--For program periods on or before August 31, 2022, an entity described in paragraph (4) of this subsection. For program periods on or after September 1, 2022, an entity described in paragraph (4) or (6) of this subsection.

(9) Suggested IGT responsibility--Notice of potential amounts that a sponsoring governmental entity may wish to consider transferring in support of DPP BHS.

(10) Total program value--The maximum amount available under the Directed Payment Program for Behavioral Health Services for a program period, as determined by HHSC.

(c) Classes of participating providers.

(1) HHSC may direct the MCOs to provide a uniform percentage rate increase or a uniform dollar increase to all providers within one or more of the following classes of providers with which the MCO contracts for services:

(A) For program periods beginning on or before September 1, 2023, providers that are certified CCBHCs and providers that are not certified CCBHCs.

(B) For program periods beginning on or after September 1, 2024, providers who are certified CCBHCs.

(2) If HHSC directs rate or dollar increases to more than one class of providers within the service delivery area, the rate or dollar increases directed by HHSC may vary between classes.

(d) Data sources for historical units of service. Historical units of service are used to determine a provider's eligibility status to receive the estimated distribution of program funds across enrolled providers.

(1) HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number.

(2) The most recently available Medicaid encounter data for a complete state fiscal year will be used to determine the distribution of program funds across eligible and enrolled providers.

(3) In the event that the historical data are not deemed appropriate for use by actuarial standards, HHSC may use data from a different state fiscal year at the discretion of the HHSC actuaries.

(4) The data used to estimate the distribution of funds will align to the extent possible with the data used for purposes of setting the capitation rates for MCOs for the same period.

(5) HHSC will calculate the estimated rate that an average commercial payor or Medicare would have paid for similar services or based on the CMS-approved CCBHC cost report rate methodology using either data from Medicare cost reports or collected from providers.

(6) Encounter data used to calculate DPP BHS payments must be designated as paid status with a reported paid amount greater than zero. Encounters reported as paid status, but with a reported paid amount of zero or negative dollars, will be excluded from the data used to calculate DPP BHS payments.

(e) Conditions of Participation. As a condition of participation, all providers participating in the program must allow for the following.

(1) The provider must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 21 calendar days, and the final date of the enrollment period will be at least nine calendar days prior to the release of suggested IGT responsibilities.

(A) Enrollment is conducted annually and participants may not join the program after the enrollment period closes. Any updates to enrollment information must be submitted prior to the publication of the IGT suggestion under subsection (j)(1) of this section.

(B) Network status for providers for the entire program period will be determined at the time of enrollment based on the submission of documentation through the enrollment process that shows an MCO has identified the provider as having a network agreement.

(2) The entity that bills on behalf of the provider must certify, on a form prescribed by HHSC, that no part of any payment made under the program will be used to pay a contingent fee and that the entity's agreement with the provider does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the provider's receipt of program funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If a provider contracts with another entity to provide DPP BHS-eligible services on behalf of the provider, the provider must submit all claims to the MCO using an NPI assigned to the provider as the billing provider's NPI.

(4) If a provider has changed ownership in the past five years in a way that impacts eligibility for DPP BHS, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider and which reference the administration of, or payment from, DPP BHS.

(5) Report all quality data denoted as required as a condition of participation in subsection (h) of this section.

(6) Failure to meet any conditions of participation described in this section will result in removal of the provider from the program and recoupment of all funds previously paid during the program period.

(f) Determination of percentage of rate and dollar increase.

(1) HHSC will determine the percentage of rate or dollar increase applicable to providers by program component.

(2) HHSC will consider the following factors when determining the rate increase:

(A) the estimated Medicare gap for providers, based upon the upper payment limit demonstration most recently submitted by HHSC to the Centers for Medicare and Medicaid Services (CMS);

(B) the estimated Average Commercial Reimbursement (ACR) gap for the class or individual providers, as indicated in data collected from providers;

(C) the estimated gap for providers, based on the CCBHC cost-reporting methodology that is consistent with the CMS guidelines;

(D) the percentage of Medicaid costs incurred by providers in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any rate increase administered under this section; and

(E) the actuarial soundness of the capitation payment needed to support the rate increase.

(g) Services subject to rate and dollar increase. HHSC may direct the MCOs to increase rates or dollar amounts for all or a subset of provider services.

(h) Program capitation rate components. Program funds will be paid to MCOs through the managed care per member per month (PMPM) capitation rates. The MCOs' distribution of program funds to the enrolled providers will be based on each provider's performance related to the quality metrics as described in §353.1322 of this subchapter. The provider must have provided at least one Medicaid service to a Medicaid managed care client for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 65 percent of the total program value for program periods beginning on or before September 1, 2023. For program periods beginning on or after September 1, 2024, Component One will be 100 percent of the total program value.

(B) Allocation of funds across all qualifying providers will be proportional, based upon historical Medicaid utilization.

(C) Monthly payments to providers will be a uniform rate increase.

(D) The interim allocation of funds across qualifying providers will be reconciled to the actual Medicaid utilization across these providers during the program period, as captured by Medicaid MCOs contracted with HHSC for managed care 120 days after the last day of the program period.

(i) Redistribution resulting from the reconciliation will be based on actual utilization of enrolled NPIs.

(ii) If a provider eligible for DPP BHS payments was not included in the monthly scorecards, the provider may be included in the reconciliation by HHSC.

(E) Providers must report quality data as described in §353.1322 of this subchapter as a condition of participation in the program.

(2) Component Two.

(A) The total value of Component Two will be equal to 35 percent of the total program value program periods beginning on or before September 1, 2023. For program periods beginning on or after September 1, 2024, the total value of Component Two will be equal to 0 percent of the total program value.

(B) Allocation of funds across all qualifying providers will be based upon historical Medicaid utilization.

(C) Payments to providers will be a uniform rate increase.

(D) Providers must report quality data as described in §353.1322 of this subchapter as a condition of participation in the program.

(i) Distribution of the Directed Payment Program for Behavioral Health Services payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each payment associated with each enrolled provider broken down by program capitation rate component and payment period. The model for scorecard payments and the reconciliation calculations will be based on the enrolled NPIs and the MCO network status at the time of the application under subsection (e)(1) of this section. For example, for a provider, HHSC will calculate the portion of each payment associated with that provider that would be paid from the MCO to the provider as follows.

(A) Monthly payments in the form of a uniform dollar increase for Component One will be equal to the total value of Component One attributed based upon historical utilization of the provider divided by twelve. An annual reconciliation will be performed for each provider based on actual utilization.

(B) For program periods beginning on or before September 1, 2023, rate increases from Component Two will be a uniform percentage rate increase on applicable services calculated based on the total value of Component Two for the providers divided by historical utilization of the respective services.

(C) For purposes of the calculation described in subparagraph (B) of this paragraph, a provider must achieve a minimum number of measures as identified in §353.1322 of this subchapter to be eligible for full payment.

(2) MCOs will distribute payments to enrolled providers based on criteria established under paragraph (1) of this subsection.

(j) Non-federal share of DPP BHS payments. The non-federal share of all DPP BHS payments is funded through IGTs from sponsoring governmental entities. No state general revenue that is not otherwise available to providers is available to support DPP BHS.

(1) HHSC will communicate suggested IGT responsibilities for the program period with all DPP BHS eligible and enrolled providers at least 10 calendar days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under DPP BHS for the program period as determined by HHSC, plus 10 percent; forecasted member months for the program period as determined by HHSC; and the distribution of historical Medicaid utilization across providers, for the program period. HHSC will also communicate estimated maximum revenues each eligible and enrolled provider could earn under DPP BHS for the program period with those estimates based on HHSC's suggested IGT respon-

sibilities and an assumption that all enrolled providers will meet 100 percent of their quality metrics.

(2) Sponsoring governmental entities will determine the amount of IGT they intend to transfer to HHSC for the entire program period and provide a declaration of intent to HHSC 21 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity intends to transfer to HHSC.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred no fewer than 14 business days before IGT transfers are due. HHSC will instruct sponsoring governmental entities as to the IGT amounts necessary to fund the program at estimated levels. IGT amounts will include the non-federal share of all costs associated with the provider rate increase, including costs associated with MCO (Capitation) premium taxes, risk margin, and administration, plus 10 percent.

(4) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. Sponsoring governmental entities will transfer the second half of the IGT amount by a date determined by HHSC, but no later than December 1. HHSC will publish the IGT deadlines and all associated dates on its Internet website by March 15 of each year.

(k) Effective date of rate and dollar reimbursement increases. HHSC will direct MCOs to increase reimbursements under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(l) Changes in operation. If an enrolled provider closes voluntarily or ceases to provide Medicaid services, the provider must notify the HHSC Provider Finance Department by electronic mail to an address designated by HHSC, by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when HHSC Provider Finance Department receives the notice.

(m) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(n) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) - (k) of this subchapter.

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 January 5, 2024.

TRD-202400058

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 25, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 707-6071

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

**CHAPTER 133. HOSPITAL LICENSING  
SUBCHAPTER C. OPERATIONAL  
REQUIREMENTS**

**25 TAC §133.54**

The Texas Health and Human Services Commission (HHSC) adopts new §133.54, concerning Hospital at Home Program Application and Operational Requirements.

New §133.54 is adopted with changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6171). This rule will be republished.

**BACKGROUND AND JUSTIFICATION**

The new section is necessary to implement House Bill (H.B.) 1890, 88th Legislature, Regular Session, 2023. H.B. 1890 amended Texas Health and Safety Code (HSC) Chapter 241 by adding new Subchapter M to allow a licensed hospital to operate a hospital at home program with approval from the Centers for Medicare and Medicaid Services (CMS) and HHSC.

HSC §241.403(a), as added by H.B. 1890, requires HHSC to adopt rules establishing minimum standards for operation of a hospital at home program by a hospital.

In March 2020, CMS created the Acute Hospital Care at Home program, originally called the Hospitals Without Walls program, to increase hospital capacity during the COVID-19 pandemic.

In response to state and federal state of disaster declarations relating to COVID-19, HHSC adopted an emergency rule in Texas Administrative Code, Title 26, Chapter 500 §500.4, relating to Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic. This emergency rule expired July 28, 2023.

**COMMENTS**

The 31-day comment period ended November 20, 2023.

During this period, HHSC received comments regarding the proposed rule from two commenters: the Teaching Hospitals of Texas (THOT) and the Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC's responses follows.

Comment: THOT appreciated HHSC's work to implement the new rule as required by H.B. 1890 to ensure the Acute Hospital Care at Home Program continues and expressed their overall support for the new section.

Response: HHSC acknowledges this comment.

Comment: THA said they appreciate HHSC's clear and concise rulemaking.

Response: HHSC acknowledges this comment.

Comment: THOT and THA recommended amending §133.54(e) to clarify whether the renewal application fee is based on the number of beds designated for the hospital at home program at the time of the application or a prediction of the number of beds

the hospital may designate to the program in the future. THOT noted it would be difficult to predict how many beds the hospital may use in the hospital at home program and administratively burdensome to submit a new payment each time a hospital adds a new bed after HHSC approves the initial application. THA additionally asked HHSC clarify how the 10 beds are calculated and the process for adding a group of 10 beds between renewal years. THA noted flexibility is important for a hospital at home program to succeed and hospitals would appreciate clear and simple policies for adding and removing beds.

Response: HHSC revises §133.54(e) to clarify the renewal application fee is based on the number of beds a hospital designates for the hospital at home program in the hospital's renewal application. HHSC also adds new §133.54(f), and renumbers subsequent subsections accordingly, to clarify when a hospital increases the number of beds designated for its hospital at home program between license renewal periods, the hospital shall notify HHSC and pay a nonrefundable fee of \$390 per block of 10 beds the hospital adds to their program.

Comment: THA recommended amending §133.54(f)(3)(A), renumbered to §133.54(g)(3)(A), to clarify the requirements for hospital policies and procedures to ensure patient health and safety. THA noted it was unclear whether the hospital's policies and procedures to ensure a patient's health and safety must address latent issues, such as mold, working smoke detectors within the patient's home, or neighborhood crime.

Response: HHSC declines to revise §133.54(f)(3)(A), renumbered to §133.54(g)(3)(A), because a hospital may determine the scope of its policies and procedures to ensure patient safety, provided the policies and procedures meet the minimum requirements under §133.54(g).

Comment: THOT and THA expressed concern about §133.54(f)(4)(A), renumbered to §133.54(g)(4)(A), precluding patients residing in assisted living facilities, group homes, hotels, or other non-traditional residential settings from qualifying for the hospitals at home program. THOT noted CMS allows patients residing in assisted living facilities to participate in the Acute Hospital Care at Home program and recommended amending §133.54(f)(4)(A) to either remove the word "residential" or allow additional home settings to improve flexibility and access. THA also noted that meeting federal qualifications should suffice for state regulatory purposes.

Response: HHSC revises §133.54(f)(4)(A), renumbered to §133.54(g)(4)(A), to remove the word "residential" from the requirement for a patient's home to be located at a physical address. HHSC notes a hospital is responsible for determining which home settings may participate in the hospital's program.

Comment: THOT and THA recommended amending §133.54(f)(4)(B) - (D), renumbered to §133.54(g)(4)(B) - (D), to require hospital policies to include how the hospital will address disruptions in electricity, water, and wastewater services at a participating patient's home in an emergency rather than disallowing disruptions and requiring hospitals assume responsibility for such services. THOT suggested HHSC use the following language: "maintain electricity service, water and wastewater with emergency policies and procedures in place in the event of a service loss that affects patient care. This may include transferring patients to a hospital setting if necessary."

Response: HHSC revises §133.54(f)(4)(B) - (D), renumbered to §133.54(g)(4)(B) - (D), to reorganize the subparagraphs under §133.54(g)(4)(B) and include a requirement for the hospital to

identify how the hospital addresses any disruptions in electricity, water, and wastewater services in an emergency.

Comment: THOT and THA recommended amending §133.54(f)(4)(E), renumbered to §133.54(g)(4)(A)(ii), to remove the words "at designated times" to allow for hospital staff entry in emergency situations. THA noted times are generally consistent and designated in advance, but this wording could limit access in emergency situations outside of defined timelines. THOT noted hospital staff typically notify patients when they will arrive, but a hospital may interpret the phrase "designated times" as hospital staff being limited in ways that could be inconsistent with best practices for patient care and emergency situations.

Response: HHSC revises §133.54(f)(4)(E), renumbered to §133.54(g)(4)(A)(ii), to replace the phrase "at designated times" with "as needed."

Comment: THA asked if the requirements in §133.54(f)(4) and (5), renumbered to §133.54(g)(4), are exhaustive and requested HHSC include any additional requirements beyond those listed in §133.54(f)(4) and (5) or note if the requirements listed are minimum requirements.

Response: HHSC revises §133.54(f), renumbered to §133.54(g), to reorganize paragraphs (4) and (5) into subparagraphs under §133.54(g)(4) and rennumbers the subsequent paragraphs in §133.54(g) accordingly. HHSC also clarifies that a hospital's policies and procedures must, at a minimum, require the patient and the patient's home to meet the requirements under that paragraph.

Comment: THOT and THA expressed concern with the requirement in §133.54(f)(6), renumbered to §133.54(g)(5), for a hospital to obtain patient consent for HHSC to enter the patient's home during a complaint investigation because this requirement may limit program participation. THOT and THA recommended removing this paragraph and following current hospital complaint investigation and survey procedures, which typically do not require entry into a patient's home. THOT alternatively suggested amending this paragraph to provide more details about the survey process when entering a patient's home.

Response: HHSC revises §133.54(f)(6), renumbered to §133.54(g)(5), to replace the requirement for a hospital to obtain consent to allow HHSC staff to enter the patient's home with a requirement that the informed consent must include a notice that HHSC may request to accompany hospital staff when entering the patient's home to ensure the hospital's compliance with §133.54.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC §241.403, which requires HHSC to adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

*§133.54. Hospital at Home Program Application and Operational Requirements.*

(a) As defined by Texas Health and Safety Code §241.401, and when used in this subchapter, the following words and terms have the following meanings.



(1) "Acute hospital care at home waiver program" means:

(A) the program established by the Centers for Medicare and Medicaid Services under United States Code Title 42 Section 1320b-5 that waives the requirements of 42 CFR Sections 482.23(b) and (b)(1); and

(B) a successor program to the program described by subparagraph (A) of this paragraph that is established by the United States Congress or the Centers for Medicare & Medicaid Services.

(2) "Hospital at home program" means a program operated by a hospital to provide in a home setting health care services that are considered to be acute hospital care for purposes of the acute hospital care at home waiver program.

(b) Notwithstanding hospital functions and services requirements in §133.41 of this subchapter (relating to Hospital Functions and Services) and hospital physical plant and construction requirements in Subchapter I of this chapter (relating to Physical Plant and Construction Requirements), a hospital may operate a hospital at home program and treat an eligible patient at that patient's home if the hospital:

(1) obtains approval from the Centers for Medicare & Medicaid Services (CMS) to participate in the acute hospital care at home waiver program; and

(2) receives written approval from the Texas Health and Human Services Commission (HHSC) to operate a hospital at home program.

(c) To apply for HHSC approval to operate a hospital at home program, an applicant shall submit the following to HHSC:

(1) a complete application to operate the program as indicated on the HHSC website;

(2) a nonrefundable application fee of \$350;

(3) a copy of the CMS approval to participate in the acute hospital care at home waiver program; and

(4) any additional information requested by HHSC.

(d) A hospital shall reapply for HHSC approval to operate the hospital's hospital at home program when applying to renew the hospital's license under §133.23 of this chapter (relating to Application and Issuance of Renewal License).

(e) A hospital shall pay a nonrefundable renewal application fee of \$390 per 10 beds the hospital designates for the hospital at home program in the renewal application. This fee is in addition to the hospital's license renewal fee.

(f) When a hospital increases the number of beds designated for its hospital at home program between license renewal periods, the hospital shall notify HHSC and pay a nonrefundable fee of \$390 per block of 10 beds the hospital adds to their program.

(g) A hospital that is approved by HHSC to operate a hospital at home program shall:

(1) maintain CMS approval to participate in the acute hospital care at home waiver program;

(2) comply with the CMS acute hospital care at home waiver program requirements and all other applicable statutes and regulations;

(3) develop, implement, and enforce policies and procedures to ensure:

(A) the patient's health and safety;

(B) the safety of hospital staff entering the patient's home; and

(C) the safety of the patient's home;

(4) ensure the hospital's policies and procedures adopted under paragraph (3) of this subsection at a minimum:

(A) require the patient's home to:

(i) be located at a physical address;

(ii) allow hospital staff entry into the home as needed;

(iii) have animals separated securely away from the patient care area while hospital staff is on site, except for service animals as allowed by the Americans with Disabilities Act of 1990; and

(iv) maintain a safe route from the entrance and exit to the patient area within in the home;

(B) require the patient's home maintain electricity, water, and wastewater service and identify how the hospital addresses any disruptions in these services in an emergency; and

(C) require the patient maintain access to telephone service;

(5) obtain a patient's written and informed consent to participate before the patient participates in the hospital's hospital at home program, including notice that HHSC may request to accompany hospital staff when entering the patient's home to ensure a hospital's compliance with this rule; and

(6) notify HHSC in writing no later than five business days if the hospital:

(A) chooses to no longer operate a hospital at home program; or

(B) loses CMS approval to participate in the acute hospital care at home waiver program.

(h) At any time, HHSC may withdraw its approval for a hospital to operate a hospital at home program if HHSC finds a threat to patient health or safety. Any patient being treated under the hospital at home program at the time HHSC withdraws its approval shall be safely relocated as soon as practicable and according to the hospital's policies and procedures.

(i) To the extent this section may conflict with a requirement in §133.21(c)(4)(B) or (C) of this chapter (relating to General), this section controls.

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 December 28, 2023.

TRD-202305001

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: January 25, 2024

Proposal publication date: October 20, 2023

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



# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 4. LIFE AND ANNUITY

The commissioner of insurance adopts the repeal of 28 TAC §4.1117. The commissioner of insurance adopts the amendments to 28 TAC §§4.201 - 4.206, 4.601 - 4.608, 4.611, 4.613 - 4.628, 4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, 4.1011, 4.1101 - 4.1104, 4.1106 - 4.1116, 4.1201, 4.1502 - 4.1509, 4.1602 - 4.1606, 4.1609 - 4.1613, 4.1703, 4.1705 - 4.1707, 4.2102 - 4.2106, 4.2302, 4.2304, 4.2306 - 4.2312, 4.2322, 4.2701, 4.2702, 4.2705, 4.2706, 4.2712 - 4.2716, 4.2721 - 4.2726, 4.2731 - 4.2734, 4.2801 - 4.2808, 4.2811, 4.2821 - 4.2823, 4.2825 - 4.2827, 4.2829, and 4.2831 - 4.2836 without changes to the proposed text published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5466). These sections will not be republished.

Sections 4.1510, 4.1702, 4.1704, and 4.2824 are adopted with nonsubstantive changes to the proposed text. In §4.1510, the Texas Department of Insurance (TDI) has removed an unnecessary reference to "Subchapter O" in a citation; in §4.1702 and §4.1704, TDI has revised an incorrect date in the title of two mortality tables by replacing "1908" with "1980"; and in §4.2824, TDI has corrected punctuation. In addition, TDI has revised the Subchapter BB, Division 2 title to replace "pursuant to" with "under." These sections will be republished.

**REASONED JUSTIFICATION.** On July 28, 2023, the Texas Register published notice (48 TexReg 4127) of the administrative transfer of certain subchapters concerning life insurance and annuity products from Chapter 3 to new Chapter 4 in Title 28 of the Texas Administrative Code.

