

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER G. STANDARDS FOR CHIP MANAGED CARE

1 TAC §370.602

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §370.602, concerning Member Complaints and Appeals.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with The Patient Protection and Affordable Care Act of 2010, §2719, as codified in the United States Code, Title 42 §300gg-19(b), which standardizes the external review process of adverse benefit determinations for members of commercial health insurance issuers to meet federal consumer protection standards. The proposed amendment also clarifies the current Children's Health Insurance Program (CHIP) managed care organization (MCO) Member Internal Complaint and Appeal Process.

In accordance with the Code of Federal Regulations, Title 42, §457.1120, HHSC elected to follow the statewide standard review process that Texas commercial health insurance issuers use, instead of a program specific review process. Therefore, §2719 also applies to CHIP MCOs.

The CHIP external review process was administered by Texas Department of Insurance (TDI). As of June 30, 2018, TDI no longer administers the CHIP external review process. All CHIP MCOs follow the federal Health and Human Services-administered external review process described in this rule amendment.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §370.602(a) clarifies that in addition to the Texas Insurance Code and TDI regulations, CHIP member complaints and appeals are subject to federal and state laws, regulations, and rules.

The proposed new language for §370.602(b) provides information on the existing complaint and appeal process, clarifying that a CHIP member may file a complaint or appeal with their MCO through the MCO's internal complaint and appeal system.

The proposed amendment to existing §370.602(b) relabels it to §370.602(c)

and clarifies that a complaint may be submitted to TDI to report an alleged MCO violation, in addition to filing with the MCO.

The proposed new language for §370.602(d) describes the external review process conducted by the independent review organization (IRO). If a member or the representative of a member is dissatisfied with the MCO's resolution of an appeal of an adverse benefit determination, and has exhausted the MCO internal appeal system, the member or the representative of a member may request an external review by the IRO.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand an 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

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rule does not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

and is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Deputy Executive Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved objectivity in the external review of appeals of adverse benefit determinations.

Mr. Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply. The proposed rule codifies existing HHSC practices for CHIP member complaints appeals and is consistent with federal requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSCRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register* (the comment period). 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 business day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R057" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

The amendment affects Texas Government Code §531.0055.

§370.602. *Member Complaints and Appeals.*

(a) CHIP member complaints and appeals are subject to disposition consistent with applicable federal and state laws, regulations and rules, including the Texas Insurance Code and [any applicable] Texas Department of Insurance (TDI) regulations.

(b) Any member, or a representative acting on behalf of the member, may file a complaint or appeal with their managed care organization (MCO) through the MCO's internal appeal and complaint system.

(c) [(b)] Any person, including those dissatisfied with the MCO's resolution of a member complaint or appeal, may submit a complaint to report an alleged violation to TDI.

(d) Any member or a representative acting on behalf of the member may request an external review of the MCO's adverse benefit determination, to be conducted by an independent review organization, when:

(1) the MCO internal appeal and complaint system regarding the adverse benefit determination has been exhausted; and

(2) the member or representative acting on behalf of the member is dissatisfied with the MCO's resolution of the appeal of an adverse benefit determination.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002777

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 624-6998



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to §16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions, and changes to more precisely reflect the procedures of the historic sites division.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions to the process of historic site evaluation will minimize the fiscal impact and contain costs in evaluating potential properties and be more cost effective to the state. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by providing an improved and enhanced structured approach in property evaluations. The proposed new three step procedure will insure that the process is the most effective and efficient in the deployment of state resources. Mr. Wolfe has

also determined that for each year of the first five-year period the amended rule is in effect, the public benefit will be a clearer statement of the criteria to be used in evaluating potential historic sites and a more clearly defined process.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to the rule as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing the rule amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to the rule, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §§442.0057 and 442.0058, which allow the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the

criteria to determine to the eligibility for the inclusion of real property into the state historic sites system.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a) provides the Commission with the authority to adopt the criteria to determine to the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.3. Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.

(a) **Criteria.** The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process ["Historic Sites Division Property Collection Plan"] as posted on the Texas Historical Commission's (Commission) website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) **Evaluation Process.** To evaluate the site against these criteria, the Commission will follow a three[two]-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) That is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) [(4)]Phase 2. If the property is recommended for additional study, a [A] staff committee will be assigned [appointed] to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the[second step] evaluation process.

(3) [(2)] Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) [(3)] Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) [(1)] of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation [site] including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing.[Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.]

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site.[Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).]

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic and endowment. [Needed staffing and consultant services for development of the site.]

[(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.]

[(H) Business plan for the site identifying projected audience/annual visitation, sources of funds for all aspects of the program including available community support, potential to generate revenue, and endowment.]

(5) [(4)]The management [This] plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) [(5)] The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002770

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 463-6100



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. This amendment will increase certain fees to account for the agency changing to biennial renewals for dental licensure. This amendment will correct the fee as it pertains to patient protection and the Texas.gov internet portal. This amendment will reduce the fee collected for the prescription monitoring program. This amendment will add a late fee for the nitrous oxide monitoring fee and remove the nitrous oxide monitoring fee duplicate certificate fee. This amendment will increase the fee for peer assistance to the maximum amount allowed under Section 467.0041 of the Texas Health and Safety Code, and remove the fee from the rule.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and the protection of the public safety and welfare by collecting fees in sufficient amounts to permit the proper function of Texas state programs.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §102.1, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

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

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

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No other statutes or rules are affected by this rulemaking.

§102.1 Fees.

(a) Effective ~~October 1, 2020~~, [September 1, 2019] the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.

~~Figure: 22 TAC §102.1~~

[~~Figure:22 TAC §102.1~~]

(b) Pursuant to Texas Occupations Code §554.006, the Board shall assess a reasonable and necessary fee on dental licensure and renewal sufficient to permit the Texas State Board of Pharmacy to operate the prescription monitoring program described by Texas Health and Safety Code §§481.075, 481.076, and 481.0761. The Board shall assess the fee in accordance with the General Appropriations Act for the respective biennium applicable for the licensure or renewal period, and in compliance with any other applicable Texas law.

(c) Pursuant to Texas Government Code §2054.252, the Board shall assess a reasonable and necessary fee on all licensure/registration and renewal types sufficient to cover the cost of subscription fees to permit the Texas Department of Information Resources to implement the state internet portal Texas.gov. The Board shall assess the fee in accordance with Texas Department of Information Resources approved fee rates, and in compliance with any other applicable Texas law.

(d) Pursuant to Texas Occupations Code §254.010(b)(3), the Board shall assess a reasonable and necessary fee on dental, dental hygiene, and registered dental assistant licensure/registration and renewal types sufficient to permit the monitoring of disciplinary action taken against license and registration holders through reports filed with the National Practitioner Data Bank. The Board shall assess the fee in accordance with the approved fees announced by the U.S. Department of Health & Human Services for query and monitoring of practitioners.

(e) The Board shall make available a list of all applicable fees under subsections (a) - (d) of this section to licensees and registrants on the public website of the Board, and shall provide a list of applicable fees upon written request. The Board shall provide a statement of due and payable fees to each licensee and registrant in advance of the applicable renewal period for license or registration renewal.

(f) Failure to timely renew a license or registration may subject the licensee or registrant to disciplinary action for practice with an

expired license or registration, in addition to any late fees assessed by the Board for renewal of a license. For purposes of Board action, continuing to practice with an expired license or registration in excess of one hundred eighty days past the renewal date of the license or registration shall represent grounds for disciplinary action absent good cause shown by the licensee or registrant for failure to timely renew.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002795

Casey Nichols

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 305-9380



CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.2, concerning the requirements for obtaining a sedation/anesthesia permit. This amendment would require applicants to complete an anesthesia jurisprudence assessment prior to obtaining a sedation/anesthesia permit. This rule is being proposed to comply with the requirements of Texas Occupations Code §258.1551.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.2, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

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

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed

rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This rule implements the requirements of SB 313 of the 85th Legislature and Texas Occupations Code §258.1551.

§110.2. Sedation/Anesthesia Permit.

(a) A dentist licensed under Chapter 101 of this title shall obtain an anesthesia permit for the following anesthesia procedures used for the purpose of performing dentistry:

- (1) Nitrous Oxide/Oxygen inhalation sedation;
- (2) Level 1: Minimal sedation;
- (3) Level 2: Moderate sedation limited to enteral routes of administration;
- (4) Level 3: Moderate sedation which includes parenteral routes of administration; or
- (5) Level 4: Deep sedation or general anesthesia.

(b) A dentist licensed to practice in Texas who desires to administer nitrous oxide/oxygen inhalation sedation or Level 1, Level 2, Level 3 or Level 4 sedation must obtain a permit from the State Board of Dental Examiners (Board). A permit is not required to administer Schedule II drugs prescribed for the purpose of pain control or post-operative care.

(1) A permit may be obtained by completing an application form approved by the Board.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of a sedation/anesthesia permit, the Board may require that the applicant undergo a facility inspection or further review of credentials. The Board may direct an Anesthesia Consultant, who has been appointed by the Board, to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than ninety (90) days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed by and should be in good standing with the Board. For pur-

poses of this chapter "good standing" means that the dentist's license is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing may not be approved.