The administrative transfer revised each subchapter and section designation included in the transfer to reflect its new location in Chapter 4, but no rule text was amended during the transfer. This adoption order updates internal section and figure citations made obsolete by the administrative transfer.

As part of the administrative transfer notice, a comparison table illustrating the new organization and designations of subchapters, divisions, and sections in Chapter 4 was published in the *Texas Register*. The transfer table is available on TDI's website at [www.tdi.texas.gov/rules/2023/index.html](http://www.tdi.texas.gov/rules/2023/index.html).

In addition to amendments that correct citations, nonsubstantive changes include:

- adding or amending Insurance Code section titles and citations for accessibility and consistency with agency rule drafting style preferences;
- updating TDI contact information, including mailing, physical, and website addresses; and
- correcting punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences, as appropriate.

Specifically, amendments to multiple sections include the deletion of "shall" or replacement of "shall" with "must" or another context-appropriate word. The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website. Resources TDI uses for plain language guidance in-

clude [plainlanguage.gov](http://plainlanguage.gov), which provides federal plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

The adoption replaces "pursuant to" with "under" or "in accordance with," as appropriate; replaces "subchapter" or "chapter" with "title" in citations to other sections in Title 28 of the Texas Administrative Code; and removes "the" when not needed before "Insurance Code." These amendments, along with other nonsubstantive amendments discussed in the following paragraphs, reflect current agency drafting style, adhere to plain language practices, and promote consistency in TDI rule text.

In addition, the administrative transfer and adopted amendments (1) enhance accessibility through thoughtful reorganization, (2) promote readability through nonsubstantive plain language amendments, (3) preserve the capacity of Chapter 4 with deliberate organization, and (4) restore the capacity of Chapter 3 for future rulemaking projects.

This adoption also includes nonsubstantive amendments to provisions related to the National Association of Insurance Commissioners (NAIC) rules, regulations, directives, or standards. Because the rules relate to NAIC rules, regulations, directives, or standards, Insurance Code §36.004 requires TDI to consider whether authority exists to enforce or adopt the provisions. TDI has determined that §36.004 does not prohibit the amendments because they are nonsubstantive updates that do not change or expand previously adopted requirements.

The adopted repeal and amendments to the sections are described in detail in the following paragraphs, organized by subchapter.

#### *Subchapter C. Consumer Notices for Life Insurance Policy and Annuity Contract Replacements.*

**Section 4.201. Purpose.** The amendments add the title to the Insurance Code §1114.006 citation and remove "the" before "Insurance Code."

**Section 4.202. Definitions.** The amendments add the title to the Insurance Code Chapter 4054 citation and remove the word "shall."

**Section 4.203. Consumer Notice Content and Format Requirements.** The amendments update section and figure citations made obsolete after the administrative transfer. The amendments also update the TDI mailing address where persons may request forms specified in the subchapter, amend punctuation, and replace "pursuant to" with "under."

**Section 4.204. Consumer Notice Regarding Replacement for Insurers Using Agents.** The amendments update figure citations made obsolete after the administrative transfer and replace "shall" with "must." No amendments are adopted to the content of the figure.

**Section 4.205. Direct Response Consumer Notices.** The amendments update figure citations made obsolete after the administrative transfer and replace "shall" with "must." No amendments are adopted to the contents of the figures.

**Section 4.206. Filing Procedures for Substantially Similar Consumer Notices.** The amendments remove previous §4.206(a), which provided the filing procedure for an insurer subject to Insurance Code Chapter 1114 beginning on December 27, 2007, and ending January 31, 2008, because it is obsolete. The

adopted amendments redesignate the remaining subsections and remove the other effective dates in the section.

The amendments also update figure citations made obsolete after the administrative transfer and add or correct titles to the Insurance Code Chapter 1114 and §1701.054 citations. The adoption also replaces multiple citations to filing requirements found in 28 TAC Chapter 3, Subchapter A, with a general citation to 28 TAC Chapter 3, Subchapter A. The amendments also replace "shall" with "must" and "prior to" with "before" and correct grammar by adding "been" to §4.206(a)(1).

*Subchapter F. Individual Life Insurance Policy Form Checklist and Affirmative Requirements.*

Section 4.601. Payment of Premiums. The amendments replace "which" with "that," "shall" with "will," "thereof to" with "at," and "his" with "the."

Section 4.602. Grace Period. The amendment replaces "shall" with "must."

Section 4.603. Entire Contract. The amendments remove the word "shall" and replace "which" with "that."

Section 4.604. Incontestable Clause. The amendments add the title to the Insurance Code §1101.006 citation, replace the citation and title of §3.118(e) with §4.621(e), replace "which" with "that," and remove "whatsoever."

Section 4.605. Statements of the Insured. The amendments add the title to the Insurance Code §705.004 citation and replace "which" with "that."

Section 4.606. Misstatement of Age. The amendments replace "shall be such as" with "is the amount that" and amend punctuation.

Section 4.607. Policy Loans. The amendments add the title to the Insurance Code Chapter 1110 citation; amend punctuation; remove "of," "herein," and one instance of "thereon"; replace "which" with "that," "thereto" with "to the policy," "therefor" with "for the loan," and "thereon" with "on the loan"; and add "of the policy" and "in this subchapter" to clarify the sentence given the removal of "thereon" and "herein" from the subsection.

Section 4.608. Automatic Nonforfeiture Benefits. The amendment adds the title to the Insurance Code Chapter 1105 citation.

Section 4.611. Reinstatement. The amendments replace "which" with "that," "shall" with "must," "shall be" with "is," and "shall not have" with "has not."

Section 4.613. Family Group Special Requirements. The amendments replace "shall" with "must" and "which" with "that."

Section 4.614. Dependent Child Riders and Family Term Riders. The amendments add the corresponding titles to the Insurance Code §1101.006 and §1105.007 citations, amend punctuation, and replace "prior to" with "before."

Section 4.615. Requirements for a Package Consisting of a Deferred Life Policy with an Accidental Death Rider Attached. The amendments add the title to the Insurance Code Chapter 1701 citation and replace "which" with "that."

Section 4.616. Substitute or Change of Insured Riders. The amendments add the word "and" at the end of §4.616(d)(3) to clarify that all elements in §4.616(d) must be clearly described. The adoption also replaces the word "shall" with "must" and amends punctuation.

Section 4.617. Preliminary Term Life Insurance. The amendments add "and" after §4.617(1) to clarify that both requirements apply to a contract of life insurance containing a preliminary term insurance rider. The amendments also correct the spelling of "contestability."

Section 4.618. Conversion Provision. The amendments add "and" after §4.618(3) to clarify that a conversion provision in a policy must comply with the requirements in the section. The adoption also replaces "shall" with "must."

Section 4.619. Limitations of Lawsuits. The amendment replaces "shall accrue" with "accrues."

Section 4.620. Backdating Policies. The amendments replace "which" with "that," "that which" with "what," "his" with "their," and "prior to" with "before" and remove "thereby."

Section 4.621. Settlement at Maturity. The amendments remove "either of" to reflect that §4.621(c) contains more than two paragraphs, amend punctuation, and replace "which would" with "that."

Section 4.622. Tontine Provisions. The amendments replace "which" with "that."

Section 4.623. Assignment Provisions. The amendments replace "which" with "that."

Section 4.624. Provisions Relating to Dividends, Coupon Benefits, or Other Guaranteed Returns. The amendments add the title to the Insurance Code §841.253 citation and replace "which" with "that."

Section 4.625. Premiums Paid in Advance. The amendments amend punctuation and replace "which" with "that" and "therein" with "in the policy."

Section 4.626. Annuity Contracts. The amendments update section citations made obsolete after the administrative transfer by replacing "Sections 3.101 - 3.128" with "All sections in Subchapter F" and replacing the word "title" with "chapter." The adoption also replaces "which" with "that."

Section 4.627. Certain Prohibited Provisions. The amendments replace "which" with "that."

Section 4.628. Renewal Premium on Term Policies. The amendment replaces "shall" with "must."

*Subchapter J. Life - Indeterminate Premium Reduction Policies.*

The adoption adds "Life -" to the title of Subchapter J to clarify the applicability of the subchapter.

Section 4.1001. Purpose and Scope. The amendments add the title to the Insurance Code Chapter 541 citation and replace "which" with "that" and "subsequent to" with "after." The adoption also adds "and" after §4.1001(a)(1) to clarify that the subchapter applies to life insurance policies that have both characteristics in §4.1001(a).

Section 4.1002. Policy Form Submission. The amendments replace "its" with "the insurer's" to clarify the subject of §4.1002(a)(1), amend punctuation, and replace "which" with "that."

Section 4.1004. Summary of Provisions. The amendments replace "which" with "that" and "subsequent to" with "after."

Section 4.1005. Relation of Initial to Later Premium Charge. The amendment replaces "which" with "that."

Section 4.1008. Minimum Nonforfeiture Values. The amendments add the title to the Insurance Code Chapter 1105 citation and replace "code" with "Insurance Code." The adoption also removes "wherein" and "are required" and adds "which requires" for clarity.

Section 4.1010. Artificial Maximum Premiums Prohibited. The amendments add the titles to the Insurance Code Chapters 1105 and 425, Subchapter B, citations. The adoption also replaces "subsequent to" with "after" and amends punctuation.

Section 4.1011. General Enforcement. The amendment adds the title to the Insurance Code Chapter 541 citation.

Subchapter K. Life - Standards for Acceleration-of-Life-Insurance Benefits for Individual and Group Policies and Riders.

The adoption adds "Life -" to the title of Subchapter K to clarify the applicability of the subchapter.

Section 4.1101. Purpose; Severability. The amendments remove the capitalization of the first word of paragraphs (1) through (5) of §4.1101(a) to reflect the punctuation of the subsection. The adoption also amends punctuation, removes "shall," and replaces "shall remain" with "remains."

Section 4.1102. Acceleration-of-Life-Insurance: Scope of Benefits. The amendments update section citations made obsolete after the administrative transfer, amend punctuation, and remove "shall" and "either." The adoption also replaces "which" with "that," "Acceleration-of-life-insurance" with "Acceleration-of-Life-Insurance," "that" with "That," and "shall" with "must" or "will."

Section 4.1103. Required Policy Definitions; Evidence of Total and Permanent Disability. The amendments update a section citation made obsolete after the administrative transfer and add the titles to the Insurance Code §1111.052 and §1201.003 citations. The adoption also removes "the" before "Insurance Code" and replaces "shall" with "must." The adoption also clarifies §4.1103(a) by removing "either" and amending punctuation throughout the section.

Section 4.1104. Standards for Medical Diagnoses. The amendments replace "shall" with "must."

Section 4.1106. Methods for Determining Benefits and Allowable Charges and Fees. The amendments replace the capitalized catchlines with lowercased catchlines and amend punctuation. The adoption also replaces "shall" with "must" or "may," "which" with "that," "annum" with "year," "one percent" with "1%," "90 day" with "90-day," "Commissioner" with "commissioner," and "regards" with "regard."

Section 4.1107. Limitations on Reduction of Cash Values. The amendments update a section citation made obsolete after the administrative transfer and replace "Lien Method" with "lien method" and "shall" with "may." The adoption also removes "the" before "Insurance Code," amends punctuation, and adds the title to the Insurance Code Chapter 1105 citation.

Section 4.1108. Pro Rata Reduction of Loan upon Acceleration of Benefits. The amendments update a section citation made obsolete after the administrative transfer and replace "Lien Method" with "lien method."

Section 4.1109. Effect of Acceleration of Benefits on Nonforfeiture Calculations. The amendments add the title to the Insurance Code Chapter 1105 citation, replace "shall" with "must," and remove "the" before "Insurance Code."

Section 4.1110. Calculation of Reserves. The amendments update a section citation made obsolete after the administrative transfer, remove "the" before "Insurance Code," and add titles to the citations for Insurance Code Chapter 425, §425.058, and §425.069. The adoption also replaces "shall" with "must," "which" with "that," and "Lien Method" with "lien method."

Section 4.1111. Unfair, Discriminatory, or Deceptive Practices Prohibited. The amendments add a comma after "Discriminatory" in the section title and add commas in §4.1111(b) for consistency with the amendment to the section title.

The adoption also removes the parentheses around the title to Insurance Code Chapter 541, removes "the" before "Insurance Code," and replaces "shall" with "may."

Section 4.1112. Notice and Disclosure Requirements for Life Insurance Contracts Containing Acceleration-of-Life-Insurance Benefits. The amendments capitalize "Acceleration-of-Life-Insurance" in the section title and update section citations made obsolete after the administrative transfer.

The adoption also corrects punctuational errors and replaces "shall" with "must," "which" with "that," "section" with "subsection," and "shall be" with "is."

Section 4.1113. Notice and Disclosure Requirements for Marketing Materials. The amendments update section citations made obsolete after the administrative transfer, amend punctuation, and replace "shall" with "must" and "which" with "that." The adoption also adds an "and" at the end of §4.1113(a)(2) to clarify that a disclosure required under the section must include information in §4.1113(a)(1) - (3).

Section 4.1114. Requirements for Acceleration-of-Life-Insurance Benefits That Fund Long-Term Care Expenses. The amendments update section citations made obsolete after the administrative transfer, capitalize "Acceleration-of-Life-Insurance" in the section title, clarify that the citation to Subchapter Y is found in Chapter 3 of Title 28, and correct the title for Chapter 3, Subchapter Y.

The amendments also replace "To" with "to" in the title citation to §4.1115 and "chapter" with "title" and correct capitalization throughout the section for consistency with the punctuation used.

Section 4.1115. Requirements for Benefits Represented to Be Qualified for Favorable Federal Tax Treatment. The amendments update section citations made obsolete after the administrative transfer and correct cited section titles in the rule text. The adoption also replaces "To" with "to" in the title of §4.1115; replaces "his or her" with "their," "shall" with "must" or "may," "long term" with "long-term," "prior to" with "before," and "which" with "that"; removes "shall"; adds "of this paragraph" in §4.1115(b)(2)(B); and amends punctuation.

Section 4.1116. Disclosure Related to Tax Qualification of Benefits and Benefits' Effect on Public Assistance. The amendments update section citations made obsolete after the administrative transfer and remove redundant citations to a section title previously cited in §4.1116. The adoption removes the phrase "a life insurance contract" in §4.1116(b) because it is redundant and amends punctuation throughout the section.

The amendments also replace "back-slashes" with "slashes," "acceleration-of-life insurance" with "acceleration-of-life-insurance," and "regards" with "regard."

Section 4.1117. Effective Date. Section 4.1117 is repealed because the section states the amendments become effective 20

days after the date the adopted rule is filed with the Office of the Secretary of State. This is standard practice for rules under Government Code §2001.036(a) and, as a result, the section is unnecessary.

*Subchapter L. Life - Insurance Sold in Connection with Prepaid Funeral Contracts.*

The adoption adds "Life -" to the title of Subchapter L to clarify the applicability of the subchapter.

Section 4.1201. Introduction to Joint Memorandum of Understanding. The amendments add the title to the Occupations Code §651.159 citation and update a section citation made obsolete after the administrative transfer.

*Subchapter O. Life - Variable Life Insurance.*

The adoption adds "Life -" to the title of Subchapter O to clarify the applicability of the subchapter.

Section 4.1502. Definitions. The amendments add a title to the Insurance Code Chapter 1152 citation, add "with" in §4.1502(10), amend punctuation, and replace "which" with "that" and "pursuant to" with "under."

Section 4.1503. Qualifications of Insurer to Issue Variable Life Insurance. The amendments update section citations made obsolete after the administrative transfer, add a title to the Insurance Code Chapter 1152 citation, and correct a title and citation to Chapter 21, Subchapter B, Division 1.

The amendments also remove "concerning notice and hearing" because that citation is outdated and remove "a" before the phrase "life insurance business in this state" to correct the grammar of the sentence. The amendments amend punctuation and replace "subsection" with "section," "which" with "that," "prior to" with "before," "pursuant to" with "under," and "contractholder" with "contract holder."

Section 4.1504. Insurance Contract and Filing Requirements. The amendments add titles to the citations for Insurance Code Chapters 1105 and 1110 and "Chapter 3" to a citation in §4.1504(1)(A). The amendments also replace "chapter" with "title" in relation to the citation to Chapter 3, Subchapter A, and remove a redundant reference to the title of §4.1509.

The amendments also add "and" at the end of §4.1504(3)(P)(v) and §4.1504(4)(A)(iii) to reflect that all the elements listed in those paragraphs must be included under §4.1504(3)(P) and §4.1504(4)(A), and add "or" at the end of §4.1504(5)(C)(iv) to reflect that contracts may offer the dividend options in §4.1504(5)(C)(i) - (v).

The amendments also update section citations made obsolete after the administrative transfer and replace multiple outdated words or terms with language that conforms to current agency drafting style and plain language preferences. These changes remove "of" and "therefor"; amend punctuation; and replace "which" with "that," "contractholder" with "contract holder," "his or her" with "the insured's," "which result" with "that results," "pursuant to" with "under," "prior to" with "before," "thereof" with "of those provisions," "thereon" with "on the contract," and "subsequent to" with "after."

Section 4.1505. Reserve Liabilities for Variable Life Insurance. The amendments add a title to the Insurance Code Chapter 425, Subchapter B, citation and replace "paid up" with "paid-up" and "which" with "that."

Section 4.1506. Separate Accounts. The amendments add titles to the Insurance Code Chapters 1105 and 1152 citations, update section citations made obsolete after the administrative transfer, and correct a reference to the title of a cited administrative code citation.

The adoption adds "and" at the end of §4.1506(7)(F) to clarify that the insurer must disclose in writing all charges that may be made against the separate account including, but not limited to, the elements in §4.1506(7). The adoption also adds "and" at the end of §4.1506(10)(C)(iii) to clarify the information to be included under §4.1506(10)(C). The adoption also removes an "or" at the end of §4.1506(1)(B)(i) because it is redundant. These amendments clarify the rule requirements but are nonsubstantive in nature and do not change the requirements under the rule.

The adoption also amends punctuation and replaces "pursuant to" with "under," "prior to" with "before," "which" with "that," "thereunder" with "under the contract" or "adopted under that section," "which evidences" with "evidencing," and "contractholders" with "contract holders."

Section 4.1507. Information Furnished to Applicants. The amendments update a section citation made obsolete after the administrative transfer and amend punctuation. The adoption also replaces "which" with "that," "contractholder" with "contract holder," "the manner in which" with "how," "prior to" with "before," and "shall" with "must," "may," or "will."

Section 4.1508. Application. The amendments add "and" after §4.1508(2) to clarify that the application for a variable life contract must contain all the elements in the section and replace "shall" with "must" and "which" with "that."

Section 4.1509. Reports to Contract Holders. The amendments update a section citation made obsolete after the administrative transfer and add an "and" at the end of §4.1509(2)(D) to clarify that a statement or statements provided annually to contract holders must contain the elements listed in the paragraph.

The adoption also replaces "contractholder" with "contract holder" in the section title and in rule text and replaces "shall" with "must," "pursuant to" with "under," "of" with "or," "which" with "that," "prior to" with "before," "therein" with "in the statement" and "his or her" with "their."

Section 4.1510. Separability. The amendments replace the range of section citations with the corresponding citation to Subchapter O and change "title" to chapter." The adoption also removes "thereby," amends the title of Subchapter O for consistency with adopted changes to the subchapter's title, and replaces "thereof" with "of such provisions" and "shall" with "will."

The text as proposed has been changed to correct an error in §4.1510 by removing "of Subchapter O" in a citation because it is unnecessary.

*Subchapter P. Life - Required Reinstatement Relating to Mental Incapacity of the Insured for Individual Life Policies Without Nonforfeiture Benefits.*

The adoption adds "Life -" to the title of Subchapter P to clarify the applicability of the subchapter.

Section 4.1602. Applicability. The amendments update a section citation made obsolete after the administrative transfer, remove punctuation, and replace "which" with "that."

Section 4.1603. Severability. The amendment removes "shall."

Section 4.1604. Definitions. The amendments remove "shall"; amend punctuation; and replace "Incapacity" with "incapacity" and "Commissioner of Insurance" with "commissioner of insurance."

Section 4.1605. Eligibility Requirements. The amendments remove the language "set forth in paragraphs (1) - (4) of this subsection" at the end of the first sentence in §4.1605 to simplify and clarify the provision. The section is not broken into subsections and there are only four paragraphs in the section, so it is not necessary to list each paragraph. The amendments add the word "following" to clarify the sentence given the removal and replace "shall" with "must" and "prior to" with "before."

Section 4.1606. Payment of Past Due Premiums. The amendment replaces "annum" with "year."

Section 4.1609. Notification and Disclosure Requirements. The amendments update section citations made obsolete after the administrative transfer, remove a cited section title that is redundant, amend punctuation, and replace "thereto" with "to the policy" and "which" with "that."

Section 4.1610. Reinstatement Procedures. The amendment replaces "shall" with "must."

Section 4.1611. Reduced Benefits. The amendments replace "shall" with "must."

Section 4.1612. Form Filing Procedures. The amendments update section citations made obsolete after the administrative transfer and remove two redundant section title citations. The amendments also add "Chapter 3" to the citation in §4.1612(c) and amend the title of Subchapter A in §4.1612(c).

Section 4.1613. Notice and Disclosure Form. The amendments update section and figure citations made obsolete after the administrative transfer. The amendments also remove a redundant title citation and replace "shall" with "must." No amendments are adopted to the contents in the figures.

*Subchapter Q. Life - Nonforfeiture Standards for Individual Life Insurance in Employer Pension Plans.*

The adoption adds "Life -" to the title of Subchapter Q to clarify the applicability of the subchapter.