(5) An applicant for a sedation/anesthesia permit must have passed the Chapter 110 (relating to Sedation and Anesthesia) component of the jurisprudence examination, within one year immediately prior to application.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002796

Casey Nichols

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 305-9380



22 TAC §110.9

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.9, concerning the requirements for renewing an anesthesia permit. This amendment would require permit holders to complete an anesthesia jurisprudence assessment once every five years. This rule is being proposed to comply with the requirements of Texas Occupations Code §258.1552.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.9, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

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

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed

rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This rule implements the requirements of SB 313 of the 85th Legislature and Texas Occupations Code §258.1552.

§110.9. Anesthesia Permit Renewal.

(a) The Board shall renew an anesthesia/sedation permit biennially if required fees are paid and the required emergency management training and continuing education requirements are satisfied. The Board shall not renew an anesthesia/sedation permit if, after notice and opportunity for hearing, the Board finds the permit holder has provided, or is likely to provide, anesthesia/sedation services in a manner that does not meet the minimum standard of care. If a hearing is held, the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations.

(b) Fees. Biennial dental license renewal certificates shall include the biennial permit renewal, except as provided for in this section. The licensee shall be assessed a biennial renewal fee in accordance with the fee schedule in Chapter 102 of this title (relating to Fees).

(c) Continuing Education.

(1) In conjunction with the biennial renewal of a dental license, a dentist seeking to renew a minimal sedation, moderate sedation, or deep sedation/general anesthesia permit must submit proof of completion of the following hours of continuing education every two years on the administration of or medical emergencies associated with the permitted level of sedation:

(A) Level 1: Minimal Sedation - six (6) hours;

(B) Levels 2 and 3: Moderate Sedation - eight (8) hours;

or

(C) Level 4: Deep Sedation/General Anesthesia - twelve (12) hours.

(2) The continuing education requirements under this section shall be in addition to any additional courses required for licensure. Advanced Cardiac Life Support (ACLS) course and Pediatric Advanced Life Support (PALS) course may not be used to fulfill the continuing education requirement for renewal of the permit under this section.

(3) Continuing education courses must meet the provider endorsement requirements of §104.2 of this title (relating to Providers).

(d) Anesthesia Jurisprudence Examination. [The Board shall develop and administer an online jurisprudence examination to determine a permit holder's knowledge of the Dental Practice Act, Board rules, and other applicable laws of this state relating to the administration of anesthesia.] A permit holder for nitrous oxide, level 1, level 2, level 3, or level 4 sedation/anesthesia must take and pass the online jurisprudence examination of Chapter 110 (relating to Anesthesia and Sedation), in conjunction with the jurisprudence examination requirement in §104.1 of this title (relating to Requirement), administered [developed] by the Board or an entity designated by the Board once every five years.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002797

Casey Nichols

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 305-9380



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§265.181 - 265.208 and new §§265.181 - 265.211, concerning Public Swimming Pools and Spas.

BACKGROUND AND PURPOSE

The purpose of the repeal and new sections in Chapter 265, Subchapter L is to comply with state legislation.

Senate Bill (S.B.) 1732, 81st Legislature, Regular Session, 2009, amended Texas Health and Safety Code, Chapter 341, by requiring safety standards at least as stringent as the Federal Virginia Graeme Baker Pool and Spa Safety Act.

S.B. 1324, 84th Legislature, Regular Session 2015, amended Texas Health and Safety Code, Chapter 341, by allowing the consumption of food and beverages in privately owned public pools and spas.

House Bill (H.B.) 1468, 85th Legislature, Regular Session, 2017, amended Texas Health and Safety Code, §1.005, by creating a category of a recreational water facility that would not be defined and regulated as a pool or spa but as an artificial swimming lagoon.

H.B. 2858, 86th Legislature, Regular Session, 2019, amended Texas Local Government Code, Chapter 214, by adopting the International Swimming Pool and Spa Code as the municipal swimming pool and spa code.

The proposal also serves as the four-year review of rules required by Texas Government Code §2001.039.

The new rules provide construction, sanitation, and operational requirements for public pools and spas in accordance with good public health engineering practices, intended to protect the health and safety of users, and to reduce to a practical minimum the possibility of drowning or of injury to users.

Existing facilities are not subject to the new requirements regarding engineering and construction. However, other requirements, such as water quality and user safety, apply to all facilities upon the effective date of the rules for this subchapter.

The term "pool and spa" refers to public pools and spas throughout this preamble.

SECTION-BY-SECTION SUMMARY

Proposed repeal of §§265.181- 265.208 removes outdated language. The updated language is incorporated into the new rules.

Proposed new §265.181 establishes the general provisions and application of the new rules.

Proposed new §265.182 defines terms used throughout the subchapter. A definition of "artificial swimming lagoon" is added to comply with H.B. 1468.

Proposed new §265.183 outlines plan submittal instructions and requires that certain new pools and spas and renovation of certain pools and spas be planned and designed by a licensed engineer.

Proposed new §265.184 describes the general construction requirements for new pools and spas and renovation requirements for existing pools and spas.

Proposed new §265.185 describes the requirements for construction or renovation of decks and deck equipment.

Proposed new §265.186 describes requirements for the construction and use of islands in pools and spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.187 describes the construction requirements for entry/exits in pools and spas.

Proposed new §265.188 describes the requirements for new public pools constructed with diving boards and for existing pools with diving boards that are renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.189 describes requirements for the installation of slides and other aquatic play features in pools and spas that are constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.190 describes the circulation systems requirements in pools and spas.

Proposed new §265.191 describes the filter requirements in pools and spas.

Proposed new §265.192 describes pump and motor requirements for pools and spas.

Proposed new §265.193 describes standards and requirements for suction outlet systems and return inlets in pools and spas constructed or renovated on or after the effective date of the rules for this subchapter. This section also implements S.B. 1732, related to safety equipment for public swimming pools and other artificial bodies of water.

Proposed new §265.194 describes standards and requirements for surface skimming and perimeter overflow or gutter systems

in pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter. This section also implements S.B. 1732, related to safety equipment for public swimming pools and other artificial bodies of water.

Proposed new §265.195 describes standards and requirements for electrical systems at pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.196 describes standards and requirements for lighting of pools and spas, and decks. This section includes requirements for security lighting at pools and spas, and facilities serving pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.197 describes heater standards and installation requirements for pools and spas constructed on or after the effective date of the new rules for this subchapter and for heaters that are replaced at existing pools and spas. This section also includes provisions for the use of solar thermal water heaters.

Proposed new §265.198 describes provisions for pool and spa water supply. New provisions include requirements for testing and monitoring of water from wells that are not regulated by the Texas Commission on Environmental Quality (TCEQ), which are often used in remote locations.

Proposed new §265.199 describes requirements for pool and spa wastewater disposal.

Proposed new §265.200 describes requirements for the proper storage and use of pool and spa chemicals.

Proposed new §265.201 describes pool and spa safety requirements, required safety signs, and required rescue equipment.

Proposed new §265.202 describes lifeguard staffing and training, and rescue equipment and personal equipment requirements. This section also describes lifeguard monitoring and requirements for special rescue equipment necessary at pools and spas with certain aquatic activities.

Proposed new §265.203 clarifies fencing requirements for Class A, Class B, and Class C pools and spas, and fencing for pools and spas that fall under Texas Health and Safety Code, Chapter 757, Pool yard enclosures.

Proposed new §265.204 describes requirements for dressing and sanitary facilities at pools and spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.205 describes requirements for the operation and management of pools and spas and implements S.B. 1324, related to food and beverage consumption in certain swimming pools.

Proposed new §265.206 describes requirements for water quality, chemical levels, and water quality testing. This section includes the requirements for the use of electronic or automatic means of water quality monitoring and testing in pools and spas.

Proposed new §265.207 provides a means of applying for an alternate method of disinfectant from DSHS.

Proposed new §206.208 describes requirements for spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.209 provides special requirements for certain pools, including slide exit pools, wave pools, leisure rivers, movable floor pools, therapeutic pools and spas, and surf pools

constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.210 addresses compliance, inspections, and investigations at pools and spas by local regulatory authorities and DSHS.

Proposed new §265.211 addresses enforcement of the rules in this subchapter by local regulatory authorities and DSHS.

FISCAL NOTE

Donna Sheppard, 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 do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the 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 repeal existing rules; and
- (7) the proposed rules will not change the number of individuals subject to the rules.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

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

Donna Sheppard has also determined that the adverse impact on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed is unknown. The rules may impose additional costs, but it is unknown the extent of changes required for them to comply, as pre-existing facilities are exempt from the rules concerning construction and design that would impose an economic cost unless engaging in repair or renovation of the pool. New businesses will have standard construction and operation requirements and safety standards that are consistent for all pools and spas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, has determined that for each year of the first five years that the rules will be in effect, the public will benefit from adoption of the sections. The public

benefit anticipated from enforcing or administering the sections is to better ensure the health and safety of residents of Texas.