Section 4.1702. Definitions. The amendments remove "shall," correct punctuation, and replace "National Association of Insurance Commissioners" with "NAIC" for consistency. The amendments also correct the case law citation in §4.1702(8) by italicizing the names of the parties for consistency with §4.1703.

The text as proposed has been changed to correct an error in §4.1702(3) by replacing "1908 CET Table (M)" with "1980 CET Table (M)."

Section 4.1703. Standard. The amendments change the *Norris* case law citation in §4.1703(d) to reflect the same case law citation used in §4.1702(8) for consistency. The amendments also remove an unnecessary reference to a list of insurance code sections, update the TDI mailing address; add the titles to the citations for Insurance Code Chapter 425, Subchapter B, and Chapter 1105, Subchapter B; remove "herein"; and replace "paid up" with "paid-up" and "which" with "that."

Section 4.1704. Alternate Rule. The amendments update a section citation made obsolete after the administrative transfer, remove an unnecessary reference to a list of insurance code sections, and add titles to the citations for Insurance Code Chapter 425, Subchapter B, and Chapter 1105, Subchapter B. The

amendments also update the TDI mailing address and replace "which" with "that."

The text as proposed has been changed to correct an error in §4.1704(a)(1) by replacing "1908 CSO Table" with "1980 CSO Table."

Section 4.1705. Unfair Discrimination. The amendment adds a title to the Insurance Code §541.057 citation.

Section 4.1706. Severability. The amendments remove "thereby" and replace "shall" with "will" and "thereof" with "of these provisions."

Section 4.1707. 2001 CSO Mortality Table. The amendments replace the sections cited with a citation to "Subchapter AA, Division 3" and replace "shall" with "must," "pursuant to" with "under," and "title" with "chapter."

*Subchapter U. Variable Annuities.*

Section 4.2102. Definitions. The amendments add a title to the Insurance Code Chapter 1152 citation, amend punctuation, and replace "which" with "that," "pursuant to" with "under," and "contractholder" with "contract holder."

Section 4.2103. Qualifications of Insurer to Issue Variable Annuities. The amendments replace "To" with "to" in the section title and update a section citation made obsolete after the administrative transfer.

The amendments also amend punctuation and replace "he or she" with "the commissioner"; "State Board of Insurance" with "Department of Insurance"; "which" with "that"; and "shall" with "must," "may," or "will."

Section 4.2104. Separate Accounts. The amendments add a title to the Insurance Code Chapter 1152 citation and update section citations made obsolete after the administrative transfer. The amendments also remove redundant instances of "or" at the end of §4.2104(a)(2)(A) and §4.2104(j)(1) and add "and" at the end of §4.2104(j)(3)(C) to clarify that the insurer must include all the information in paragraph (3), if applicable.

The amendments also replace "To" with "to" in a title citation, amend punctuation, and replace "which" with "that," "contractholders" with "contract holders," "prior to" with "before," "pursuant to" with "under," and "thereunder" with "adopted under that section" or "under the contract," as appropriate.

Section 4.2105. Contract Requirements. The amendments replace outdated Insurance Article citations with current Insurance Code citations and their corresponding titles. The amendments also replace a citation and title to "Board Order 40701" with "Chapter 3, Subchapter A" and its corresponding title citation.

The amendments also amend punctuation throughout, remove "thereunder" and "the" before "Internal Revenue Code," and replace "which," "as of which," or "of which" with "that"; "him or her" or "his or her" with "the commissioner" or "the contract holder," as appropriate; "chapter" with "title"; "prior to" with "before"; "contractholder" with "contract holder"; "pursuant to" with "under"; "shall have" with "has"; "previous to" with "before"; "subparagraph" with "subparagraphs"; and "shall" with "must," "may," "will," or "do."

Section 4.2106. Separability. The amendments remove "thereby" and replace "thereof" with "of these sections" and "shall" with "will."

*Subchapter W. Annuity Disclosures.*

*Division 1. Annuity Contract Disclosures.*

Section 4.2302. Applicability and Scope. The amendments remove "the" before Insurance Code and Finance Code for consistency, add titles to the Insurance Code Chapter 102 citation and the Finance Code Chapter 154 citation, and amend punctuation.

Section 4.2304. Definitions. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code Chapter 102 and 4054 citations. The amendments also remove "the" before Insurance Code and "shall" throughout the section and replace "subchapter" with "title."

Section 4.2306. Guaranteed and Non-Guaranteed Elements. The amendments update section citations made obsolete after the administrative transfer, replace "Non-guaranteed" with "Non-Guaranteed" in the section title, and replace "subchapter" with "title."

Section 4.2307. Effect on Other Law. The amendments replace "pursuant to" with "under."

Section 4.2308. Required Consumer Notices. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code §1152.110 citation. The amendments remove "the" before Insurance Code, amend punctuation, and replace "subchapter" with "title," "Internet" with "internet," "which" with "and," "prior to" with "before," and "shall" with "must" or "will."

Section 4.2309. Disclosure Document. The amendment replaces "shall" with "must."

Section 4.2310. Buyer's Guide. The amendments correct punctuation and replace "NAIC" with "National Association of Insurance Commissioners (NAIC)" and "SEC's" with "Securities and Exchange Commission (SEC)."

Section 4.2311. Free Look Period. The amendments replace "shall" with "must" and "shall mean" with "means."

Section 4.2312. Report to Contract Owners. The amendment replaces "shall" with "must."

*Division 2. Annuity Suitability Disclosures.*

Section 4.2322. Required Forms. The amendments add "(NAIC)" at the end of the first use of "National Association of Insurance Commissioners" and then replace all instances of "National Association of Insurance Commissioners" with "NAIC." The adoption also removes "Texas" before "Insurance Code" for consistency with current agency rule drafting style.

*Subchapter AA. Mortality Tables.*

*Division 1. Annuity Mortality Tables.*

Section 4.2701. Purpose. The amendments update section and figure citations made obsolete after the administrative transfer. No amendments are adopted to the contents in the figures.

Section 4.2702. Definitions. The amendments update a section citation made obsolete after the administrative transfer, replace "Actuaries" with "Actuaries" and "table" with "Table," and amend punctuation. The amendments also add "(NAIC)" at the end of the first use of "National Association of Insurance Commissioners" and then replace all instances of "National Association of Insurance Commissioners" with "NAIC."

Section 4.2705. Application of the 1994 GAR Table. The amendments update a figure citation made obsolete after the adminis-

trative transfer. No amendments are adopted to the content in the figure.

Section 4.2706. Application of the 2012 IAR Mortality Table. The amendments update figure citations made obsolete after the administrative transfer. Amendments to figure citations are adopted in both the rule text and the text of Figure: 28 TAC §4.2706.

*Division 2. Smoker-Non smoker Composite Mortality Tables.*

Section 4.2712. Definitions. The amendments update punctuation and remove "shall."

Section 4.2713. Alternate Tables. The amendments update section citations made obsolete after the administrative transfer, remove an unnecessary reference to a list of insurance code sections in two places, and add the title to the Insurance Code, Chapter 1105, Subchapter B, citation. The amendments also remove a redundant title to a section cited earlier in §4.2713, amend punctuation, update a TDI mailing address, remove "herein," and replace "paid up" with "paid-up."

Section 4.2714. Conditions. The amendment adds the title to the Insurance Code §425.068 citation.

Section 4.2715. Severability. The amendments remove "thereby" and replace "thereof" with "of these sections" and "shall" with "will."

Section 4.2716. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer and replace "shall" with "must," "pursuant to" with "under," and "title" with "chapter."

*Division 3. 2001 CSO Mortality Table.*

Section 4.2721. Purpose. The amendments update a section citation made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapter 425, Subchapter B; §425.058; and §1105.055.

Section 4.2722. Definitions. The amendments update punctuation, remove "shall," and capitalize "Mortality."

Section 4.2723. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapter 425, Subchapter B; §425.058; and §1105.055. The adoption also corrects a citation from Insurance Code "§1055.055(h)" to "§1105.055(h)" in §4.2723(b).

The amendments also remove a redundant title to a section cited earlier in §4.2723; replace "Commissioner of Insurance" with "commissioner," "title" with "chapter," and "pursuant to" with "under"; and update a TDI mailing address and the TDI website where the 2001 CSO Mortality Table may be accessed.

Section 4.2724. Conditions. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code §425.068 citation. The amendments also replace "Chapter 3, Subchapter EE" with "Chapter 4, Subchapter BB, Division 3" in a title citation and correct inconsistent capitalization in §4.2724(a)(1) - (3) to reflect the punctuation used in the section.

Section 4.2725. Applicability of the 2001 CSO Mortality Table to Chapter 4, Subchapter BB, Division 3 of this Title. The amendments update section citations made obsolete after the administrative transfer and replace "Chapter 3, Subchapter EE" with "Chapter 4, Subchapter BB, Division 3" in the section title and

rule text. The amendments also amend punctuation, replace "shall be" with "is" and "shall" with "may," and remove "shall," as appropriate.

Section 4.2726. Gender-Blended Tables. The amendments add titles to the citations for Insurance Code Chapter 541 and Chapter 425, Subchapter B; and update the TDI mailing address and the TDI website where the blended tables developed by the American Academy of Actuaries CSO Task Force may be accessed.

#### *Division 4. Preferred Mortality Tables.*

Section 4.2731. Purpose. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code Chapter 425, Subchapter B and §425.058 citations.

Section 4.2732. Definitions. The amendments remove "shall" and amend punctuation.

Section 4.2733. 2001 CSO Preferred Class Structure Table. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The amendments also replace "pursuant to" with "under" and "prior to" with "before" and update the TDI mailing address and the TDI website where the 2001 CSO Preferred Class Structure Mortality Table may be accessed.

Section 4.2734. Conditions. The amendments update punctuation and replace "NAIC" with "National Association of Insurance Commissioners (NAIC)," "prior to" with "before," and "shall" with "must" or "will."

#### *Subchapter BB. Life and Annuity Reserves.*

##### *Division 1. Actuarial Opinion and Memorandum Regulation.*

Section 4.2801. Purpose. The amendments remove the language "described in paragraphs (1) - (3) of this section" at the end of the first sentence in §4.2801 to simplify and clarify the provision. The section is not broken into subsections and there are only three paragraphs in the section, so it is not necessary to list out each paragraph. The amendments also add the word "following" to clarify the sentence given the removal and add the title to the Insurance Code §425.054 citation.

Section 4.2802. Scope and Applicability. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The amendments also replace "thereof" with "of the statement of opinion," "shall apply" with "applies," "shall have" with "has," "shall be" with "is," "which" with "that," "his or her" with "their," and "shall" with "must."

Section 4.2803. Commissioner Discretion. The amendments update section citations made obsolete after the administrative transfer and replace "which" with "that."

Section 4.2804. Definitions. The amendments update section citations made obsolete after the administrative transfer and add titles to the Insurance Code §884.307 and §884.402 citations. The adoption also amends punctuation; removes "shall"; and replaces "pursuant to" with "under," "his or her" with "their," and "which includes" with "including."

Section 4.2805. General Requirements. The amendments update a section citation made obsolete after the administrative transfer and add titles to the Insurance Code §§425.054, 425.064, 425.065, 425.068, and 425.069 citations.

Section 4.2806. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. The amendments update figure and section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B citation. The adoption also updates section citations in Figure: 28 TAC §4.2806(b)(2). No other amendments were proposed or are adopted to the contents in the figures.

The amendments replace "be at least" with "include the following" in §4.2806(f)(1)(C)(ii) for clarity and amend punctuation. The adoption also capitalizes the words beginning each paragraph in §4.2806(f)(1) to reflect the amended punctuation and replaces "subsequent to" with "before" and "being" with "may be" in §4.2806(f)(1)(B) to clarify that before an alternative statement may be issued, the company must file certain requirements.

The amendments also correct a reference to the title of 28 TAC §7.18 and replaces "NAIC" with "National Association of Insurance Commissioners," "that which" with "what," "which" with "that," and "he or she" or "his or her" with "the appointed actuary" or "their."

Section 4.2807. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary. The amendments update section citations made obsolete after the administrative transfer and add titles to the citations for Insurance Code Chapters 401 and 425, Subchapter B. The adoption replaces citations to Insurance Code §§425.054 - 425.057 with Chapter 425, Subchapter B.

The amendments replace a colon at the end of a statement with "the following" and a period and correct capitalization for consistency with the subsection's organization.

The adoption also updates a TDI mailing address; removes "the" before Insurance Code; amends punctuation; and replaces "which" with "that," "his or her" with "the appointed actuary's," and "their" with "the other actuaries."

Section 4.2808. Asset Adequacy Analysis Exemption. The amendments update section citations made obsolete after the administrative transfer, capitalize "Commissioner" as it appears in the title for §4.2803, and replace "pursuant to" with "under" and "shall" with "must."

*Division 2. Strengthened Reserves Under Insurance Code §425.067. The text as proposed has been changed by replacing "Pursuant to" with "Under."*

Section 4.2811. Strengthened Reserves Under Insurance Code §425.067. The amendments add titles to the Insurance Code §425.053 and §425.067 citations and replace "pursuant to" with "under" in the section title.

##### *Division 3. Valuation of Life Insurance Policies.*

Section 4.2821. Purpose. The amendments revise capitalization to reflect current agency drafting style.

Section 4.2822. Adoption of Tables of Select Mortality Factors. The amendments update a figure citation made obsolete after the administrative transfer and replace "age last birthday" with "age-last-birthday," "age nearest birthday" with "age-nearest-birthday," and "which" with "that." No amendments are adopted to the content in the figure.

Section 4.2823. Applicability. The amendments update section citations made obsolete after the administrative transfer and add the title to the Insurance Code Chapter 425, Subchapter B cita-



tion. The adoption also amends punctuation and replaces "Non-level" with "nonlevel" and "shall" with "does" or "must."

Section 4.2824. Definitions. The amendments update section and figure citations made obsolete after the administrative transfer; remove a redundant title already cited; update punctuation; and replace "subchapter" with "title," "shall" with "must" or "may," and "one percent" with "1%." These amendments are made in the rule text and in the text of Figure: 28 TAC §4.2824(2).

Amendments also add or correct titles to the citations for Insurance Code Chapter 425, Subchapter B and §§425.061, 425.064, and 425.068; remove "shall" and instances of "the" before Insurance Code; replace "one year" with "one-year"; and correct capitalization throughout the section. These nonsubstantive amendments are meant to align the section with other similar sections.

The text of §4.2824(9)(B) as proposed has been changed to insert a missing closing parenthesis.

Section 4.2825. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves. The amendments update section citations made obsolete after the administrative transfer; correct a title citing to Insurance Code Chapter 425, Subchapter B; and remove a redundant title already cited.

The amendments correct capitalization and add "or" at the end of §4.2825(b)(3)(G)(iii) to reflect that, if select mortality factors are elected, it may be those found in §4.2825(b).

The amendments also remove "the" before "Insurance Code"; amend punctuation; and replace "shall" with "must," "percent" with "%," "prior to" with "before," and "subchapter" or "chapter" with "title."

Section 4.2826. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums of Guaranteed Nonlevel Benefits (Other than Universal Life Policies). The amendments update section citations made obsolete after the administrative transfer; add the title to the Insurance Code Chapter 425, Subchapter B citation; and remove a redundant title already cited. The amendments also update punctuation and replace "prior to" with "before," "subsequent to" with "after," "twenty-four" with "24," and "twenty-five" with "25."

Section 4.2827. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyholder to Keep a Policy in Force Over a Secondary Guarantee Period. The amendments update section citations made obsolete after the administrative transfer; correct capitalization in §4.2827(d) to reflect the subsection organization; amend punctuation; and replace "one year" with "one-year," "which" with "that," and "shall" with "must."

Section 4.2829. 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer by replacing "§§3.9101 - 3.9106" with "Subchapter AA, Division 3" and replace "shall" with "must," "title" with "chapter," and "pursuant to" with "under."

*Division 4. Preneed Life Insurance Minimum Mortality Standards for Determining Reserve Liabilities and Nonforfeiture Values.*

Section 4.2831. Purpose and Applicability. The amendments update a section citation made obsolete after the administrative transfer and replace "of the Insurance Code" with titles to the Insurance Code §425.058 and §1105.055 citations. The amendments also replace "chapter" with "title" and add "Insurance Code" before the Insurance Code citations.

Section 4.2832. Definitions. The amendments add titles to the Finance Code Chapter 541 and §541.002 citations, remove "shall" and "the" before Finance Code, amend punctuation, and replace "which" with "that."

Section 4.2833. Minimum Valuation Mortality Standards. The amendments update a section citation made obsolete after the administrative transfer and replace "subchapter" with "title" and "shall be" with "is."

Section 4.2834. Minimum Valuation Interest Rate Standards. The amendments correct the title for the Insurance Code Chapter 425, Subchapter B and Chapter 1105 citations; remove "the" before Insurance Code; and replace "shall be" with "are."

Section 4.2835. Minimum Valuation Method Standards. The amendments update the titles for the Insurance Code Chapter 425, Subchapter B and Chapter 1105 citations; update punctuation; replace "shall be" with "is"; and remove "the" before "Insurance Code."

Section 4.2836. Transitional Use of the 2001 CSO Mortality Table. The amendments update section citations made obsolete after the administrative transfer by replacing "§§3.9101 - 3.9106" with "Subchapter AA, Division 3." The adoption also replaces "shall" with "must."

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal and amendments.

## SUBCHAPTER C. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

### 28 TAC §§4.201 - 4.206

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.201 - 4.206 under Insurance Code §§1114.006, 1114.007, and 36.001.

Insurance Code §1114.006 provides that the commissioner by rule adopt or approve model documents to be used for consumer notices under Insurance Code Chapter 1114.

Insurance Code §1114.007 authorizes the commissioner to adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purposes of Insurance Code Chapter 1114.

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 January 4, 2024.

TRD-202400038

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



SUBCHAPTER F. INDIVIDUAL LIFE  
INSURANCE POLICY FORM CHECKLIST AND  
AFFIRMATIVE REQUIREMENTS

**28 TAC §§4.601 - 4.608, 4.611, 4.613 - 4.628**

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.601 - 4.608, 4.611, and 4.613 - 4.628 under Insurance Code §§541.401, 543.001(c), 1701.060 and 36.001.

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

Insurance Code §543.001(c) provides that the commissioner may adopt and enforce rules as provided by Insurance Code Chapter 541, Subchapter I to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 authorizes the commissioner to adopt reasonable rule necessary to implement the purposes of Insurance Code Chapter 1701.

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 January 4, 2024.

TRD-202400039

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



SUBCHAPTER J. INDETERMINATE  
PREMIUM REDUCTION POLICIES

**28 TAC §§4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, 4.1011**

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1001, 4.1002, 4.1004, 4.1005, 4.1008, 4.1010, and 4.1011 under Insurance Code §§543.001(c), 1701.060, and 36.001.

Insurance Code §543.001(c) provides that the commissioner may adopt and enforce reasonable rules as provided by Insurance Code Chapter 541, Subchapter I to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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 January 4, 2024.

TRD-202400040

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



SUBCHAPTER K. STANDARDS FOR  
ACCELERATION-OF-LIFE-INSURANCE  
BENEFITS FOR INDIVIDUAL AND GROUP  
POLICIES AND RIDERS

**28 TAC §§4.1101 - 4.1104, 4.1106 - 4.1116**

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1101 - 4.1104 and 4.1106 - 4.1116 under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111, Subchapter B.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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 January 4, 2024.

TRD-202400041

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



**28 TAC §4.1117**

STATUTORY AUTHORITY. The commissioner adopts the repeal of §4.1117 under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1111, Subchapter B.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

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 January 4, 2024.

TRD-202400037

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER L. INSURANCE SOLD IN CONNECTION WITH PREPAID FUNERAL CONTRACTS

### 28 TAC §4.1201

STATUTORY AUTHORITY. The commissioner adopts amendments to §4.1201 under Occupations Code §651.159 and Insurance Code §36.001.

Occupations Code §651.159 provides the commissioner adopt a memorandum of understanding with the Texas Funeral Service Commission and the Texas Department of Banking.

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 January 4, 2024.

TRD-202400042

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER O. VARIABLE LIFE INSURANCE

### 28 TAC §§4.1502 - 4.1510

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1502 - 4.1510 under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 authorizes the commissioner to adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

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.

#### *§4.1510. Separability.*

If any provision of this chapter (relating to Life - Variable Life Insurance) or the application of such provisions to any person or circumstance is for any reason held to be invalid, the remainder of the sections and the application of such provision to other persons or circumstances will not be affected.

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 January 4, 2024.

TRD-202400043

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER P. REQUIRED REINSTATEMENT RELATING TO MENTAL INCAPACITY OF THE INSURED FOR INDIVIDUAL LIFE POLICIES WITHOUT NONFORFEITURE BENEFITS

### 28 TAC §§4.1602 - 4.1606, 4.1609 - 4.1613

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1602 - 4.1606 and 4.1609 - 4.1613 under Insurance Code §1106.010 and §36.001.

Insurance Code §1106.010 provides the commissioner adopt reasonable rules to implement Insurance Code Chapter 1106.

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 January 4, 2024.

TRD-202400044

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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

◆   ◆   ◆

SUBCHAPTER Q. NONFORFEITURE  
STANDARDS FOR INDIVIDUAL LIFE  
INSURANCE IN EMPLOYER PENSION PLANS

**28 TAC §§4.1702 - 4.1707**

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.1702 - 4.1707 under Insurance Code §§36.004, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

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

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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.

*§4.1702. Definitions.*

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

(1) 1980 CET Table--That mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 National Association of Insurance Commissioners (NAIC) amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(2) 1980 CET Table (F)--That mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

(3) 1980 CET Table (M)--That mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

(4) 1980 CSO Table, with or without Ten-Year Select Mortality Factors--That mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

(5) 1980 CSO Table (F), with or without Ten-Year Select Mortality Factors--That mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(6) 1980 CSO Table (M), with or without Ten-Year Select Mortality Factors--That mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

(7) 1980 CSO and 1980 CET smoker and nonsmoker mortality tables--The mortality tables derived from the 1980 CSO and 1980 CET mortality tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.

(8) *Norris* decision--The decision of the United States Supreme Court in the case of *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073 (1983).

*§4.1704. Alternate Rule.*

(a) In determining minimum cash surrender value and amounts of paid-up nonforfeiture benefits for any policy of insurance on either a male or a female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of former Insurance Code Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, concerning Computation of Adjusted Premiums Using Nonforfeiture Net Level Premium Method), and before January 1, 2017, for that policy form, in addition to the mortality tables that may be used according to §4.1703 of this title (relating to Standard), the tables in paragraphs (1) and (2) of this subsection may be used. For policies issued on or after January 1, 2017, the valuation manual, adopted under Insurance Code Chapter 425, Subchapter B, concerning Standard Valuation Law, provides the tables to be used.

(1) A mortality table that is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without 10-year select mortality factors, may, at the option of the company, be substituted for the 1980 CSO Table, with or without 10-year select mortality factors.

(2) A mortality table that is of the same blend as used in paragraph (1) of this subsection but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table or 1980 CET Nonsmoker Mortality Table may, at the option of the company, be substituted for the 1980 CET Table.

(b) The following blended mortality tables are considered as the basis for acceptable tables according to subsection (a) of this section:

(1) 100% male, 0% female for smoker tables to be designated as the 1980 CSO-SA and 1980 CET-SA Tables;

(2) 80% male, 20% female for smoker tables to be designated as the 1980 CSO-SB and 1980 CET-SB Tables;

(3) 60% male, 40% female for smoker tables to be designated as the 1980 CSO-SC and 1980 CET-SC Tables;

(4) 50% male, 50% female for smoker tables to be designated as the 1980 CSO-SD and 1980 CET-SD Tables;

(5) 40% male, 60% female for smoker tables to be designated as the 1980 CSO-SE and 1980 CET-SE Tables;

(6) 20% male, 80% female for smoker tables to be designated as the 1980 CSO-SF and 1980 CET-SF Tables;

(7) 0% male, 100% female for smoker tables to be designated as the 1980 CSO-SG and 1980 CET-SG Tables;

(8) 100% male, 0% female for nonsmoker tables to be designated as the 1980 CSO-NA and 1980 CET-NA Tables;

(9) 80% male, 20% female for nonsmoker tables to be designated as the 1980 CSO-NB and 1980 CET-NB Tables;

(10) 60% male, 40% female for nonsmoker tables to be designated as the 1980 CSO-NC and 1980 CET-NC Tables;

(11) 50% male, 50% female for nonsmoker tables to be designated as the 1980 CSO-ND and CET-ND Tables;

(12) 40% male, 60% female for nonsmoker tables to be designated as the 1980 CSO-NE and 1980 CET-NE Tables;

(13) 20% male, 80% female for nonsmoker tables to be designated as the 1980 CSO-NF and 1980 CET-NF Tables; and

(14) 0% male, 100% female for nonsmoker tables to be designated as the 1980 CSO-NG and 1980 CET-NG Tables.

(c) The Texas Department of Insurance adopts and incorporates into this subchapter by reference the tables to which subsection (b) of this section refers as tables to be used in conjunction with the section adopted under this subchapter. Copies of these tables can be obtained from the Life and Health Division, Life and Health Actuarial, MC: LH-ACT, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

(d) The tables specified in subsection (b)(1), (7), (8), and (14) of this section may not be used except where the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

(e) Notwithstanding any other provision of this subchapter, an insurer may not use the blended mortality tables in subsection (b) of this section unless the *Norris* decision is known to apply to the policies involved, or unless there exists a bona fide concern on the part of the insurer that the *Norris* decision might reasonably be construed to apply by a court having jurisdiction.

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 January 4, 2024.

TRD-202400045

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER U. VARIABLE ANNUITIES

### 28 TAC §§4.2102 - 4.2106

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2102 - 4.2106 under Insurance Code §§1152.002, 1152.101, and 36.001.

Insurance Code §1152.002 specifies that the commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

Insurance Code §1152.101 states that the commissioner has sole authority to regulate the issuance and sale of a variable

contract under Insurance Code Chapter 1152 and rules adopted under Insurance Code §1152.002.

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 January 4, 2024.

TRD-202400046

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER W. ANNUITY DISCLOSURES

### DIVISION 1. ANNUITY CONTRACT DISCLOSURES

### 28 TAC §§4.2302, 4.2304, 4.2306 - 4.2312

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2302, 4.2304, and 4.2306 - 4.2312 under Insurance Code §§31.002, 101.051, 1108.002, 1114.007, 1152.002, and 36.001.

Insurance Code §31.002 specifies that in addition to other required duties, TDI will regulate the business of insurance in this state; administer the workers' compensation system of this state as provided by Labor Code, Title 5; and ensure that the Insurance Code and other laws regarding insurance and insurance companies are executed.

Insurance Code §101.051 specifies that acts that constitute the business of insurance in this state include making or proposing to make, as an insurer, an insurance contract; taking or receiving an insurance application; or issuing or delivering an insurance contract to a resident of this state.

Insurance Code §1108.002 specifies that for the purpose of regulation under the Insurance Code, an annuity contract is considered an insurance policy or contract if the annuity contract is issued by a life, health, or accident insurance company, including a mutual company or fraternal benefit society, or if it is issued under an annuity or benefit plan used by an employer or individual.

Insurance Code §1114.007 authorizes the commissioner to adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purpose of Insurance Code Chapter 1114.

Insurance Code §1152.002 authorizes the commissioner to adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

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 January 4, 2024.

TRD-202400047

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## DIVISION 2. ANNUITY SUITABILITY DISCLOSURES

### 28 TAC §4.2322

STATUTORY AUTHORITY. The commissioner adopts amendments to §4.2322 under Insurance Code §§36.004, 1115.005, 1115.0514, 1115.0516, and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §1115.005 provides that the commissioner may adopt reasonable rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1115.0514 requires that an agent, before the recommendation or sale of an annuity, provide a disclosure to the consumer on a form prescribed by the commissioner by rule.

Insurance Code §1115.0516 requires agent use, at specified times, of disclosure forms prescribed by the commissioner by rule.

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 January 4, 2024.

TRD-202400048

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## SUBCHAPTER AA. MORTALITY TABLES DIVISION 1. ANNUITY MORTALITY TABLES

### 28 TAC §§4.2701, 4.2702, 4.2705, 4.2706

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2701, 4.2702, 4.2705, and 4.2706 under Insurance Code §§36.004, 425.053, 425.059(d), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.053 authorizes TDI to annually value or cause to be valued the reserves for all outstanding annuity and pure endowment contracts before the operative date of the valuation manual required under Insurance Chapter 425.

Insurance Code §425.059(d) provides that the commissioner may approve by rule a mortality table adopted after 1980 by the National Association of Insurance Commissioners or a modification of one of the tables provided in the section.

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 January 4, 2024.

TRD-202400049

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## DIVISION 2. SMOKER-NONSMOKER COMPOSITE MORTALITY TABLES

### 28 TAC §§4.2712 - 4.2716

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2712 - 4.2716 under Insurance Code §§36.004, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

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

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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 January 4, 2024.

TRD-202400050

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



### DIVISION 3. 2001 CSO MORTALITY TABLE

#### 28 TAC §§4.2721 - 4.2726

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2721 - 4.2726 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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 January 4, 2024.

TRD-202400051

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



### DIVISION 4. PREFERRED MORTALITY TABLES

#### 28 TAC §§4.2731 - 4.2734

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2731 - 4.2734 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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 January 4, 2024.

TRD-202400052

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



### SUBCHAPTER BB. LIFE AND ANNUITY RESERVES

#### DIVISION 1. ACTUARIAL OPINION AND MEMORANDUM REGULATION

##### 28 TAC §§4.2801 - 4.2808

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2801 - 4.2808 under Insurance Code §§36.004, 425.054, and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.054 provides that the commissioner specify by rule the requirements of an actuarial opinion under §425.064(b), including any matters considered necessary to the opinion's scope.

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 January 4, 2024.

TRD-202400053

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## DIVISION 2. STRENGTHENED RESERVES UNDER INSURANCE CODE §425.067

### 28 TAC §4.2811

**STATUTORY AUTHORITY.** The commissioner adopts amendments to §4.2811 under Insurance Code §425.067 and §36.001.

Insurance Code §425.067 authorizes the commissioner to establish categories of necessary reserves for certain policies, benefits, or contracts issued by life insurance companies.

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 January 4, 2024.

TRD-202400054

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## DIVISION 3. VALUATION OF LIFE INSURANCE POLICIES

### 28 TAC §§4.2821 - 4.2827, 4.2829

**STATUTORY AUTHORITY.** The commissioner adopts amendments to §§4.2821 - 4.2827 and 4.2829 under Insurance Code §§36.004, 425.058(c)(3), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved

by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

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.

#### §4.2824. Definitions.

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

(1) **Basic reserves**--Reserves calculated in accordance with the principles of Insurance Code §425.064, concerning Commissioners Reserve Valuation Method for Life Insurance and Endowment Benefits.

(2) **Contract segmentation method**--The method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this section, (or any other valuation mortality table adopted by the NAIC after the effective date of this subchapter and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in §4.2825(b) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves).  
Figure: 28 TAC §4.2824(2)

(3) **Deficiency reserves**--The excess, if greater than zero, of the minimum reserves calculated in accordance with the principles of Insurance Code §425.068, concerning Reserve Computation: Gross Premium Charged Less Than Valuation Net Premium, over the basic reserves.

(4) **Guaranteed gross premiums**--The premiums under a policy of life insurance that are guaranteed and determined at issue.

(5) **Maximum valuation interest rates**--The interest rates defined in Insurance Code §425.061, concerning Computation of Calendar Year Statutory Valuation Interest Rate: General Rule, that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) **NAIC**--National Association of Insurance Commissioners.

(7) **1980 CSO valuation tables**--The Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(8) **Scheduled gross premium**--The smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in §4.2827(a)(3) of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period) if any, or else the minimum premium described in §4.2827(a)(4) of this title.

(9) **Segmented reserves**--Reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the



respective guaranteed gross premiums within the segment. The length of each segment is determined by the "contract segmentation method," as defined in this section. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. For both basic reserves and deficiency reserves computed by the segmented method, present values must include future benefits and net premiums in the current segment and in all subsequent segments. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(A) the present value of the death benefits and endowment benefits within the segment, plus

(B) the present value of any unusual guaranteed cash value (see §4.2826(d) of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies))) occurring at the end of the segment, less

(C) any unusual guaranteed cash value occurring at the start of the segment, plus

(D) for the first segment only, the excess of clause (i) of this paragraph over clause (ii) of this paragraph, as follows.

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(10) Tabular cost of insurance--The net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

(11) Ten-year select factors--The select factors in Insurance Code Chapter 425, Subchapter B, concerning Standard Valuation Law.

(12) Unitary reserves--The present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(A) guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(B) modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of clause (i) of this subparagraph over clause (ii) of this subparagraph, as follows.

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal

year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(C) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(13) Universal life insurance policy--Any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

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 January 4, 2024.

TRD-202400055

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



#### DIVISION 4. PRENEED LIFE INSURANCE MINIMUM MORTALITY STANDARDS FOR DETERMINING RESERVE LIABILITIES AND NONFORFEITURE VALUES

##### 28 TAC §§4.2831 - 4.2836

STATUTORY AUTHORITY. The commissioner adopts amendments to §§4.2831 - 4.2836 under Insurance Code §§36.004, 425.058(c)(3), 1105.055(h), and 36.001.

Insurance Code §36.004 provides that the commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if certain statutory requirements are met.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Insurance Code Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Insurance Code Chapter 425, Subchapter B.

Insurance Code §1105.055(h) specifies that the commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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 January 4, 2024.

TRD-202400056

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 24, 2024

Proposal publication date: September 22, 2023

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



## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

#### DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

##### 28 TAC §5.4211

The commissioner of insurance adopts amendments to 28 TAC §5.4211, concerning the establishment of a time period for the Texas Windstorm Insurance Association (TWIA) appraisal process. The amendments to §5.4211 implement House Bill 3310, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6567) and will not be republished.

**REASONED JUSTIFICATION.** HB 3310 requires the commissioner to adopt rules that establish a time period for an appraisal demanded under Insurance Code §2210.574. Amendments to §5.4211 are necessary to establish the required deadline.

Amendments to subsections (a)(2) and (b)(1) insert the titles of cited Insurance Code sections.

The amendments also add new subsections (e), (f), (j), (k), and (m). The other subsections are redesignated as appropriate to reflect the addition of these new subsections.

New subsection (e) sets a deadline by which appraisers must disclose their projected fees to the parties and agree on an umpire. The deadline helps ensure that appraisers begin their involvement with the appraisal in a timely manner, and it helps claimants evaluate the anticipated cost of the appraisal.

New subsection (f) establishes a deadline by which the appraisers must agree on the amount of loss. One way to complete an appraisal is for the appraisers to agree on the amount of loss, so subsection (f) establishes a deadline to complete that effort. The deadline is longer for commercial claims because losses are frequently larger or more complex than the losses in residential claims.

The amendment to redesignated subsection (i) provides for an umpire to become involved if the appraisers do not agree on the amount of loss by the applicable deadline in adopted subsection (f). The amendment does not prevent an umpire from becoming involved before the deadline.

If the appraisers do not agree on the amount of loss, the way to complete the appraisal is for the appraisal panel to decide on the amount of loss. The appraisal panel consists of the two appraisers and the umpire. Accordingly, new subsection (j) establishes

a deadline for the appraisal panel to decide on the amount of loss. The deadline is based on when the umpire becomes involved in the appraisal. The deadline is longer for commercial claims because losses are frequently larger or more complex than losses in residential claims.

New subsection (k) provides that TWIA and the claimant may extend the deadlines in subsections (f) or (j) by written agreement. Giving the parties the ability to extend the deadlines adds flexibility to provide more time for the appraisal when both parties agree it is appropriate. The subsection also recognizes that the commissioner may extend deadlines under 28 TAC §5.4222.

The amendment to redesignated subsection (l) provides that when the appraisers--rather than the parties--cannot agree on the amount of loss, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties. In an appraisal, decisions about the amount of loss are made by appraisers and umpires, not the parties. The amendment clarifies that distinction.

New subsection (m) allows the appraisers to select a new umpire if a decision is not issued within the deadlines. Allowing the appraisers to select a new umpire helps ensure the appraisal is completed in a timely manner. If the appraisers cannot agree on a new umpire, either of the appraisers may ask TDI to select one. This subsection follows the same process used to select an umpire at the outset of an appraisal.

The amendment to redesignated subsection (n) removes an obsolete applicability date. The subsection's applicability remains the same.

Other amendments add articles "the" or "an" before "appraisal" as appropriate to conform with current agency drafting style.

As required by HB 3310, TDI developed the amendments in consultation with TWIA.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE

**Commenters:** TDI received one comment on the proposal, from the Office of Public Insurance Counsel, in support of it.

**Comment on §5.4211**

**Comment.** One commenter broadly expressed support for the proposal.

**Agency Response.** TDI appreciates the support.

**STATUTORY AUTHORITY.** TDI adopts amendments to §5.4211 under Insurance Code §§2210.008, 2210.574(d-1), 2210.580, and 36.001.

Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.574(d-1) requires the commissioner to adopt rules establishing the period in which an appraisal demand must be completed.

Insurance Code §2210.580 requires the commissioner to adopt rules regarding procedures and deadlines for payment and handling of claims.

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 January 2, 2024.

TRD-202400019

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 22, 2024

Proposal publication date: November 10, 2023

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

◆   ◆   ◆

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 2, 2023, adopted amendments to 31 TAC §§65.91, 65.92, 65.95, 65.97, and 65.98, concerning Disease Detection and Response, and 65.605, 65.608, and 65.611, concerning Deer Breeder Permits. Sections 65.95, 65.98, 65.608, and 65.611 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5626) and will be republished. Sections 65.91, 65.92, 65.97, and 65.605 are adopted without change to the proposed text and will not be republished.

The change to §65.95, concerning Movement of Breeder Deer, removes proposed subsection (b)(1)(C). The provision would have established a six-month residency requirement for breeder deer as a condition for eventual transfer to another breeding facility or release facility. The commission during its deliberations determined that further investigation of residency requirements is necessary. The change also alters proposed subsection (d)(2)(A) to increase the number of days allowed for landowners of trace-out release sites to submit test samples, from one day to seven days following mortality of trace deer. The commission during its deliberations considered that one day was an insufficient amount of time for persons to reasonably dispatch a trace deer, collect a test sample, and submit it. Finally, the change eliminates proposed new subsection (f), which would have prohibited the release of breeder deer prior to April 1 of the year following the year in which the breeder deer was born. The provision was intended to function in concert with a proposed amendment to §65.611 to eliminate the possibility of breeder deer being released without permanent identification. The commission voted to table provisions related to permanent identification; therefore, the provision is being removed.

The change to §65.98, concerning Transition Provisions, alters subsection (b) as proposed to remove provisions that mirror the provisions of current §65.99(e), concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities. The commission was persuaded, based on public comment, that confusion as to the rationale for reproducing current language in the proposed amendment could be avoided simply by referencing the contents of current §65.99(c) and providing for the resolution of any conflict be-

tween the sections by making the provisions of subsection (c) as adopted take precedence.

The change to §65.608, concerning Annual Reports and Records, eliminates an unnecessary comma in subsection (b). The change is nonsubstantive.

The change to §65.611, concerning Prohibited Acts, removes proposed new subsections (l) and (m), which reproduced the provisions of Parks and Wildlife Code, §43.3561, and provided for a defense to prosecution for persons who remove ear tags from deer following lawful hunting. As noted earlier in this preamble in the discussion of the changes to §65.95, the commission decided to table actions regarding the permanent identification of breeder deer.

The rules as adopted will function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid

populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as on multiple release sites associated with CWD-positive deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724).

The last nine months have seen an unprecedented increase in CWD detections, which is directly attributable to the regulatory actions taken in December 2021 to tighten and refine the agency's CWD surveillance measures. Since that time, CWD has been detected in an additional 15 deer breeding facilities, three release sites associated with CWD-positive deer breeding facilities, the Kerr Wildlife Management Deer Research facility, and two free-ranging deer in new areas where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 4,500 unique deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, 287 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

The amendment to §65.91, concerning General Provisions, eliminates an exception for nursery facilities. The rules as adopted eliminate the practice of moving breeder deer from deer breeding facilities to external facilities for nursing purposes and the amendment is therefore necessary to eliminate all provisions relating to that practice.

The amendment to §65.92, concerning CWD Testing, conforms an internal citation in subsection (b) of that section to comport it with the provisions of the amendment to §65.95, concerning Movement of Breeder Deer.

The amendment to §65.95, concerning Movement of Breeder Deer, alters the section to provide an internal reference, remove provisions applicable to nursery facilities, implements provisions regarding the testing of breeder deer being transferred between breeding facilities, removes an internal three-year limitation on the effectiveness of provisions governing the release of breeder deer, strengthens provisions governing the obligations of release-site owners in the event that a release site is epidemiologically linked by trace-out to a positive breeding facility, and provides for the suspension of participation in Managed Lands Deer Program activities for landowners who fail to comply with provisions applicable to trace-out release sites.

Current rules require a breeder deer to be the subject of an ante-mortem test (a live-animal test) before it can be transferred elsewhere for purposes of release. The amendment expands this requirement to include transfers between deer breeding facilities. The department has determined that in light of the spate of recent detections of CWD in multiple deer breeding facilities, it is not only prudent, but imperative to require all breeder deer to be tested as a condition of authorizing transfer between deer breeding facilities, which is intended to impose a testing protocol capable of providing an acceptable probability of detecting CWD if it exists in any given breeding facility and possibly preventing the transfer of CWD positive deer.

For similar reasons, the amendment eliminates the practice of transferring fawn deer from deer breeding facilities to external facilities for nursing purposes. The practice was considered to be an acceptable risk prior to the emergence of CWD; however, given the steady and increasing discoveries of CWD in deer breeding facilities across the state, the department has determined that the practice should be stopped.

The amendment also imposes new requirements for release sites that are epidemiologically connected to deer breeding facilities where CWD has been detected. Under current rule, the landowner of a release site that is epidemiologically connected to a positive deer breeding facility is required to test either 100 percent of all hunter-harvested deer at the release site property or one hunter-harvested deer per released deer (if authorized by a herd plan), whichever value is greater. Release site owners are also required by rule to maintain a harvest log. The department has determined that regulatory compliance at release sites has been problematic, as some release site owners have failed to conduct the required testing or maintain harvest logs as required. Although the department prohibits additional releases of deer at such sites unless approved by a herd plan, the epidemiological value of the animals at a trace-out release site is significant. The recent detections mark a dramatic increase in number and distribution of CWD-positive facilities across the state since 2020. Records indicate 367 trace release sites have received deer from these positive facilities and are of epidemiological concern. Although the owners of trace release sites are provided herd plans and placed under a hold order, herd plans do not require harvest on that property, only that if a deer is harvested a CWD sample must be collected and tested. The lack of harvest leaves the department in a precarious situation to mitigate potential spread of CWD to areas where the disease is currently undetected. Timely removal of trace animals is critically important for CWD management. Therefore, the department has determined that it is necessary to require all trace deer at trace-out release sites to be removed and tested within 60 days of notification by the department that the site has been confirmed as a trace-out release site. In addition, the amendment eliminates the current provision providing an alternative to 100 percent testing of hunter-harvested deer on trace-out release sites and instead requires testing of all hunter-harvested deer until the number and distribution of samples is sufficient to provide statistical confidence that if CWD were present at a certain prevalence on the release site, it would be detected. The amendment enhances the department's ability to more quickly assess whether exposed deer transferred from CWD-positive deer breeding facilities have spread CWD to trace-out release sites.