Donna Sheppard has also determined that for the first five years that rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because pre-existing facilities are exempt from certain rules that would impose an economic cost. It has also been determined that for future public swimming pools and spas there is no anticipated economic costs to persons required to comply with the proposed rules because future facilities will have standard construction and operation requirements and safety standards that are consistent for all pools and spas.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by 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 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 Katie Moore, Consumer Protection Division, Texas Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; street address 8407 Wall Street, Austin, Texas 78754; or by email to PHSCPS@dshs.texas.gov. Please indicate "Comments on Chapter 265, Public Swimming Pools and Spa Rules" in the subject line.

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

SUBCHAPTER L. STANDARDS FOR PUBLIC POOLS AND SPAS

25 TAC §§265.181 - 265.208

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code §341.002 which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive

Commissioner of the 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; and by Texas Government Code §2001.039, which requires that each state agency review and consider for re-adoption each of its rules every four years.

The repeals implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

§265.181. *General Provisions.*

§265.182. *Definitions.*

§265.183. *Plans, Permits and Instructions for Post-10/01/99 Pools and Spas.*

§265.184. *General Construction and Design for Post-10/01/99 Pools and Spas.*

§265.185. *General Construction and Design for Pre-10/01/99 Pools and Spas.*

§265.186. *Decks, Entry/Exit, Diving Facilities, and Other Deck Equipment at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.187. *Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.188. *Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.189. *Pumps and Motors at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.190. *Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.191. *Surface Skimming and Perimeter Overflow (Gutter) Systems for Post-10/01/99 Pools and Spas.*

§265.192. *Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards, and Spa Yards.*

§265.193. *Heating of Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.194. *Pool or Spa Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.195. *Drinking Water at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.196. *Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.197. *Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.198. *Gas Chlorination for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.199. *Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.200. *Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.201. *Dressing and Sanitary Facilities at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.202. *Food, Beverages, and Containers at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.203. *Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.204. *Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas.*

§265.205. *Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Spas.*

§265.206. *Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Therapeutic Pools and Spas.*

§265.207. *Compliance, Inspections, and Investigations.*

§265.208. *Enforcement.*

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

Filed with the Office of the Secretary of State on July 13, 2020.

TRD-202002877

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 231-5719



SUBCHAPTER L. PUBLIC SWIMMING POOLS AND SPAS

25 TAC §§265.181 - 265.211

STATUTORY AUTHORITY

The new rules are authorized by Texas Health and Safety Code §341.002 which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the 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; and by Texas Government Code §2001.039, which requires that each state agency review and consider for readoption each of its rules every four years.

The new rules implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

§265.181. General Provisions.

(a) Scope and purpose. This subchapter provides minimum standards for the design, construction, renovation and maintenance of public swimming pools and spas, and bathhouses. The rules in this subchapter also establish minimum standards for public swimming pools and spas to ensure proper filtration, chemical balance, and maintenance of the water for the safety of the users, and to reduce to a practical minimum the possibility of drowning or injury to users. The rules in this subchapter are in addition to any municipal or federal laws applicable to public swimming pools and spas. This subchapter implements Texas Health and Safety Code, §341.064(g) authorized by Texas Health and Safety Code, §341.002, and the rules are considered to be good public health engineering practices.

(b) Application of the rules. Public swimming pools and spas shall be referred to as pools and spas throughout this subchapter.

(1) The rules will specify whether or not a particular provision applies to pools and spas constructed on or after the effective date of this subchapter or to all pools and spas regardless of the date of construction.

(2) Repairs to any pool, spa or related systems shall conform to those required for a new system whenever possible. Repairs shall not cause existing systems to become unsafe, unsanitary or overloaded.

(c) Date of construction. The date of construction of a pool or spa or a bathhouse is the date that a building permit for construction is issued or, if no building permit is required, the date that excavation or electrical service begins, whichever is earlier, in which case the owner or operator must produce adequate written documentation of that fact.

(d) Local regulatory authority. Pursuant to Texas Local Government Code, §214.103, the International Swimming Pool and Spa Code (ISPSC) is adopted as the municipal swimming pool and spa code for all construction, alteration, remodeling, enlargement, and repair of pools and spas. Regarding standards in this subchapter not addressed by the ISPSC, local regulatory authorities may, with the exception of department approved alternate methods of disinfectant set forth in §265.207 of this subchapter (relating to Request for Alternate Method of Disinfectant), adopt standards that vary from the standards in this subchapter; however, such standards shall be equivalent to or more stringent than the standards in this subchapter and shall be in accordance with good public health engineering practices.

§265.182. Definitions.

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

(1) Activity pool--A pool designed for casual water play ranging from simple splashing activity to the use of attractions placed in the pool, such as pad walks or floatation devices, for recreation.

(2) AED--Automated External Defibrillator. A device that automatically diagnoses the life-threatening cardiac arrhythmias of ventricular fibrillation and pulseless ventricular tachycardia and is able to treat those conditions by application of electricity which stops the arrhythmia, allowing the heart to re-establish an effective rhythm.

(3) Alternate method of disinfectant--A method of disinfection required to be approved by the Texas Department of State Health Services.

(4) Alternative communication system--Devices that alert multiple on-site staff when activated, such as pager systems, radios, or walkie-talkie communication systems. Used to notify either on-site emergency medical services (EMS), on-site medical staff, or on-site certified staff such as lifeguards, or a commercial emergency monitoring service.

(5) ANSI--American National Standards Institute.

(6) APSP--Association of Pool and Spa Professionals.

(7) ARC--American Red Cross.

(8) Artificial swimming lagoon--An artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant.

(9) ASME--American Society of Mechanical Engineers.

(10) ASPSA--American Swimming Pool and Spa Association now known as PHTA.

(11) ASTM International--American Society of Testing Materials International

(12) ASTM F2376--Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems.

(13) Backflow prevention device--A device designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system.

(14) Beach entry--A sloping entry starting above the waterline at deck level and ending below the waterline. Also called a zero-depth or sloped entry.

(15) Bonded--Permanent joining of metallic parts to form an electrically conductive path that ensures electrical continuity and the

capacity to conduct safely any current likely to be imposed to minimize the risk of electrocution.

(16) Broken stripe--A horizontal stripe that is at least 1-inch wide with uniform breaks in the stripe, with the breaks totaling not more than 75% of the length of the stripe and stripe breaks.

(17) BVM--Bag-Valve Mask. A handheld device used to provide positive pressure ventilation to persons who are not breathing adequately. Also known by its proprietary name, Ambu bag.

(18) Catch pool--A body of water located at the exit of one or more waterslide flumes. It is designed and intended to terminate the slide action of the waterslide user and to provide a means of exit to a deck or walkway area.

(19) Circulation equipment--Mechanical components that are a part of a recirculation system of a pool or spa. Circulation equipment includes pumps, hair and lint strainers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices.

(20) Cleansing shower--A shower with hot and cold running water and soap that removes dead skin, sweat, dirt, and waste material from users.

(21) CPSC--United States Consumer Product Safety Commission.

(22) Cross-connection control device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system.

(23) DCOF--Dynamic coefficient of friction. A measurement of frictional resistance of a surface one pushes against when already in motion.

(24) DCOF AcuTest--A test used to evaluate the slip resistance or DCOF of a tile surface under known conditions using a standardized sensor prepared according to a specific protocol.

(25) Deck--An area immediately adjacent to or attached to the pool or spa that is specifically constructed or installed for sitting, standing, or walking and can include the coping. The term "deck" does not include the sandy beach areas adjacent to the zero-entry access areas.

(26) Deep areas--Pool water areas where the depth of the water is more than five feet.

(27) Department--Texas Department of State Health Services.

(28) Depth--Vertical distance measured at three feet from the pool or spa wall or barrier from the bottom of the pool or spa to the design water level.

(29) Design water level--

(A) For a skimmer system, the midpoint of the operating range of the skimmers.

(B) For a gutter or perimeter overflow system, the top of the overflow rim of the gutter or overflow system.

(30) Disinfectant--Energy, chemicals, or a combination of both used to kill or irreversibly inactivate microorganisms such as bacteria, viruses, and parasites.

(31) Diving board--A flexible board secured at one end that is used for diving such as a spring board or a jump board.

(32) Diving platform--A stationary platform designed for diving.

(33) DPD--A chemical testing reagent (N, N-Diethyl-P-Phenylenediamine) used to measure the levels of free chlorine or bromine in water by yielding a series of colors ranging from light pink to dark red.

(34) Emergency monitoring service--A service that provides an emergency summoning device at pools and spas that is monitored 24 hours a day off-site by personnel trained to identify pool and spa-related emergencies, such as drownings. The service is capable of contacting local EMS, providing a precise location of the emergency call to local EMS, and has personnel trained to offer the caller instructions for assisting when possible.

(35) Exercise spa or swim spa--Exercise spas or swim spas are a variant of a spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including swimming in place. Exercise spas and swim spas shall be referred to as spas in this subchapter.