The amendment also eliminates current subsection (c)(6)(E), which imposed a three-year period of effectiveness for the provisions of paragraph (6). In a rulemaking in 2021 (46

TexReg 8724), the commission imposed a three-year period of effectiveness for ante-mortem testing of breeder deer prior to release, with the understanding that should continuation of the requirement be determined to be necessary, that decision would be made as needed in the future. As noted previously in this preamble, there has been an unprecedented significant increase in the detection of CWD within deer breeding facilities as well as release sites associated with deer breeding facilities recently, which not only necessitates the continuation of the provisions of paragraph (6), but to do so indefinitely.

Additionally, the amendment provides that the owner of a release site that is not in compliance with the applicable provisions of Chapter 65, Subchapter B, Division 2, is ineligible for enrollment or continued participation in the Managed Lands Deer Program (MLDP) under Chapter 65, Subchapter A. The MLDP is a conservation program that offers special privileges to participants in exchange for conducting beneficial management actions. The department reasons that the owner of a trace-out release site who is unwilling to comply with CWD management provisions should not be afforded the privilege of participation in the program.

Finally, the amendment does not include a proposed provision to prohibit the release of breeder deer prior to April 1 of the year following the year in which the breeder deer is born. As noted previously in this preamble, the commission decided to table all proposed provisions regarding the removal of required permanent identification of breeder deer.

The amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, requires tissue samples collected for the issuance of a TTP (Trap, Transfer, and Process) permit to be submitted within seven days of collection. One of the recent detections of CWD occurred in a deer that was trapped in Bexar County under the provisions of a TTP permit. The TTP permit is used to remove surplus deer in situations in which hunting is impractical or unfeasible, such as in urban areas where discharge of firearms is prohibited. Typically, a TTP permit allows trapping activities between October 1 and March 31, and current rules require CWD test results to be submitted by May 1 following completion of permitted activities; however, there are no requirements on how quickly those CWD samples must be submitted to the lab for testing. The department has determined that in light of the detection of CWD in TTP deer, it is necessary to require tissue samples to be submitted within seven days of collection, which will provide for quicker department response in the event of detection.

The amendment to §65.98, concerning Transition Provisions, alters the timeframes for tissue sample collection at deer breeding facilities designated by the department as Category B facilities (facilities in which not all deer of epidemiological concern are available). Effective epidemiological investigations depend on specificity of time and place. Trace herds should be evaluated in a timely fashion, and, historically, whole-herd testing requirements have been inconsistent with the timeliness of testing. Furthermore, some breeding facilities in which the date of last known exposure occurred within the 18 months prior to epidemiological connection have either not conducted tests or not submitted test results. The amendment creates a more efficacious timeline (60 days) for compliance with collection and submission of required ante-mortem testing samples for Category B breeding facilities, which is necessary to clear epidemiologically linked herds in a timelier fashion. In addition, the amendment causes the provi-

sions of §65.99(i), which apply to nursing facilities, to cease effect for reasons discussed elsewhere in this preamble.

The amendments to §65.605, concerning Holding Facility Standards and Care of Deer, and §65.608, concerning Annual Reports and Records, remove references to nursing facilities for reasons discussed elsewhere in this preamble.

The amendment to §65.611, concerning Prohibited Acts, removes provisions applicable to nursing facilities for reasons discussed elsewhere in this preamble and corrects an error in citation style in current subsection (j). The rule as adopted does not include proposed provisions to prohibit the removal of identification tags on breeder deer except as specifically authorized by statute, for reasons discussed earlier in this preamble.

The department received 2,772 opposing adoption of the rules as proposed. Of those comments, 311 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response, follow. The department notes that many comments addressed multiple provisions or contained many reasons for opposition; therefore, the department has organized this response in an itemized fashion. Therefore, the number of department responses is greater than the total number of comments.

One-hundred thirty-seven commenters opposed adoption of the rules as proposed and stated displeasure with the rules, describing them, variously, as onerous, overkill, out of control, excessive regulation, government overreach, witch hunt, or some other similar descriptive language meant to illustrate the department's actions as being egregious and unnecessary. The department disagrees with the comments and responds that CWD continues to be detected in deer breeding facilities and release sites associated with breeding facilities across the state; additional testing requirements for deer being transferred between deer breeders are necessary, as well as measures to enhance the department's ability to quickly test deer at release sites that have been epidemiologically linked to a positive deer breeding facility or facilities. The department believes the rules as adopted are sensible, appropriate, and reasonable. No changes were made as a result of the comments.

Fifty-six commenters opposed adoption of the rules as proposed and stated that the rules are reflective or representative of a pre-existing condition of department antipathy towards deer breeders, describing the rules as discriminatory, bullying, crippling, "war on breeders," trying to put breeders out of business, punishing breeders, and other unflattering adjectives and phrases with negative connotations. The department disagrees with the comments and responds that the rules as adopted are not and are not intended to be punitive or as a demonstration of wanton disregard for the regulated community; rather, they represent the earnest desire of the department to discharge its statutory duty to protect and conserve the wildlife resources of the state from the apparently increasing threat of CWD in captive breeding facilities and to do so in a manner that is conscientious and respectful of the interests of the regulated community. No changes were made as a result of the comments.

Thirty-nine commenters opposed adoption and stated that the rules will harm, kill, destroy, or otherwise negatively impact deer hunting or the "white tail industry," and 41 commenters stated in various ways that the rules hurt small businesses, the hunting industry, businesses associated with the hunting industry, the state economy, and local economies, and other general assertions of financial hardship or harm. The department disagrees

with the comments and responds that the rules as adopted do not directly regulate any person other than those who hold a deer breeder permit and those who purchase deer from deer breeders for purposes of release and whose release sites are subsequently linked epidemiologically to a deer breeding facility where CWD has been detected ("positive facility"), imposing testing requirements as a condition for the transfer of breeder deer between deer breeders and at release sites that become epidemiologically linked to positive deer breeding facilities ("trace-out release site"). The department notes that captive-bred deer represent an extremely small percentage (less than five percent) of the total number of deer harvested annually in Texas and in that context, whatever ancillary, indirect economic impact of the rules as adopted is exceedingly minor, if it exists at all. The department also notes that if CWD is allowed to become widespread, the economic impacts and the impacts to hunting and to the regulated community itself will be significant. No changes were made as a result of the comments.

Thirty-eight commenters opposed adoption of the rules as proposed and expressed some sort of doubt with respect to the threat or even existence of CWD, claiming the disease has been around forever, isn't fatal, has no effect on deer populations, only affects small portions of the deer population, hasn't caused "die-offs," isn't prevalent, has never killed a deer, is a scam, or some other, similar expression of disbelief, and that the department's response to CWD is therefore a waste of time and money because it is not warranted. The department disagrees with the comments and responds that although much is unknown about CWD there is no scientific debate as to whether it is real, that it is without question invariably fatal, and that the disease can have population level effects. Further, the absence of large-scale die-offs isn't an appropriate metric because CWD can take years to reach a high prevalence in free-ranging deer populations, at which point it becomes impossible to eradicate. The department's management efforts are intended to prevent this outcome from occurring. No changes were made as a result of the comments.

Thirty commenters opposed adoption of the rules as proposed and stated in some form or fashion that the department and commission are engaging in a conspiracy with or acting in the interests of wealthy landowners to eliminate deer breeders because they do not want market competition for hunting opportunity. The department disagrees with the comments and responds that not only is there no merit whatsoever to the accusation, it is difficult to conceive that, given the extremely small percentage of breeder deer in the deer population or the total harvest, there would be sufficient economic incentive for anyone, wealthy or not, to eliminate deer breeding. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption of the rules as proposed and stated in various ways that the rules are unsupported by science generally or peer-reviewed science in particular, or that the science upon which the department bases the rules is flawed. The department disagrees with the comments and responds that its CWD management policy and regulatory stance are driven by the best available science. No changes were made as a result of the comments.

Twenty-three commenters opposed adoption of the rules as proposed and stated the rules constituted a violation of private property rights and were unfair to property owners. The department disagrees with the comments and responds that the rules do not

affect private property rights in any way. No changes were made as a result of the comments.

Eighteen commenters opposed adoption of the rules as proposed and stated that they are unnecessary because the current rules are working. The department disagrees with the comment and responds that through slow but steady improvements in the department's rules over the last five years, the department's ability to expeditiously and reliably detect the disease has increased; however, the continued detection and transfer of CWD positive animals within and between deer breeding facilities and release sites associated with such facilities indicate a continuing need for improvement and adaptive management of the disease. No changes were made as a result of the comments.

Eighteen commenters opposed adoption of the rules on the basis that the severity of the threat of CWD justifies the prohibition of deer breeding altogether. The department responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department must issue a deer breeding permit to a qualified person; thus, the commission cannot prohibit deer breeding. No changes were made as a result of the comments.

Seventeen commenters opposed adoption of the rules as proposed and made vague accusations of monetary gain providing the incentive for the rules ("follow the money," "it's all about the money," "just a money grab"). The department disagrees with the comments and responds that such allegations are unjustified. The department operates within a budget that is appropriated by the legislature, with numerous oversight features designed to prevent and detect misuse of public funds. In addition, agency revenues and expenditures are a matter of public record, available for inspection at any time. No changes were made as a result of the comments.

Seventeen commenters opposed adoption of the rules as proposed and stated that the commission is corrupt. The department disagrees with the comments and responds that such accusations are untrue. No changes were made as a result of the comments.

Sixteen commenters opposed adoption of the rules as proposed on the basis that the department and the commission are engaging in a smear campaign, propaganda, fear-mongering, or scare tactics to influence the general public. The department disagrees that the rules as proposed or adopted are based on anything less than valid science, the facts, and the department's statutory duty to protect and conserve the state's wildlife resources. No changes were made as a result of the comments.

Sixteen commenters opposed adoption of the rules as proposed and stated that CWD doesn't or cannot harm and poses no risk to humans. The department disagrees with the comments and responds that certain spongiform encephalopathies (the family of diseases including CWD) are known to have become inter-specifically transmissible, including spillover to humans. Recent research suggests that CWD may have zoonotic potential and the Centers for Disease Control as well as the World Health Organization recommend that humans avoid consumption of CWD-positive animals. In any case, the rules as adopted are intended to address the management of CWD in deer populations; the protection of human health and safety is an ancillary benefit. No changes were made as a result of the comments.

Fourteen commenters opposed adoption of the rules as proposed and stated displeasure with provisions repeating statutory language regarding permanent, visible identification on breeder deer at release sites. The department disagrees with the com-

ments and responds that by statute, the required ear tags cannot be removed except to replace a damaged ear tag. Nevertheless, the commission has directed the removal of language regarding permanent identification from the rules as adopted.

Thirteen commenters opposed adoption of the rules as proposed and stated that CWD cannot be eradicated and hasn't been eradicated in free range herds. The department disagrees with the comments and responds that there are examples where the rapid detection and intensive management of CWD in free-range herds appears to have prevented further detections. Even within Texas, no further detections have been found in Del Rio (three free-ranging positives) and Lubbock (one free-ranging positive) for at least two hunting seasons following the timely, intensive efforts to remove native deer. The department does recognize, though, that in areas where CWD has become established (in animals, the environment, or both), efficient eradication of the disease may not be possible; however, it is precisely because it is difficult if not impossible to eradicate CWD once it is established that it is imperative to keep the disease from spreading. No changes were made as a result of the comments.

Thirteen commenters opposed adoption of the rules as proposed because the rules do not require all hunter-harvested deer to be tested/do not require testing of free-range deer at the same rate as breeder deer. The department disagrees with the comments and responds that because the department has implemented a statewide risk-based surveillance strategy, it is unnecessary to require the testing of all hunter-harvested deer. Captive populations (of any organism, and especially those that can be relocated in ways other than natural movement or dispersion) and free-ranging populations (of that organism) with limited natural ranges of movement present entirely different disease management realities that cannot be conflated or compared. The rules as adopted implement demonstrably necessary and scientifically defensible measures to reduce the likelihood of disease transmission between deer breeding facilities and release sites. No changes were made as a result of the comments.

Eleven commenters opposed adoption of the rules as proposed and stated that in various ways that the department's surveillance efforts with respect to free-ranging populations are intentionally inadequate or insufficient because the department does not want to acknowledge the existence or prevalence of CWD in free-ranging populations, which would prove the department's animus towards deer breeders and defeat the premise that CWD surveillance in breeding facilities is necessary. The department disagrees with the comments and responds that such assertions are objectively false, as is the inference that deer breeders are being unfairly regulated. No changes were made as a result of the comments.

Eleven commenters opposed adoption of the rules as proposed and stated that EHD (Epizootic Hemorrhagic Disease) is a bigger threat than CWD and the department doesn't do/isn't doing anything about it. The department disagrees with the comment and responds that EHD and CWD are completely different diseases with different transmission pathways. EHD is spread via insects, which the department has no ability to control, while a known major pathway for spread of CWD is the transfer of infected deer by unnatural means (such as haulage), which the department does have the ability to influence in a way that mitigates disease transmission risk. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated the rules as proposed would hurt property values. The department disagrees with the comment and responds that the rules prescribe testing requirements for the transfer of breeder deer between deer breeders and enhances surveillance requirements at trace-out release sites, neither which can be demonstrated to affect property values. No changes were made as a result of the comments.

Ten commenters opposed adoption of the rules as proposed and stated that one day is not enough for test sample submission from release sites epidemiologically linked to positive breeding facilities. The department agrees with the comment and has made changes accordingly.

Nine commenters opposed adoption of the rules as proposed and stated that the rules are unnecessary because deer breeders are breeding CWD out of deer, and six commenters stated that the department should be working with breeders in that effort. The department disagrees with the comments and responds that CWD continues to be detected in deer breeding facilities and at the present time there is no indication that there are breeder deer incapable of contracting CWD; thus, it is imperative to use the tools available now to try to slow or stop the spread of CWD instead of waiting for techniques that have yet to be developed or proven. The department also notes that it is funding research projects to investigate genetic approaches to combating CWD. No changes were made as a result of the comments.

Nine commenters opposed adoption of the rules as proposed and stated that deer breeders already test every deer. The department disagrees with the comments and responds that because some deer breeders were unable for whatever reason to comply with rules requiring 100 percent of deer mortalities occurring within the facility to be tested (post-mortem testing is considered to be the definitive standard), the department implemented rules allowing ante-mortem testing at sufficient intensity to substitute for missing mortalities. Nevertheless, breeder deer are not currently tested frequently enough with respect to the volume and frequency at which breeder deer are transferred between deer breeders on even a monthly basis. In fact, the rules as adopted are not ideal in this regard and represent a minimum standard for achieving confidence that CWD is not being spread. The department has repeatedly explained that ante-mortem testing is less reliable at ascertaining whether an individual animal is truly uninfected with CWD, but it has significant value as a screening test for ascertaining the CWD status of a herd. No changes were made as a result of the comments.

Nine commenters opposed adoption of the rules as proposed and stated that CWD is scrapie and therefore no response is warranted. Thirteen commenters opposed adoption of the rules as proposed and stated in some form or fashion that CWD is the same thing as scrapie and indicated that this should alter the department's approach to CWD management. The department disagrees with the comments and responds that CWD is a cervid disease that is without question related to scrapie, a similar disease found in sheep, but in any case, this distinction is irrelevant in the context of disease surveillance, response, and management actions as scrapie is itself another disease justifying state and federal regulatory action, including depopulation of flocks infected with scrapie. No changes were made as a result of the comments.

Eight commenters opposed adoption of the rules as proposed and stated that the rules are unnecessary because CWD can be spread in many ways and deer are far more likely to die from

other causes anyway. The department disagrees with the comments and responds that CWD is an existential threat to captive and free-ranging deer populations and although CWD can be spread in many ways, the majority of CWD detections thus far have occurred in deer breeding facilities, increasing the probability of spreading the disease by the movement of breeder deer through human agency. Regardless of how CWD spreads, the department has an obligation to mitigate the spread of the disease and manage the disease through appropriate regulations. The department also notes that a deer infected by CWD is highly likely to die from some other cause because of the debilitating, disorienting nature of the disease. No changes were made as a result of the comments.

Eight commenters opposed adoption of the rules as proposed and stated that the commission doesn't or likely doesn't consider public comment. The department disagrees with the comments and responds that each commissioner received a verbatim copy of all public comments. Additionally, staff provided a summary of public comment at the time of the commission meeting, which included a synopsis of the content of public comment. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the legislature is the appropriate body to manage CWD response and regulate deer breeders, eight commenters opposed adoption and stated that regulation should be left up to local officials, three commenters opposed adoption and stated that the department is engaging in extra-legislative action, and three commenters opposed adoption and stated that the rules should be subject to a vote by the public. The department disagrees with the comments and responds that the legislature has delegated to the Parks and Wildlife Commission the authority to promulgate rules governing white-tailed deer held in captivity by persons with a deer breeders permit, that local officials do not enjoy that authority, and that under the Administrative Procedure Act, department rules are implemented by vote of the Parks and Wildlife Commission after the opportunity is provided for public comment, as provided by statute. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated in various ways that the department is overreacting, blowing things out of proportion, or otherwise reacting with inappropriate alarm. The department disagrees with the comments and responds that the rules as adopted are necessary in light of the continuing detection of CWD in deer breeding facilities. The department also responds that it is similarly necessary to enhance the department's ability to quickly test deer at release sites that have been epidemiologically linked to a positive deer breeding facility or facilities. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that transfer/transport of breeder deer should be prohibited. The department disagrees with the comment and responds that although the department is charged with protecting and conserving wildlife, deer breeders have a statutory permit privilege to transfer deer in a healthy condition for purposes of release; therefore, the department is reluctant to prohibit the movement of all deer by haulage. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that the rules are unconstitutional or a violation of constitutional rights. The department disagrees with the comments and responds that the rules are not violative of any provision of

the state or federal constitutions. No changes were made as a result of the comments.

Six commenters opposed adoption of the rules as proposed and stated that the rules hurt, are unfair to, or put high-fence ranches out of business. The department disagrees with the comments and responds that the rules as adopted do not affect the presence, absence, or dimensions of any fence erected by any landowner. If the comments refer to negative impacts resulting from epidemiological linkage of release sites to positive deer breeding facilities, the department responds that it is a landowner's decision to release breeder deer on their property and the department's rules are clear as to what a release site owner's obligations are in the event that a property becomes epidemiologically connected to a positive facility. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated that the rules "give too much authority to the department." The department disagrees that the rules give any authority to the department. The department's authority is derived from the legislature as codified in the Parks and Wildlife Code, and the rules as adopted are within that authority. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated in various ways that the rules are not justified because of the low positivity and prevalence rates for CWD in captive deer populations and there is no evidence that CWD is more common in breeder pens than in the wild. The department disagrees with the comments and responds that comparative positivity and prevalence rates in captive versus free-ranging populations is of little value in the context of the rules as adopted. CWD is and has been spread via the transfer of breeder deer to other locations. The rules as adopted address that fact. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed and stated that the department should not be or has no business being involved in animal health issues, which should be left to TAHC. Another commenter stated that the department is not a disease control authority. The department disagrees with the comments and responds that the department has a statutory duty to conserve wildlife populations and with respect to breeder deer, a statutory duty to ensure that only deer in a healthy condition are sold by deer breeders. Additionally, TAHC has authority to regulate diseases that affect livestock and wildlife populations; thus, the department and TAHC are in a partnership to protect both livestock and wildlife from CWD. No changes were made as a result of the comments.

Five commenters opposed adoption of the rules as proposed, stating displeasure with management zones and offering suggested alternatives. The department disagrees that CWD zone designations were the subject of the rules as proposed or adopted; therefore, the comments are not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated that CWD can be bred out of deer in the same fashion that scrapie was bred out of sheep. The department disagrees that scrapie has been bred out of sheep, for scrapie cases continue to occur and be reported, but more importantly, sheep are livestock, not wildlife. Humans have a long history of utilizing linebreeding to improve disease resistance in livestock, but it is nearly impossible with free-ranging populations because the an-



imals are not domesticated or confined. In any case, the comment is not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated that there is no scientific support for the proposed residency requirements and the rules do not consider the transfer of breeder deer between facilities under common ownership on one tract of land. The department, while disagreeing that the proposed residency requirements are not scientifically defensible or appropriate, agrees that further refinement of such requirements is warranted, and has made changes accordingly.

Four commenters opposed adoption of the rules as proposed and stated that deer breeders are the solution to CWD because "they do more and test more." The department disagrees with the comments and responds that the task of constraining CWD and preventing its spread presents challenges to everyone involved, from deer breeders to land managers to hunters to scientists and ultimately, to every citizen. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated because CWD can be acquired by deer in a variety of ways, deer breeders cannot be blamed. The department disagrees with the comment and responds that the rules as adopted do not and are not intended to constitute blame or imply culpability for anything; they are intended to curb and if possible stop the spread of CWD to additional deer populations. It cannot be refuted that a pathway for CWD transmission in Texas is via the movement of captive cervids. No changes were made as a result of the comments.