(36) Facility--A pool, spa, interactive water feature or fountain, and restrooms, dressing rooms, equipment rooms, deck or walkways, beach entries, enclosure, and other appurtenances directly serving the pool or spa.

(37) FIFRA--The Federal Insecticide, Fungicide, and Rodenticide Act.

(38) Filter media--A finely graded material (for example, sand, diatomaceous earth, or polyester fabric) that removes filterable particles from the water.

(39) FINA--Fédération Internationale de Natation. The organization that administers international competition in aquatic sports.

(40) Floatation system--A combination of float solution holding vessel and treatment system for the immersion and floatation of a person or persons in a temperature-controlled environment. Also known as a sensory deprivation system or floatation chamber.

(41) Flume--A trough-like or tubular structure of a water slide that directs the path of travel and the rate of descent by the rider.

(42) gpm--Gallons per minute.

(43) Handhold--The portion of a pool or spa structure or specific element that is at or above the design waterline that users in the pool or spa grasp for support.

(44) Handrail--A support device intended to be gripped by a user for the purpose of resting or steadying, typically located within or at exits to the pool or spa or as part of a set of steps.

(45) Hyperchlorination--The intentional and specific raising of chlorine levels for a prolonged period of time to inactivate pathogens following a diarrheal release in a pool or spa.

(46) IAPMO SPS 4--International Association of Plumbing and Mechanical Officials Special Use Suction Fittings for Swimming Pools, Spas, and Hot Tubs (for Suction Side Automatic Swimming Pool Cleaners).

(47) ICC-SRCC--International Code Council-Solar Rating and Certification Corporation

(48) Island--A structure inside a pool where the perimeter is completely surrounded by the pool water and the top is above the surface of the pool.

(49) Jump board--A manufactured diving board that has a coil spring, leaf spring, or comparable device located beneath the board that is activated by the force exerted by jumping on the board's end.

(50) Ladder--A series of vertically separated treads or rungs connected by vertical rail members or independently fastened to an adjacent vertical pool or spa wall.

(51) Leisure river--A manufactured stream of water of near-constant depth in which the water is moved by pumps or other means of propulsion to provide river-like flow that transports users over a defined path that may include water features and play devices. Also known as a lazy river or current channel.

(52) Licensed electrician--A person licensed to perform electrical work on pools and spas in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305, and related rules.

(53) Licensed engineer--A person licensed to engage in the practice of engineering in the State of Texas in accordance with the Texas Engineering Practice Act, Texas Occupations Code, Chapter 1001, and related rules.

(54) Lifeguard--A person who supervises the safety and rescue of swimmers, surfers, and other water sports participants, and who has successfully completed and holds a current ARC, YMCA, or equivalent Lifeguard Certificate from an aquatic safety organization and a current First Aid Certificate and current cardiopulmonary resuscitation (CPR) certificate, which includes training in CPR for adults, infants, and children, use of an AED and BVM.

(55) Local regulatory authority--A county, municipality, or other political subdivision of the state having jurisdiction over pools and spas, and associated facilities.

(56) Maintained illumination--The value, in foot-candles or equivalent unit, below which the average illuminance on a specified surface is not allowed to fall. Maintained illumination equals the initial average illuminance on the specified surface with new lamps, multiplied by the light loss factor to account for reduction in lamp intensity over time.

(57) NCAA--National Collegiate Athletic Association.

(58) NEC--National Electrical Code.

(59) NEMA--National Electrical Manufacturers Association.

(60) NESC--National Electrical Safety Code.

(61) NFPA--National Fire Protection Association.

(62) NRPA--National Recreation and Parks Association.

(63) NSF--National Sanitation Foundation International.

(64) NSF 50 or NSF/ANSI Standard 50--Standard establishing minimum requirements for materials, design, construction and performance of equipment commonly included in the water circulation systems of residential and public swimming pools, spas or hot tubs.

(65) NSPF--National Swimming Pool Foundation. Now known as the Pool and Hot Tub Alliance.

(66) ORP--Oxidation Reduction Potential. The potential level of oxidation-reduction produced by strong oxidizing (sanitizing) agents in a water solution. Oxidation level is measured in millivolts by an ORP meter.

(67) Overflow system--Overflows, surface skimmers, and surface water collection systems of various design and manufacture for removal of surface water from the pool or spa.

(68) Perimeter gutter system (gutter)--Overflow trough in the perimeter wall of a pool that is a component of the circulation system or flows to waste.

(69) pH--A value expressing the relative acidic or basic tendencies of a substance such as water on a scale from 0 to 14, with 7.0 being neutral, values less than 7.0 being acidic, and values greater than 7.0 being basic.