Four commenters opposed adoption of the rules as proposed and stated either that breeder deer are not the property of the state or that breeder deer are private property and the department does not possess the authority to regulate their possession. The department disagrees with the comments and responds that all white-tailed deer are the property of the people of the state by statute and the Texas Constitution, which has been affirmed on more than one occasion by courts at various levels, including the Texas Supreme Court. The department further responds that Parks and Wildlife Code, Chapter 43, expressly requires the department to regulate the possession of breeder deer held under a deer breeders permit. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated disapproval of depopulation orders, and 18 commenters stated that depopulation events killing thousands of deer achieve nothing. The department disagrees that the depopulation of CWD positive facilities "achieves nothing" as it is especially critical for CWD management in contexts where such measures can result in effective containment, compared with response options to detections in free-ranging populations. Nonetheless, the topic of depopulation activities is not germane to the rules as proposed or adopted. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department's motivation was simply to obtain money from the federal government. The department disagrees with the comment and responds that the only incentive affecting the department is the desire to protect wildlife resources for the enjoyment of present and future generations, and, further, that federal funds for CWD management in Texas are a negligible

proportion of the department's budget for wildlife resource management. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department has no statutory authority to require tags for free-ranging deer. The department disagrees with the comment and responds that the commission has the authority to require identification of deer held in possession under a variety of permits, and to require that identification to remain with the deer following release. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the provisions requiring permanent visible identification to remain with breeder deer following release was onerous because hunters don't want to shoot deer with a tag in its ear. The department disagrees with the comments and responds that although identification of deer formerly held under a deer breeder's permit is critical for the quick location of trace deer in the event that a release site becomes epidemiologically linked to a positive deer breeding facility, the commission voted to table provisions related to permanent identification and directed the removal of language regarding permanent identification from the rules as adopted.

Three commenters opposed adoption and stated that the rules relating to trace deer at release sites were not fair because breeder deer are tested prior to release. The department disagrees with the comment and responds that because of the intricate connectivity of breeding facilities, the long incubation time before CWD is detectable, and the fact that ante-mortem testing should not be understood to be a way to definitively clear individual animals, when CWD is detected in a captive population that was the source for released deer, it is necessary to quickly locate, dispatch, and test the released deer to gain a definitive understanding of the disease status at the release site. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the rules are not valid because the commission isn't elected. The department disagrees with the comments and responds that the commission is appointed by the Governor in compliance with the applicable provisions of the Texas Constitution and applicable statutory law and the rules were validly promulgated. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed on the basis that breeders "test exponentially more deer." The department disagrees with the comments for the reasons stated in an earlier discussion of why testing protocols for captive deer are different from routine monitoring protocols for free-ranging populations. No changes were made as a result of the comments.

Three commenters opposed adoption of the rules as proposed and stated that the department should "let the market decide." The department is unable to determine the meaning of the comment, as the rules as adopted impose disease testing requirements on a small number of permit holders and enhances surveillance at trace-out release sites and will not affect the supply of nor demand for captive deer. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed because of the removal of the "sunset" provision requiring ante-mortem CWD testing of breeder deer prior to transfer to release sites. The department disagrees with the comment and responds that the continued detection of CWD at breeding

facilities and associate release sites warrants the continued screening of breeder deer prior to transfer to release sites. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed and disagreed with the 60-day time period within which trace deer must be removed from a trace-out release site. One commenter stated that each release site presents a unique combination of size, habitat, hunting frequency and pressure, and elapsed time since the release of breeder deer. The commenter also stated that the proposed provision is unconstitutional and grossly subjective. The department disagrees with the commenters and responds that it is up to the individual landowner to be aware of and consider the matrix of possibilities with respect to CWD rules and the current epidemiological reality of CWD in Texas when purchasing breeder deer for release. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed on the basis that the department does not have an epidemiologist on staff. While the department does have an epidemiologist on staff, the department disagrees that an epidemiologist must be on staff as a condition of rulemaking. The department notes that it works closely with and utilizes the expertise of epidemiologists and wildlife disease specialists at a number of state and federal entities, universities, and the department's CWD Task Force, and is confident that the disease management protocols represent the best available science. No changes were made as a result of the comments.

Two commenters opposed adoption of the rules as proposed on the basis that disease surveillance efforts in free-range populations are not adequate or insufficient, which indicates that the department is not interested in determining disease prevalence in populations other than captive populations and is afraid to acknowledge that CWD is in fact widespread in free-ranging populations. The department disagrees with the comments and responds, as noted in discussions elsewhere in this preamble, that surveillance of free-ranging populations is in fact sufficient for the department to conclude that CWD would be more broadly detected in free-ranging populations if it were widespread. No changes were made as a result of the comments.

One commenter opposed adoption of the rules as proposed and stated that deer don't live long enough for CWD to kill them. The department disagrees with the comment and responds that there is abundant evidence that deer die from CWD. In addition, deer infected with CWD are four times more likely to die from other causes than deer that are not infected with CWD. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that there is no proof that breeder deer are the problem. The department disagrees with the comment and responds that the problem at hand is CWD and there is no question that it has been spread by the transfer of captive cervids. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that CWD originated in wild deer and did not come from farmed deer. The department neither agrees nor disagrees with the comment and responds that neither the threat posed by CWD nor the department's response to that threat are reliant upon a specific determination of pathogenesis; however, the movement of deer by humans via vehicles is a significant factor in the spread of CWD in captive cervid populations in Texas and elsewhere. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that there is no evidence that CWD is spread by deer breeders. The department disagrees with the comment and responds that numerous epidemiological investigations have conclusively shown that CWD has been spread by the movement of captive cervids in Texas. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that predators and scavengers spread CWD more than deer breeders. The department neither agrees nor disagrees with the comment and responds that the rules as adopted impose additional testing measures for deer breeders who transfer deer to other breeders and imposes enhanced surveillance measures at trace-out release sites because the department has determined that CWD is and has been spread by the transfer of breeder deer. The department also notes that the spread of CWD by predators and scavengers is a natural process that cannot be regulated. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed as being "anti-hunting." The department disagrees with the comment and responds that the department has a statutory duty to protect game species for the enjoyment of the public, which includes the hunting public. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that helicopter services will be hurt. The department neither agrees nor disagrees with the comment and responds that the rules as adopted do not and are not intended to regulate helicopter services. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would result in "high cost to ranchers." The department disagrees with the comment and responds that although the commenter did not explain the rationale for the comment, the rules as adopted do not affect landowners other than those who own deer breeding facilities and those who own trace-out release sites. The department has for many years cautioned the public about the dangers of CWD, and the current rules are clear about the obligations of release-site owners in the event that a property is implicated in an epidemiological investigation. The department further notes that the rules are actually intended to benefit landowners by containing and if possible preventing the spread of CWD to additional properties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "all deer should be tested." By this the department understands the commenter to be referring to the testing of all deer harvested by hunters. The department disagrees with the comment for reasons stated in a response earlier in this preamble regarding surveillance protocols in captive versus free-ranging populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "Montage" [sic] for testing in captive deer should be 18 months of age." The department believes the commenter is referring to the minimum age at which a breeder deer becomes eligible for testing. In any case, the rules as proposed and adopted did not contemplate any changes with respect to the age at which breeder deer

can be tested; therefore, the comment is not germane to the rule-making. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules will jeopardize food security and food supply. The department disagrees with the comment and responds that there is no apparent connection between the rules as adopted and threats to the food chain, although as noted in a previous response, spongiform encephalopathies can be transmitted interspecifically, so it is prudent to attempt to contain and manage CWD to the greatest extent possible. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules would prevent hunters from feeding their families. The department disagrees with the comment and responds that because breeder deer constitute less than five percent of the total deer harvest and nothing in the rules as adopted imposes limitations on any person's ability to hunt deer, there is little chance that families will suffer from a lack of venison as a result of the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the department was engaging in "a propaganda campaign to kill hunting." The department disagrees with the comment and responds that the department is a vigorous advocate for hunters and hunting heritage. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the rules violate the constitutional right to hunt. The department disagrees with the comment and responds the rules do not affect any person's constitutional right to hunt. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that deer breeders "monitor better and more successfully than TPWD." The department disagrees with the comment and responds that deer breeders must monitor for CWD because it is a condition of department rules for holding a deer breeding permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that deer breeders "test continuously" and "no sick deer get in or out." The department disagrees with the comment and responds that the value of testing frequency by itself is not as valuable as testing frequency as it relates to the number of deer that enter and/or leave a facility, the number of facilities involved, and the transfer volumes of those facilities. The statement that sick deer do not get in or out is objectively not true, because CWD is spreading in the state, and detections are predominantly occurring within captive deer populations. No changes were made as a result of the comments.

One commenter opposed adoption of the rules as proposed because the rules do not require persons who participate in the department's Managed Lands Deer Program (MLDP) to test all deer harvested on MLDP properties. The department disagrees with the comment and responds once again that it is not necessary to require the testing of all hunter-harvested deer. No changes were made as a result of the comment.

One commenter opposed the rules as proposed and stated that they are impossible to enforce. The department disagrees with the comment and responds that it is confident the rules as adopted are enforceable. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed on the basis that the rules apply only to deer, not other farm animals known to carry or that are susceptible to the disease. The department disagrees with the comment and responds that white-tailed deer and mule deer are species of wildlife authorized to be regulated by the department, while livestock, exotic livestock, and domesticated animals are regulated by TAHC. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "money should be spent on research and testing, not surveillance and monitoring." The department disagrees with the comment and responds that surveillance and monitoring are the practical endpoints of research and testing; it is pointless to do research and develop testing techniques if they are not going to be used. Therefore, the department engages in and funds research, and the fruits of that research then inform surveillance and monitoring protocols. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that technically all rights belong to the landowner. The department neither agrees nor disagrees with the commenter and responds that the intended point of the comment cannot be determined and it does not appear to have any connection to the rules as adopted, unless it is meant to apply to provisions applicable to trace-out release sites, in which case the department's response has been stated elsewhere.

One commenter opposed adoption of the rules as proposed and stated, "If you test enough you will find it." The department neither agrees nor disagrees with the comment and responds that the intended point of the comment cannot be determined. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "Information was not provided to the public." The department disagrees with the comment and responds the rules were lawfully promulgated in compliance with all requirements regarding timely public notice, were published on the department's website, and were the subject of department press releases. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that breeders should be "left alone to test deer prior to release." The department agrees with the comment and responds that the rules as adopted do not require a representative of the department to be present or involved in any way with testing activities conducted in compliance with the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that TPWD personnel are spreading CWD. The department understands the comment to be an accusation that the department is intentionally causing CWD to spread, disagrees with the comment, and responds that in the absence of credible evidence to the contrary, the possibility is to be dismissed out of hand. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the state should create a laboratory capable of testing high volumes of samples quickly. The department agrees with the commenter and responds that the Texas A&M Veterinary Medical Diagnostic Laboratory has the capability of testing a high volume of CWD samples. New technologies are being explored and will be implemented as quickly as possible, contingent upon the budgetary realities of the various agencies involved. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed on the basis that the department "uses the wrong test for CWD." The department disagrees with the comment and responds that the department's rules require the use of testing protocols that have been approved by the United States Department of Agriculture, but hastens to add that as new, more efficient, less expensive, or less invasive testing protocols and methodologies are approved, the department will recognize and allow their use. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated "that they should not be adopted as emergency rules." The department disagrees with the commenter and responds that the rules as adopted are not emergency rules, but replace, in part, an identical emergency rule that was adopted with a limited duration as provided by law for instances in which a species regulated by the department faces an immediate threat. The department additionally responds that these rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that they violate the constitutionally guaranteed right to farm. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, requires the department to regulate the possession of deer held under a deer breeder's permit. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed because they did not "address deer overpopulations in million-dollar subdivisions." The department disagrees with the comment and responds that the rules do not contemplate issues of deer overpopulation, but rather impose testing requirements on deer breeders and landowners of trace-out release sites. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that all deer killed under a TTP should be tested before being used as a food source. The department disagrees with the comment insofar as the department does not regulate food safety; nonetheless, the rules as adopted require the timely submission of test results from TTP trap sites, which will function to provide additional surveillance of CWD in free-ranging populations. The department agrees that testing harvested deer for CWD is prudent and that if CWD is detected, consumption of meat from the animal is not recommended. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that "there was no economic impact study." The department disagrees with the comment and responds that the rules were promulgated in compliance with all applicable provisions of the Administrative Procedure Act, including all required economic analyses. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated the department's estimates of the cost of veterinary services was inaccurate because it did not include travel time to and from ranch calls. The department disagrees with the comment and responds that the notice of proposed rulemaking acknowledged the fluidity of prices across the state, based on the variety of practice models and service competition. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the provisions requiring testing of deer at trace-out release sites are problematic because "there is no definitive metric for epidemiological clearance and the testing of trace deer with negative results should clear a release site and absolve the landowner from testing hunter-harvested deer." The commenter stated that the procedure for clearing an epidemiologically linked release site should be the same as that for clearing a trace-out breeding facility that received deer from an index facility, where a facility is cleared if trace-out deer test "negative." The department disagrees that there is "no definitive metric" for a release site to be cleared; in fact, if a trace release site were to receive "not detected" results for every trace deer on the release site, it would be promptly released, exactly like a breeding facility in instances where all trace animals are tested with results of "not detected." The department notes that without some method of quickly locating trace deer on a trace release site, epidemiological clearance becomes difficult. In such situations, a clear, definitive metric of CWD testing is identified in the trace-out release site herd plan, which includes CWD testing of hunter-harvested animals, which is warranted until sufficient confidence that CWD is not present has been attained. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that owners of epidemiologically linked release sites should be given the option to live-test trace deer and quarantine them until test results are obtained. The commenter stated that requiring post-mortem testing of animals that were ante-mortem tested prior to release creates a hardship. The department disagrees with the comment and responds that the proposal does not address ante-mortem testing of free-ranging trace deer on release sites and in any case is not germane to the proposed or adopted rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated objections to the provisions requiring the removal and post-mortem testing of trace deer from release sites epidemiologically linked to a positive deer breeding facility or facilities. The commenter stated that the termination of released deer "without regard to contact tracing or further testing is irrational and serves no legitimate public interest" and will result in the loss of thousands of healthy deer and the associated investments by landowners. The department disagrees with the comment and responds that contact tracing is the central component of epidemiological investigation and the quickest and most effective way to clear a release site linked to a positive breeding facility is to remove every trace deer and subject them to post-mortem testing. The department asserts that the rules as adopted serve a significant public interest, which is the protection of free-ranging and captive deer populations from CWD. The department again notes it is up to the individual landowner to be aware of and consider the matrix of possibilities with respect to CWD rules and the current epidemiological reality of CWD in Texas when purchasing breeder deer for release. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the current administration of "herd plans" is unworkable because current "herd plans" are "generic," do not treat small acreages differently than large acreages and are not "tailored" to properties in question. The department disagrees with the comment and responds that herd plans are absolutely tailored to individual properties and thus are not generic. The department further responds that from an epidemiological perspec-

tive, the size of a property is irrelevant, since herd plans are based on statistical models that dictate the particular goals for achieving confidence that CWD is not present. No changes were made as a result of the comment.

The department received a form letter from 179 individuals expressing opposition to adoption of the rules as proposed. The commenters stated that current rules are working as intended, implying but not explicitly stating that the rules as proposed are not warranted. The department disagrees with the comments and responds that through slow but steady improvements in the department's rules over the last five years, the likelihood of expeditiously and reliably detecting CWD in captive deer populations before it can be spread has increased; however, the continued detection of positives in additional deer breeding facilities and release sites associated with such facilities indicate a continuing need for improvement. No changes were made as a result of the comments. The commenters stated opposition to proposed provisions regarding permanent identification of breeder deer upon release. The department disagrees with the comments and responds that by statute, the required ear tags cannot be removed except to replace a damaged ear tag. Nevertheless, the commission has directed the removal of language regarding permanent identification from the rules as adopted. The commenters stated that the matter of permanent identification is "clearly" a matter for the Texas Legislature to address and that the department has not requested or been granted the authority to regulate the identification of free-ranging deer. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L, clearly and explicitly requires breeder deer to be identified with an ear tag by March 31 of the year following birth and clearly and explicitly provides one and only one condition under which the ear tags may be removed, which is to replace an ear tag that does not comply with the requirements. The department further responds it is unnecessary to seek legislative approval to enforce the statute as written, and that in any case, the provision in question does not require permanent identification of free-ranging deer, but the permanent identification of breeder deer, as breeder deer do not become free-ranging deer until they are no longer in possession of the deer breeder, who is also the only person authorized to attach or remove ear tags in accordance with law. The commission has directed staff to remove the proposed provisions, but as noted previously in this preamble, the statutory bar to removal of the ear tags remains. The commenters also state opposition to the proposed residency requirement for deer prior to being transferred elsewhere and stated that the department "failed to articulate a scientific need for the requirement." The department disagrees with the comments and responds that the department has repeatedly explained the scientific basis and need for the provision in question, which is to create a mechanism to reduce the number of breeding facilities and release sites made vulnerable to CWD because of the high frequency with which deer are transferred between breeders, which makes it possible for an exposed deer, if infected, to then infect multiple facilities in a short period of time before the disease becomes detectable, thus involving multiple facilities in epidemiological investigations that could have been avoided. In any case, as explained earlier in this preamble, the commission was persuaded that additional refinement of residency requirements, primarily to address scenarios in which breeder deer are transferred between facilities under common ownership in the same location, is warranted, and the residency provisions were not adopted. The commenters stated opposition to the proposed requirement for test samples to be submitted within one day of collection at release sites epidemiologically

connected to positive deer breeding facilities. The commission agreed with the comment and changes have been made accordingly. The commenters also opposed the proposed requirement for breeder deer to be subjected to ante-mortem testing as a condition of transfer to another deer breeder, stating "This portion of the proposal lacks merit that should be given for not-detected results on ante-mortem tests. If adopted, this needs to include a provision removing all language from the rules related to tier facilities or tier deer. The Texas Animal Health Commission rules do not recognize tiers as a disease threat. The tier terminology in the current rules was created by TPWD staff and places an unreasonable burden on lawfully permitted deer breeders who are already required to provide not-detected test results of 100% of mortalities and 100% ante-mortem tests prior to release." The department disagrees with the comments and responds that the provision in question is in response to the detection of CWD in deer breeding facilities, which continues in spite of recent rule changes to improve surveillance effectiveness. The provision in question mimics current rules requiring ante-mortem testing of breeder deer prior to release, and will provide an additional layer of surveillance protection. With respect to "tier" status, the department recognizes that TAHC rules do not extend to that level of epidemiological connectivity, which does not mean "tier" designation is not useful or necessary. A breeding facility that has received an exposed deer that was in a trace-out facility is of epidemiological concern and value. TAHC regulates livestock; the department conserves and protects wildlife, which live in a state of nature and are not domesticated, and once released from a breeding facility, breeder deer become free-ranging wildlife. Therefore, what suits the management of wildlife isn't necessarily something that TAHC, as a regulator of livestock, considers necessary. The department does not believe the "tier" category places an undue burden on the regulated community, especially when due diligence is performed with respect to provenance and quantity of deer, and sources of deer by a prospective purchaser, and in any case, the rules as proposed do not impose or alter any current provision related to "tier" status. The department also responds that compliance with current rules does not affect the necessity for the rules as adopted. The commenters also stated that if the provisions regarding ante-mortem testing prior to transfer between breeders is adopted, "then containment zones and surveillance zones should be immediately abolished." The department disagrees with the comment and responds that the rules as proposed did not contemplate the department's system of CWD management zones and such a change is beyond the scope of this rulemaking. No changes were made as a result of the comments. The commenters stated opposition to the proposed provisions to impose a seven-day deadline for submission of CWD test samples for Trap, Transport and Process permits, stating that it would not mitigate disease risk at all and stating that all TTP deer should be tested before being distributed to food banks. The department disagrees with the comment and responds that the rule as adopted mitigates disease risk, as the current rules require only the annual submission of test results. By expediting the process, the department is able to react more quickly in the event CWD is detected. The department agrees that testing harvested deer for CWD is prudent, and recommends not consuming meat from infected animals. No changes were made as a result of the comments.

The department received a letter from Senator Juan Hinojosa expressing concerns over the timeline to adopt the proposed rules, noting that there has not been enough time to review and provide detailed responses to public comment and any needed revisions to proposed rules. Senator Hinojosa requested delay of

consideration or adoption only of a portion of the rules such as ante-mortem testing requirements for breeder-to-breeder movement. The department respectfully disagrees with the comments and responds that the rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements. The department also notes the rules were developed with the knowledge, presence and participation of all components of the regulated community, including deer breeders and the department's CWD Task Force. No changes were made as a result of the comments.

The department also received a letter signed by Senator Bob Hall, Senator Charles Perry, Senator Mayes Middleton, Senator Angela Paxton, Senator Tan Parker, and Senator Drew Springer asking the commission to delay consideration and adoption of the rules. The letter expressed concern that the department did not prepare a detailed economic impact statement concerning the proposed rules or allow sufficient time for adequate public input and comments or legislative oversight. The department respectfully disagrees with the comments and responds that the rules were proposed and adopted in accordance with all applicable statutes regarding agency rulemaking, including public notice requirements and economic impact analyses. The department also notes the rules were developed with the knowledge, presence, and participation of all components of the regulated community, including deer breeders and the department's CWD Task Force. No changes were made as a result of the comments.

The Texas Deer Association and the Deer Breeders Corporation commented in opposition to adoption of the rules as proposed.

The Texas Wildlife Association, the Texas and Southwestern Cattle Raisers Association, the Texas Sheep and Goat Raisers Association, the Texas Farm Bureau, the Archery Trade Association, the Boone and Crockett Club, the Mule Deer Foundation, the National Deer Association, the National Wildlife Federation, the Pope and Yong Club, the Rocky Mountain Elk Foundation, The Wildlife Society, the Theodore Roosevelt Conservation Partnership, the Texas Foundation for Conservation, Plateau Land and Water, the Texas Nature Conservancy, and the Backcountry Hunters and Anglers commented in support of adoption of the rules as proposed.

The department received 1,378 comments supporting adoption of the rules as proposed.

## SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

### DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

#### 31 TAC §§65.91, 65.92, 65.95, 65.97, 65.98

The amendments are adopted under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and

trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

#### §65.95. *Movement of Breeder Deer.*

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) of this section; or

(3) a DMP facility (however, deer transferred to DMP facilities cannot be recaptured and must be released as provided in the deer management plan)

#### (b) Transfer From Breeding Facility to Breeding Facility.

(1) A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected"; and

(B) the deer is at least six months of age at the time the test sample required by this subsection is collected.

(2) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(3) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

#### (c) Release Sites; Release of Breeder Deer.

(1) An approved release site consists solely of the specific tract of land to which deer are released and the acreage is designated as a release site in TWIMS. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this paragraph.

(2) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(3) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring

that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(4) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(5) The owner of a release site where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) or deer from a CWD-positive facility have been released shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(6) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the release has been returned with test results of "not detected"; and

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected.

(C) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be utilized a second time to satisfy the requirements of this paragraph, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

(D) A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(d) Trace-out Release Site.

(1) A release site is a trace-out release site if it has:

(A) received deer directly or indirectly from a positive breeding facility; and

(B) it has not been released from a hold order or quarantine related to activity described in subparagraph (A) of this paragraph.

(2) The landowner of a trace-out release site must:

(A) within 60 days of notification by the department that trace-out release status has been confirmed, remove every trace deer at the release site, either by lawful hunting or as specifically authorized in writing by the department (or both), and submit post-mortem CWD samples for each deer within seven days of mortality; and

(B) submit post-mortem CWD test results for 100 percent of all hunter-harvested deer until the department is confident that CWD is not present at the release site or as prescribed in a herd plan.

(3) No breeder deer may be transferred to a trace-out release site unless the deer has been tagged in one ear with a button-type RFID tag approved by the department.

(e) The owner of a release site that is not in compliance with applicable provisions of this division is ineligible for enrollment or continued participation in the Managed Lands Deer Program under Subchapter A of this chapter.

*§65.98. Transition Provisions.*

(a) A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

(1) required to comply with the applicable provisions of this division regarding CWD testing with respect to release facilities; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this section.

(b) To the extent that any provision of this subsection conflicts with the provisions of §65.99(e) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Breeding Facilities), this section controls. Tissue samples required by §65.99(e)(2)(E) of this title shall be submitted within 60 days of notification by the department of Category B status.

(c) As of the effective date of this subsection, the provisions of §65.99(i) of this title cease effect.

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 December 29, 2023.

TRD-202400001

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: January 18, 2024

Proposal publication date: September 29, 2023

For further information, please call: (512) 389-4775



## SUBCHAPTER T. DEER BREEDER PERMITS

### 31 TAC §§65.605, 65.608, 65.611

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

*§65.608. Annual Reports and Records.*

(a) Each deer breeder shall file a completed annual report by not later than May 15 of each year.

(b) A person other than a deer breeder holding breeder deer for breeding or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.

*§65.611. Prohibited Acts.*

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or in any facility for which the herd inventory on file with the department does not account for those breeder deer, except for fawn breeder deer that are not yet required to be reported to the department.

(c) No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) No person may hold more than one cervid species at any time in a deer breeding facility except as provided by §65.602(e) of this title (relating to Application and Permit Issuance), or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(e) Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(g) This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

- (1) possess a deer acquired from an out-of-state source; or
- (2) import or attempt to import deer from an out-of-state source.

(h) It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(i) It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this title (relating to Holding Facility Standards and Care of Deer).

(j) No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(k) Except as provided under §65.602(e) of this title, no person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

- (1) the deer identified in the reconciled herd inventory for the facility; and
- (2) offspring that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

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 December 29, 2023.

TRD-202400002

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: January 18, 2024

Proposal publication date: September 29, 2023

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

#### SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

##### 34 TAC §31.5, §31.6

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) and §31.6 (relating to Second EAR Warning Payments) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as proposed in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6350). The rules will not be republished.

##### REASONED JUSTIFICATION

TRS amends §31.5 and §31.6, so that they conform with statutory changes made to TRS' employment after retirement ("EAR") notice requirements under Government Code § 824.601.

In 2021, the Texas Legislature passed House Bill 1585 which added, among other provisions, an EAR notice procedure (also called a "three strikes" procedure) that ensured TRS would issue at least two warnings to a TRS service retiree before that retiree would forfeit his or her entire annuity for a month because the retiree exceeded the limits on employment after retirement during that month.

Importantly, this notice procedure, which is under Government Code §824.601(b-3), requires that a TRS service retiree cannot be subject to a second warning (and the possible dollar-for-dollar partial forfeiture associated with a second warning) until the month after the month TRS issues a first warning to a TRS retiree for exceeding the limits on EAR. Further, a TRS retiree cannot be subject to mandatory full forfeiture of his or her annuity until the month after the month TRS issues the second warning letter. These requirements are clear in the statute.

However, §31.5 and §31.6 currently provide, at least in part, that a TRS service retiree is not subject to a second warning until the retiree receives, rather than TRS issues, a first warning. Further, the rules provide that a TRS retiree is not subject to a mandatory forfeiture until the retiree receives, rather than TRS issues, both required notices.

By requiring that the retiree receive, rather than TRS issue, these EAR notices before the retiree can be subject to the next level of EAR forfeiture, §31.5 and §31.6 are in conflict with Government Code §824.601(b-3). In addition, the receipt, rather than issue, standard creates a substantial administrative hurdle for TRS in administering the EAR "three strikes" procedure.

Specifically, TRS sends EAR notices to service retirees by both first class and certified mail to the retiree's current mailing address on file with TRS to ensure that the retirees timely receive their EAR notices. However, if a retiree did not maintain an accurate current mailing address with TRS, and TRS was unable to locate (or at least was delayed in locating) the retiree, the retiree could arguably not be subject to the next EAR notice and potentially full forfeiture until TRS receives a current mailing address for the member.



In addition, because the month TRS issues an EAR notice can be different from the month a TRS service retiree receives that notice, the month in which a TRS retiree is subject to the next level of EAR forfeiture could, in some cases, be ambiguous even if the retiree receives the EAR notice.

For these reasons, TRS has amended §31.5 and §31.6, so that each provision conforms with the statutory language under Government Code §824.601 that triggers the next stage of notice or forfeiture for a retiree when TRS issues, rather than when the retiree receives, a warning. Amended §31.5 and §31.6 will become effective on February 1, 2024.

#### COMMENTS

No comments on the proposed adoption of the amendments were received.

#### STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; Section 2 of House Bill 1585 as enrolled by the 87th Texas Legislature, Regular Session, on May 26, 2021, which established the EAR notice procedure for TRS; and Section 1 of Senate Bill 288 as enrolled by the 87th Legislature, Regular Session, on May 31, 2021, which also provides the same EAR notice procedure for TRS.

#### CROSS-REFERENCE TO STATUTE

The adopted amendments implement Government Code §824.601, which relates to loss of monthly benefits; Government Code § 824.602, which relates to exceptions; and Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic.

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 January 5, 2024.

TRD-202400059

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: February 1, 2024

Proposal publication date: October 27, 2023

For further information, please call: (512) 542-6506



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 4. TEXAS MILITARY DEPARTMENT

#### CHAPTER 138. HAZARDOUS PROFESSION DEATH BENEFITS

##### 37 TAC §§138.1 - 138.3

The Texas Military Department (Department) adopts new Texas Administrative Code, Title 37, Part 4, Chapter 138. Specifically, the Department adopts new rules §138.1 regarding Applicability, §138.2 regarding Eligibility Determination, and §138.3 regarding Filing the Claim. New §138.1 is adopted with nonsubstantive formatting changes to the proposed text as published in the October 20, 2023, *Texas Register* (48 TexReg 6194), and will be republished. New §138.2 and §138.3 are adopted without changes and will not be republished.

The Department received no comments in response to the proposed new rules.

The new rules are adopted under Texas Government Code §615.024(c) that provides the Department shall adopt rules providing the circumstances under which the death of an individual described in §615.024(b) entitles an eligible survivor to payment of assistance under Government Code Chapter 615. The new rules establish procedures for confirming eligibility for payment of survivor benefits, verifying to whom benefits are to be paid, and how benefits will be processed under Chapter 615 claim process.

#### §138.1. Applicability.

(a) This rule applies to a member of the Texas Military Forces whose death occurs on or after September 1, 2023. For purposes of this rule, a death that occurs before September 1, 2023, is governed by the law in effect on the date the death occurred, and the former law is continued in effect for that purpose.

(b) A survivor of an individual who is a member of the Texas Military Forces is eligible to receive a lump sum payment under Texas Government Code Section 615.022 and monthly assistance under Section 615.023, as applicable, if:

(1) the individual died while on state active duty;

(2) the Texas Military Department certifies to the Employees Retirement System of Texas (ERS) that the circumstances of the individual's death entitle an eligible survivor to the payment of assistance under Chapter 615 of the Texas Government Code; and

(3) the survivor is:

(A) a beneficiary designated by the individual on the individual's United States Department of Defense Form DD-93; or

(B) a beneficiary designated by the individual on the Texas Military Department Record of Emergency Data form; or

(4) if there is no beneficiary described by Paragraph (3)(a) or (3)(b) of this section:

(A) the surviving spouse of the decedent;

(B) a surviving child of the decedent if there is no surviving spouse; or

(C) the surviving parent of the decedent if there is no surviving spouse or child.

(c) For purposes of this rule, a death on state active duty means the individual died because of a personal injury sustained in the line of duty in connection with the performance of military or emergency service for this state at the call of the governor or the governor's designee.

(1) "Personal injury" means an injury resulting from an external force, an activity, or a medical condition caused by or resulting from:

(A) a line-of-duty accident; or

(B) a medical condition caused by line-of-duty work under hazardous conditions.

(2) "Line of duty" means an action the individual is required or authorized by rule, condition of employment, or law to perform. The term includes, but is not limited to:

(A) an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer; and

(B) an action performed as part of a training program the individual is required or authorized by rule, condition of employment, or law to undertake.

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 January 8, 2024.

TRD-202400060

Shelia Bailey Taylor

Director of State Administration

Texas Military Department

Effective date: January 28, 2024

Proposal publication date: October 20, 2023

For further information, please call: (512) 782-3390



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 421. STANDARDS FOR CERTIFICATION

#### 37 TAC §§421.1, 421.3, 421.17

The Texas Commission on Fire Protection (Commission) adopts amendments to 37 Texas Administrative Code Chapter 421, Standards for Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17 Requirement to Maintain Certification.

The purpose of the proposed amendments to rule §421.1 is to provide information regarding the appointment of advisory com-

mittees as mentioned in 37 Texas Administrative Code, Chapter 463, Advisory Committees, Practice and Procedures. Proposed amendments to §421.3 include the following functional descriptions: Plans Examiner, Fire and Safety Educator I, Fire and Safety Educator II, and Fire Marshal. Proposed amendments to §421.17 outlines new guidelines for expired certifications from one year to greater than one year but no longer than five years.

Chapter 421, Standards for Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17 Requirement to Maintain Certification, is adopted without changes to the text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7013). These rules will not be republished.

No comments were received from the public regarding the adoption of the new rule.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

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 January 8, 2024.

TRD-202400062

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Effective date: January 28, 2024

Proposal publication date: December 1, 2023

For further information, please call: (512) 936-3812



# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

---

## Adopted Rule Reviews

Texas Board of Nursing

### Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2022 rule review plan adopted by the Board at its April 2022 meeting, in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6921).

Chapter 211. General Provisions, §§211.1 - 211.11

Chapter 217. Licensure, Peer Assistance, and Practice §§217.1 - 217.24

Chapter 219. Advanced Practice Registered Nurse Education §§219.1 - 219.13

The Board did not receive comment on the above rules. The Board has completed its review and has determined that the reasons for originally adopting the above rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, current procedures and practices of the Board, and that the rules are in compliance with the Texas Administrative Procedure Act.

The Board readopts the rules in Chapters 211, 217, and 219 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 211, 217, and 219 under the 2022 rule review plan adopted by the Board.

TRD-202400065

James W. Johnston

General Counsel

Texas Board of Nursing

Filed: January 9, 2024

◆ ◆ ◆  
Health and Human Services Commission

### Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 371, Breast and Cervical Cancer Services

Notice of the review of this chapter was published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6752). HHSC received one comment concerning this chapter. A summary of the comment and HHSC's response follows.

Comment: One commenter with the American Cancer Society Cancer Action Network (ACS CAN) offered steadfast support of the Breast and Cervical Cancer Services (BCCS) program and stated that it is available to provide resources and support for the continuation of the vital services that BCCS provides.

Response: HHSC welcomes and appreciates the offer of support from ACS CAN.

HHSC has reviewed Chapter 371 in accordance with §2001.039 of the Texas Government Code, 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 371. Any amendments or repeals to Chapter 371 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 371 as required by the Texas Government Code, §2001.039.

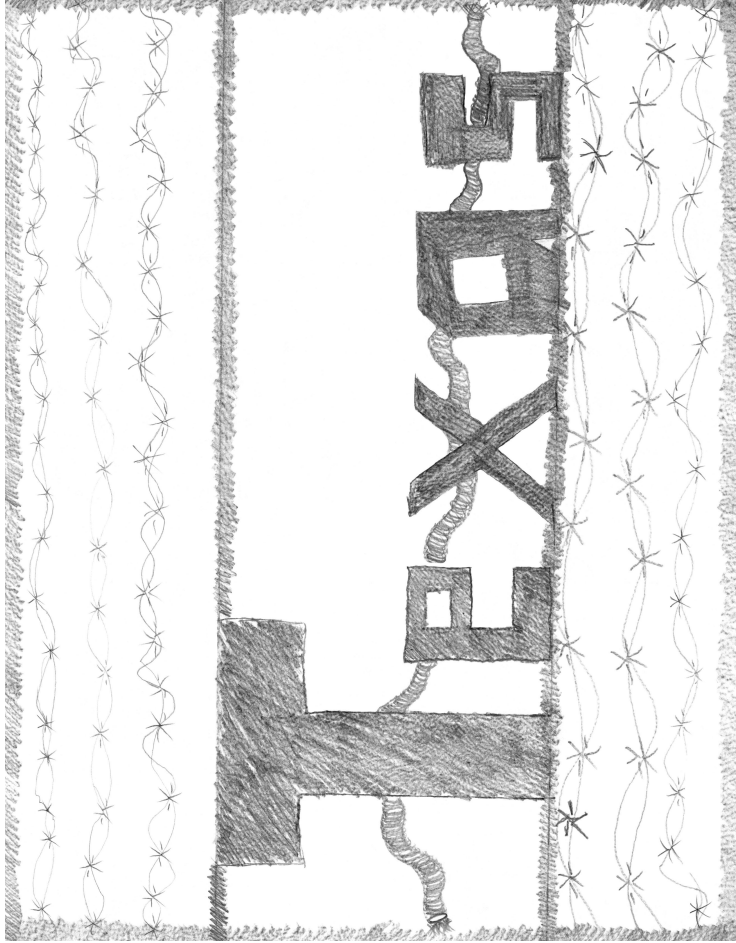
TRD-202400064

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: January 8, 2024  
◆ ◆ ◆



# 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: 25 TAC §265.190(e)(5) [~~Figure: 25 TAC §265.190(f)(5)~~]

Required Pool Sign or Signs	Letter and Symbol Size
"WARNING-NO LIFEGUARD ON DUTY" (Where no lifeguard <u>is</u> required or provided.)	<u>4-inches</u> [4-inches]
"NO DIVING" and International No Diving Symbol (Where no lifeguard <u>is</u> required or provided.)	<u>4-inches</u> [4-inches]
"IN CASE OF EMERGENCY, DIAL 911"	<u>4-inches</u> [4-inches]
Precise Location of the Pool on or with the Emergency Phone (address, directions, GPS location, or building number, as appropriate)	Minimum 1-inch
Hours of Operation	Minimum 1-inch
Directions to and Location of Emergency Phone if Phone Not Visible in Pool Yard	Minimum 2-inches
Maximum User Load Limit	Minimum 2-inches
"PETS IN THE POOL ARE PROHIBITED"	Minimum 2-inches
"DO NOT SWIM IF YOU HAVE BEEN ILL WITH DIARRHEA WITHIN THE PAST 2 WEEKS"	Minimum 2-inches
"CHANGING DIAPERS WITHIN 6 FEET OF THE POOL IS PROHIBITED"	Minimum 2-inches
"GLASS ITEMS NOT ALLOWED IN THE POOL YARD"	Minimum 2-inches
"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL WITHOUT ADULT SUPERVISION" ( <u>Where no lifeguard is required or provided.</u> )	Minimum 2-inches
"EXTENDED BREATH HOLDING ACTIVITIES ARE DANGEROUS AND PROHIBITED"	Minimum 2-inches

Figure: 25 TAC §265.190(g)(1) [~~Figure: 25 TAC §265.190(h)(4)~~]

<b>Required Spa Signs</b>	Letter and Symbol Size
"WARNING – NO LIFEGUARD ON DUTY" ( <u>Where [if] no lifeguard is provided or required.</u> )	<u>4-inches</u> [4-inches]
"DO NOT USE THE SPA IF THE WATER TEMPERATURE IS ABOVE 104 DEGREES FAHRENHEIT"	Minimum 1-inch
Maximum User Load	Minimum 1-inch
Location of the nearest emergency phone or device	Minimum 2-inches
EMERGENCY SPA SHUTOFF	Minimum 2-inches
"DO NOT SWIM IF YOU HAVE BEEN ILL WITH DIARRHEA WITHIN THE PAST 2 WEEKS"	Minimum 2-inches
"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE SPA WITHOUT ADULT SUPERVISION" ( <u>Where no lifeguard is required or provided.</u> )	Minimum 2-inches
"PETS IN THE SPA ARE PROHIBITED"	Minimum 2-inches

Figure: 28 TAC §4.2824(2)

The length of a particular contract segment must be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows.

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t = 1, 2, \dots$ ;  $t$  is reset to 1 at the beginning of each segment;

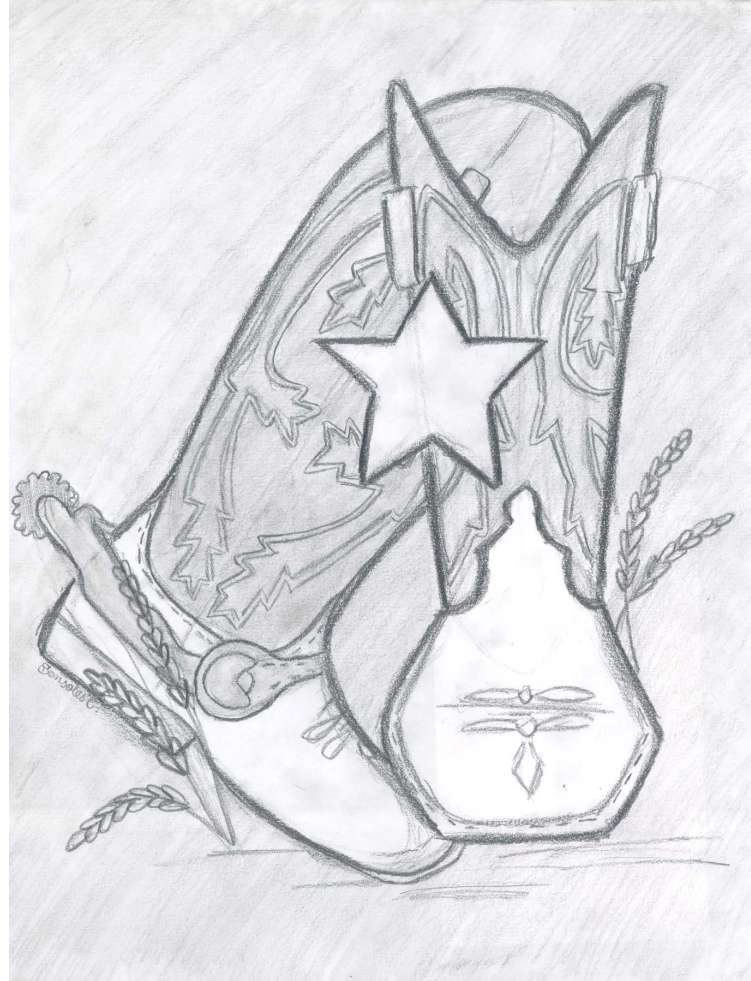
$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount, for year  $t$  of the segment ignoring policy fees only if such policy fees are level for the premium paying period of the policy.

$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$ . However,  $R_t$  may be increased or decreased by 1% in any policy year, at the company's option, but  $R_t$  must not be less than one;

where:

$x$ ,  $k$  and  $t$  are as defined above, and  $q_{x+k+t-1}$  = valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of §4.2825(b)(2) of this title if §4.2825(b)(3) of this title is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  must be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  must be deemed to be 0.





# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

### Local Sales Tax Rate Changes Effective January 1, 2024

The city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective January 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Rice (Navarro Co)	2175063	.020000	.082500

The city sales and use tax will be increased to 1 3/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective January 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Shoreacres (Harris Co)	2101259	.020000	.082500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective January 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Rocksprings (Edwards Co)	2069017	.017500	.080000

The combined areas have been created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, effective January 1, 2024 in the entities listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Bullard/Smith County Emergency Services District No. 2	6212601	.015000	SEE NOTE 1
Jarrell/Williamson County Emergency Services District No. 5 (1)	6246683	.020000	SEE NOTE 2
Keene/Johnson County Emergency Services District No. 1-B	6126615	.020000	SEE NOTE 3
Lindale/Smith County Emergency Services District No. 1	6212610	.015000	SEE NOTE 4
McLendon Chisholm/Rockwall County Public Safety & Fire Assistance District	6199644	.020000	SEE NOTE 5

NOTE 1: The Bullard/Smith County Emergency Services District No. 2 combined area is the area within the Smith County Emergency Services District No. 2 annexed by the city of Bullard on or after June 8, 2021.

NOTE 2: The Jarrell/Williamson County Emergency Services District No. 5 (1) combined area is the area within the Williamson County Emergency Services District No. 5 annexed by the city of Jarrell on or after December 7, 2021.

NOTE 3: The Keene/Johnson County Emergency Services District No. 1-B combined area is the area within the Johnson County Emergency Services District No. 1-B annexed by the city of Keene on or after August 11, 2022.

NOTE 4: The Lindale/Smith County Emergency Services District No. 1 combined area is the area within the Smith County Emergency Services District No. 1 annexed by the city of Lindale on or after October 17, 2023.

NOTE 5: The McLendon Chisholm/Rockwall County Public Safety & Fire Assistance District combined area is the area within the Rockwall County Public Safety & Fire Assistance District annexed by the city of McLendon Chisholm on or after April 19, 2023.

TRD-202400086

Jenny Burleson  
Director, Tax Policy  
Comptroller of Public Accounts  
Filed: January 10, 2024

◆   ◆   ◆

## 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 01/15/24 - 01/21/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/15/24 - 01/21/24 is 18.00% for commercial<sup>2</sup> credit.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202400079

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 10, 2024

◆   ◆   ◆

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 20, 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 **February 20, 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: BFS Asset Holdings LLC dba BMC West; DOCKET NUMBER: 2023-1015-PST-E; IDENTIFIER: RN100608793; LOCATION: Austin, Travis County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.7(d)(1) and (3) and (B)

and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated UST; and 30 TAC §334.48(g)(1)(B) and TWC, §26.3475(c)(2), by failing to inspect the overfill prevention equipment at least once every three years; PENALTY: \$8,313; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: BHULLAR ENTERPRISES LLC dba A Motion Food Mart; DOCKET NUMBER: 2023-0565-PST-E; IDENTIFIER: RN101548881; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip the UST system with overfill prevention equipment; PENALTY: \$10,703; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Atlanta dba Atlanta Municipal Airport; DOCKET NUMBER: 2022-1065-PST-E; IDENTIFIER: RN101810422; LOCATION: Atlanta, Cass County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Milford; DOCKET NUMBER: 2021-0886-MWD-E; IDENTIFIER: RN102080934; LOCATION: Milford, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.33(a) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013937001, Monitoring Requirements Number 5, by failing to have automatic flow measuring devices accurately calibrated by a trained person at plant start-up and thereafter not less often than annually; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0013937001, Monitoring and Reporting Requirements Number 7.c., by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013937001, Sludge Provisions Section III(G), by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §317.4(a)(8), by failing to test the reduced-pressure backflow assembly annually; 30 TAC §317.6(b)(1)(E), by failing to maintain forced mechanical ventilation in the chlorination room; and 30 TAC §319.11(d), by failing to install the flow measurement device in accordance with the Water Measurement Manual, United States Department of the Interior, Bureau of Reclamation; PENALTY: \$47,400; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$37,920; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: DALLAS TRADER'S ZONE LLC dba One Stop Food and Beverages; DOCKET NUMBER: 2023-1046-PST-E; IDENTIFIER: RN101353555; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,556; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: EAST TEXAS BAPTIST ENCAMPMENT; DOCKET NUMBER: 2022-0097-PWS-E; IDENTIFIER: RN101259091; LOCATION: Newton, Newton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code, §341.035(a) and TCEQ Agreed Order Docket Number 2018-0537-PWS-E, Ordering Provision Numbers 2.h.ii. and 2.j, by failing to obtain approval prior to making any significant change or addition to the system's production treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.43(c)(2), by failing to ensure that the facility's ground storage tank (GST) hatch remains locked except during inspections and maintenance; 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, GSTs, standpipes, and elevated storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), 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(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's GST annually; 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2018-0537-PWS-E, Ordering Provision Number 2.h.i, 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; 30 TAC §290.46(s)(1) and TCEQ Agreed Order Docket Number 2018-0537-PWS-E, Ordering Provision Number 2.b.ii, by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i) and TCEQ Agreed Order Docket Number 2018-0537-PWS-E, Ordering Provision Number 2.b.vi, by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.119(b)(7), by failing to use an acceptable analytical method for disinfectant analyses; and 30 TAC §290.121(a) and (b) and TCEQ Agreed Order Docket Number 2018-0537-PWS-E, Ordering Provision Number 2.b.iii, by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$9,150; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: MAYA VIDA, LIMITED LIABILITY COMPANY dba Hilltop; DOCKET NUMBER: 2023-0142-PST-E; IDENTIFIER: RN102783966; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Amy Lane,

(512) 239-2614; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Red River Authority of Texas; DOCKET NUMBER: 2022-0590-PWS-E; IDENTIFIER: RN101233062; LOCATION: Cromwell, Foard County; TYPE OF FACILITY: public water system; 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: \$2,500; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: River Chase Plaza, LLC; DOCKET NUMBER: 2023-0869-EAQ-E; IDENTIFIER: RN111572970; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: commercial business; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(10) COMPANY: SAAS Investment Group LLC dba Good Luck Food Mart; DOCKET NUMBER: 2023-0914-PST-E; IDENTIFIER: RN103027884; LOCATION: Bonham, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,556; ENFORCEMENT COORDINATOR: Celicia Garza, (512) 239-2095; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202400066

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 9, 2024



#### Enforcement Orders

An agreed order was adopted regarding Chris Thomas Custom Homes, Inc., Docket No. 2021-1317-WQ-E on January 9, 2024 assessing \$6,250 in administrative penalties with \$1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Star Cooperative Gin, Docket No. 2022-0179-AIR-E on January 9, 2024 assessing \$6,250 in administrative penalties with \$1,250 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 Galveston County Municipal Utility District No. 12, Docket No. 2022-0560-MWD-E on January 9, 2024 assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, 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 Comal Independent School District, Docket No. 2022-1186-EAQ-E on January 9, 2024 assessing \$1,875 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Jarrell Independent School District, Docket No. 2022-1187-EAQ-E on January 9, 2024 assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Carrizo Springs, Docket No. 2022-1412-MWD-E on January 9, 2024 assessing \$5,062 in administrative penalties with \$1,012 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, 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 DTT LLC, Docket No. 2022-1450-MWD-E on January 9, 2024 assessing \$3,510 in administrative penalties with \$702 deferred. Information concerning any aspect of this order may be obtained by contacting Laura Draper, 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 Kennedale, Docket No. 2023-0471-UTL-E on January 9, 2024 assessing \$900 in administrative penalties with \$180 deferred. Information concerning any aspect of this order may be obtained by contacting Christiana McCrimmon, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Olvera Reforestation Services LLC, Docket No. 2023-1554-WR-E on January 9, 2024 assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Shane Glantz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202400083

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 10, 2024



## Enforcement Orders

A default order was adopted regarding Double Diamond Utilities, Co., Docket No. 2020-0651-MWD-E on January 10, 2024 assessing \$42,799 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pack Ellis, 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 Mallard Point WWTP, LLC, Docket No. 2020-0958-MWD-E on January 10, 2024 assessing \$18,312 in administrative penalties with \$14,712 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 CELANESE LTD., Docket No. 2021-0113-AIR-E on January 10, 2024 assessing \$57,641 in administrative penalties with \$3,023 deferred. 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 Sheldon Road Municipal Utility District, Docket No. 2021-0775-MWD-E on January 10, 2024 assessing \$12,751 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Occidental Permian Ltd., Docket No. 2021-0896-AIR-E on January 10, 2024 assessing \$150,000 in administrative penalties with \$30,000 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 Austin, Docket No. 2021-1043-MWD-E on January 10, 2024 assessing \$13,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Danbury, Docket No. 2021-1082-MWD-E on January 10, 2024 assessing \$15,750 in administrative penalties with \$3,150 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 City of Sinton, Docket No. 2021-1301-MWD-E on January 10, 2024 assessing \$73,125 in administrative penalties with \$14,625 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 San Antonio River Authority, Docket No. 2021-1395-MWD-E on January 10, 2024 assessing \$12,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Hudson, Docket No. 2021-1501-MWD-E on January 10, 2024 assessing \$10,000 in administrative penalties with \$2,000 deferred. 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.

An agreed order was adopted regarding J & K EXCAVATION, LLC, Docket No. 2022-0088-WQ-E on January 10, 2024 assessing \$16,004 in administrative penalties with \$3,200 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 Break it Down, L.L.C., Docket No. 2022-0329-AIR-E on January 10, 2024 assessing \$22,500 in administrative penalties with \$4,500 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Por-

ras, 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 WS CAMPUS HOLDINGS LLC, Docket No. 2022-0388-EAQ-E on January 10, 2024 assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 GPM Empire, LLC dba GPM Store 22503, Docket No. 2022-0499-PST-E on January 10, 2024 assessing \$14,651 in administrative penalties with \$2,930 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, 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 LINDEL FARMS, LLC, Docket No. 2022-1590-WQ-E on January 10, 2024 assessing \$56,250 in administrative penalties with \$11,250 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.

TRD-202400085  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 10, 2024



#### Notices of an Application to Amend a Water Use Permit Application No. 3936D

Marecek Land & Cattle, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below. The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to stream-flow restrictions. The application, technical memoranda, 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](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 January 29, 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 January 29, 2024. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by January 29, 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 WRPERM 3936 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](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202400084  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 10, 2024



#### Notice of District Petition

Notice issued January 10, 2024

TCEQ Internal Control No. D-09282023-038; 45 Williamson LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Travis County Municipal Utility District No. 27 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, and the lienholder, Susser Bank, has consented to the creation of and inclusion of the property in the District; (3) the proposed District will contain approximately 523.291 acres of land, located within Travis County, Texas; and (4) the land to be included in the proposed District is partially within the corporate limits and partially within the extraterritorial jurisdiction of the

City of Creedmoor, Texas (City), and the City has consented to creation of and inclusion of the land within the District. By resolution No. 2023-230518, passed and adopted on May 18, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code Chapter 54.016. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (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 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 District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$95,000,000, including \$59,700,000 for water, wastewater and drainage, \$31,230,000 for roads, and \$4,070,000 for recreational facilities.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition 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](http://www.tceq.texas.gov).

TRD-202400082

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 10, 2024



#### Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016272001

**APPLICATION.** OurCalling, Inc., P.O. Box 140428, Dallas, Texas 75214, a nonprofit serving the homeless, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016272001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. TCEQ received this application on December 12, 2022.

The facility will be located at 231 Wickliffe Road, in Ellis County, Texas 75125. The treated effluent will be discharged to an unnamed tributary, thence to Bear Creek, thence to Red Oak Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and high aquatic life use for Bear Creek and Red Oak Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Bear Creek or Red Oak Creek, which have been identified as having high aquatic life uses. 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://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.57302,32.512257&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.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses

will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, February 20, 2024 at 7:00 p.m.**

**Ferris Junior High School Cafeteria**

**1002 E. 8th Street**

**Ferris, Texas 75125**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Ferris Public Library, 301 East 10th Street, Ferris, Texas. Further information may also be obtained from OurCalling, Inc. at the address stated above or by calling Ms. Victoria Lahr, Project Manager, Authers Building Group, LLC, at (714) 215-0149.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: January 05, 2024

TRD-202400081

Laurie Gharis  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: January 10, 2024



## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 21, 2023 to January 5, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal

zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 12, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday February 11, 2024.

Federal License and Permit Activities:

**Applicant:** Battleground Oil Specialty Terminal Company, LLC

**Location:** The project site is located in the San Jacinto River, off the Houston Ship Channel, at 1836 Miller Cut Off Road, in La Porte, Harris County, Texas.

**Latitude and Longitude:** 29.729731, -95.050761

**Project Description:** The applicant proposes to discharge 202 cubic yards of riprap into 0.13 acre of estuarine emergent wetlands and 551 cubic yards of riprap into 0.34-acre open water to stabilize 1,050 linear feet of shoreline at an existing marine terminal facility. The applicant was previously authorized to discharge fill material into 7.64 acres of ponds on the project site. These ponds are also proposed to be filled as a result of this project. The applicant proposed to mitigate for the proposed impacts by purchasing credits from the Gulf Coastal Plains Wetlands Mitigation Bank to offset proposed impacts to tidal fringe wetlands.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2011-00011. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1107-F1

**Applicant:** Coastal Bend Bays & Estuaries Program

**Location:** The project site is located within open waters of the Corpus Christi Bay, adjacent to the USS Lexington Museum and the community of North Bay, in Corpus Christi, Nueces County, Texas.

**Latitude and Longitude:** 27.823538, -97.382233

**Project Description:** The applicant proposes to armor an existing jetty and install breakwater islands. Specifically, the applicant proposes to place 1,000 linear feet of fill (stone) to armor an existing jetty located west of the U.S.S. Lexington Museum and install five (5) breakwater islands east of North Beach consisting of armor stone and beneficial use dredged material (BUDM). Each island is proposed to have a maximum footprint of approximately 1,120-foot long by 650-foot wide. The applicant proposes a total of 81 acres of impacts below the High Tide Line. Fill material to create the breakwater islands is planned to be either harvested from a nearby Dredge Material Placement Area (DMPA) owned by the applicant (DMPA No. 14) or an adjacent dredging project within the Corpus Christi Ship Channel or Inner Harbor. A temporary pipeline will be utilized to transport material from proposed BUDM No. 14 to the project site. Except for the Rincon Channel crossing, the pipeline is proposed to be floating; within the Rincon Channel the pipeline is proposed to be along the seafloor. The applicant anticipates requiring the pipeline to be in place 12 months. The pipeline will be secured by clump weights where floating and anchor collars where submerged. The applicant is amicable to utilizing a floating pipeline in the nearshore environment to decrease potential impacts to sea grass beds and other sensitive resources. The placed material is planned to be graded, shaped, and planted with native vegetation species to provide additional habitat benefits to the project and aid in the stabilization of the material. The applicant has not proposed compensatory mitigation.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2023-00292. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1112-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202400067

Mark Havens  
Chief Clerk  
General Land Office  
Filed: January 9, 2024

◆ ◆ ◆

## Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Cable Insurance Company, a foreign fire and/or casualty company. The home office is in Fort Lauderdale, Florida.

Application for incorporation in the state of Texas for Porch Insurance Reciprocal Exchange, a domestic reciprocal. The home office is in Irving, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202400080

Justin Beam  
Chief Clerk  
Texas Department of Insurance  
Filed: January 10, 2024

◆ ◆ ◆

## Notice of Comment Period Extension Proposed Amendments, New Sections, and Repeal Concerning Preferred and Exclusive Provider Benefit Plans

The commissioner of insurance has extended the period to submit comments on the proposed amendments to 28 TAC §§3.3038, 3.3702 - 3.3705, 3.3707 - 3.3711, 3.3720, 3.3722, 3.3723; new §3.3712 and §3.3713; and the proposed repeal of §3.3725.

The proposed amendments, new sections, and repeal were published in the December 8, 2023, issue of the *Texas Register*. The proposal document may also be viewed on TDI's website at [www.tdi.texas.gov/rules/2023/documents/33038proposal.pdf](http://www.tdi.texas.gov/rules/2023/documents/33038proposal.pdf).

Notice of the comment period extension was announced during a public hearing on the proposal held by the Texas Department of Insurance (TDI) under Docket No. 2842 in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701 on January 10, 2024. Notice of the comment period extension was also posted on TDI's website and circulated via email to interested parties.

You may submit your written comments to TDI on or before 5:00 p.m., central time, on January 22, 2024. Send comments to Chief-Clerk@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.

TRD-202400078

Jessica Barta  
General Counsel  
Texas Department of Insurance  
Filed: January 10, 2024

◆ ◆ ◆

## Texas Parks and Wildlife Department

### Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Rio Grande Joint Venture has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb 148 cubic yards of sedimentary material within Alamito Creek in Presidio County. The purpose is to improve and begin to restore stream habitat in Alamito Creek. The location is approximately 2.5 miles upstream of State Highway 169 (29.9172987, -104.0102843). Notice is being published and mailed pursuant to Title 31 TAC §69.105(b).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on Friday, February 16, 2024, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at [beth.bendik@tpwd.texas.gov](mailto:beth.bendik@tpwd.texas.gov) for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to the TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or e-mail [sand.gravel@tpwd.texas.gov](mailto:sand.gravel@tpwd.texas.gov).

TRD-202400061

James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Filed: January 8, 2024

◆ ◆ ◆

## Public Utility Commission of Texas

### Notice of Application for True-Up of 2020 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 20, 2022, for true-up of 2020 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).



Docket Style and Number: Application of Border to Border Communications, Inc. for True-Up of 2020 Federal Universal Service Fund Impacts to Texas Universal Service Fund, Docket Number 54134.

The Application: Border to Border Communications, Inc. filed a true-up in accordance with findings of fact 17 and 18 of the Notice of Approval in Docket No. 51645. In that docket, the Commission approved Border to Border Communications request to recover \$1,201,823 from the TUSF for 2020 to the extent funding is available.

Persons wishing to intervene or comment on the action sought should contact the commission 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. A deadline for intervention in this proceeding will be established. 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 54134.

TRD-202400073  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 10, 2024



### Notice of Application Under Section 56.023 of the Public Utility Regulatory Act

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 29, 2023, seeking a determination of need for continued support from the Texas High Cost Universal Service Plan.

Docket Title and Number: Petition of Brightspeed of Texas, Inc. dba Brightspeed and Brightspeed of Eastern Texas, Inc., dba Brightspeed under PURA § 56.023, Docket Number 56074.

Application: Brightspeed of Texas, Inc. dba Brightspeed and Brightspeed of Eastern Texas, Inc. dba Brightspeed filed with the commission a request for a determination of Brightspeed's financial need for continuing support from the Texas High Cost Universal Service Plan (THCUSP), and the establishment of monthly per-line THCUSP support amounts in the exchanges with a financial need for continued sup-

port. Under PURA § 56.023 recipients from the THCUSP may petition the commission to initiate a contested case proceeding to determine the company's eligibility to receive continued support under the THCUSP. Brightspeed asserts a financial need for continued support exists in all of its currently supported exchanges.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 as a deadline to intervene may be imposed. 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 56074.

TRD-202400036  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2024



### Texas Workforce Commission

#### Correction of Error

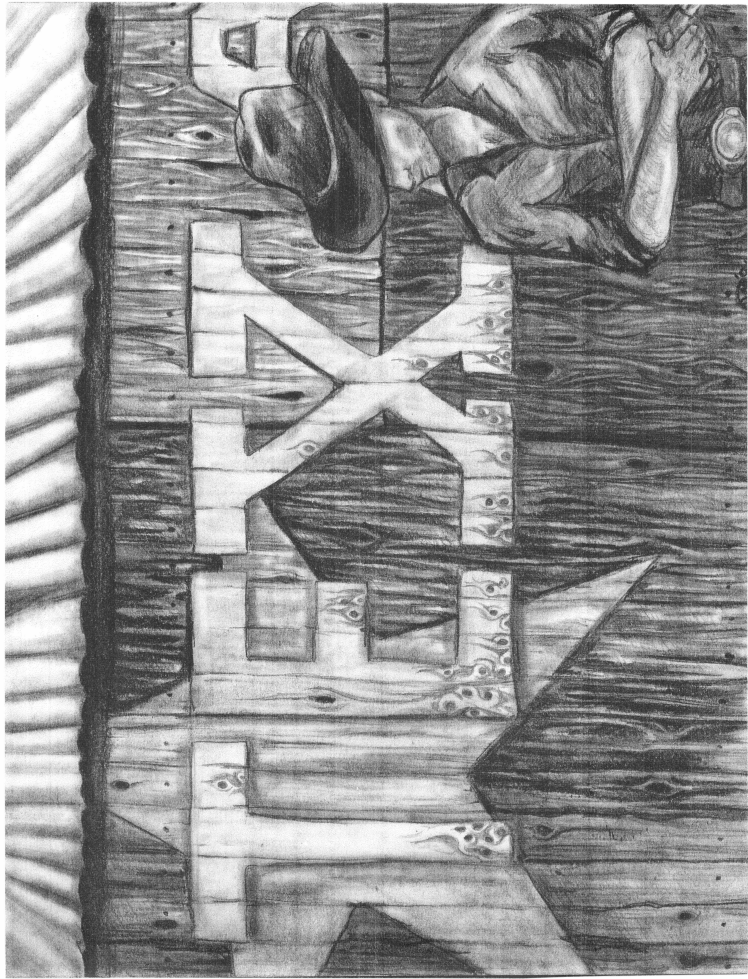
The Texas Workforce Commission (TWC) proposed amendments to Chapter 801 and Chapter 853 in the January 5, 2024, issue of the *Texas Register* (49 TexReg 26 and 49 TexReg 29, respectively). Due to an error by TWC, the proposals contained incorrect information regarding the public comment period. The correct information is as follows:

#### PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to [TWCPolicy-Comments@twc.texas.gov](mailto:TWCPolicy-Comments@twc.texas.gov) and must be received no later than February 19, 2024.

TRD-202400069  
Les Trobman  
General Counsel  
Texas Workforce Commission  
Filed: January 9, 2024





## 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)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)



LexisNexis