(70) PHTA--Pool and Hot Tub Alliance. Formally APSP and NSPF.

(71) PIWF--Public interactive water feature and fountain. Any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. It may be a stand-alone PIWF, also known as a splash pad, spray pad, or wet deck, or may share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool.

(72) Pool yard or spa yard--An area that has an enclosure containing a pool or spa.

(73) Public pool--Any man-made permanently installed or non-portable structure, basin, chamber or tank containing an artificial body of water that is maintained or used expressly for public recreation, swimming, diving, aquatic sports, or other aquatic activity. Public pools include but are not limited to activity pools, catch pools, lazy or leisure river pools, wave action pools, vortex pools, therapy pools, and wading pools. A public pool may be publicly or privately owned and may be operated by an owner, lessee, operator, licensee or concessionaire. A fee for use may or not be charged. The term does not include a residential pool, artificial swimming lagoon, floatation system or chamber, or a body of water that continuously recirculates water from a spring.

(A) Class A pool--Any pool maintained or used, with or without a fee, for accredited competitive events such as FINA, United States Swimming, United States Diving, NCAA, and National Federation of State High School Association events. A Class A pool may also be used for recreational swimming.

(B) Class B pool--Any pool maintained or used for public recreation and open to the general public with or without a fee.

(C) Class C pool--Any pool operated for and in conjunction with:

(i) lodging, such as hotels, motels, apartments, condominiums, or mobile home parks;

(ii) youth camps, property owner associations, private organizations, or clubs; or

(iii) schools, colleges, or universities while operated for academic or continuing education classes. The use of such a pool would be open to occupants, members or students, and their guests, but not to the public.

(74) Recessed treads--A series of vertically spaced cavities in the pool or spa wall creating tread areas for step holes.

(75) Regulatory authority--A federal or state agency or local regulatory authority having jurisdiction over pools and spas.

(76) Rehabilitate or remodel--To modify or remake a pool or spa in a similar but different manner, or to change the style, shape or form of a pool or spa.

(77) Renovation--To return a pool or spa that may still be operational and functional, but that is outdated or has faded, declined, or deteriorated, to its former or original state. This term includes remodeling or rehabilitating a pool or spa.

(78) Repair--To mend or restore to working order or operating condition a pool or spa, or the related equipment or appurtenances that were broken, damaged, worn, defective, or malfunctioning.

(79) Rescue tube--A piece of lifesaving equipment that is an essential part of the equipment that must be carried by lifeguards and that is used to make water rescue easier by helping support the victim's and rescuer's weight.

(80) Resident youth camp--A resident youth camp as described in the Texas Youth Camps Safety and Health rules, §265.11 of this chapter (relating to Definitions.)

(81) Residential pool or spa--A pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests. It includes a pool or a spa serving only a single-family home or duplex.

(82) Return inlet or inlet--Aperture or fitting through which water under positive pressure returns into the pool or spa.

(83) Rinsing shower--A shower located on the pool or spa deck that is used to remove sand, dirt, sweat, and user hygiene products without the use of hot water or soap.

(84) Secchi disk--An 8-inch diameter disk with alternating black and white quadrants that is lowered in the pool and spa and is used to measure water turbidity and clarity.

(85) Self-closing and self-latching device--A device or mechanism that causes a gate to automatically close without human or electrical power after it has been opened, and to automatically latch without human or electrical power when the gate closes.

(86) Service animal or assistance animal--A canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability in accordance with the Texas Human Resources Code, Chapter 121.

(87) Shallow areas--Pool water areas where the depth of the water is five feet or less.

(88) Skimmer--A device installed in the pool or spa that permits the removal of floating debris and surface water to the filter. A skimmer is not considered a suction outlet for purposes of this subchapter.

(89) Slide--A recreational feature with a flow of water and an inclined flume or channel by which a rider is conveyed downward into a pool.

(A) Drop slide--A slide that drops bathers into the water from an elevated height into water.

(B) Pool slide--A slide having a configuration as defined in the Code of Federal Regulations, Chapter II, Title 16, Part 1207 by CPSC or is similar in construction to a playground slide that allows users to slide from an elevated height to a pool. This includes children's (tot) slides and all other non-flume slides that are mounted on a pool deck or within the basin of a pool.

(C) Waterslide--A slide that runs into a landing pool or runout through a fabricated channel with flowing water.

(90) Slip resistant--A surface that has been treated or constructed to significantly reduce the chance of slipping.

(91) Slope break--Point where the slope of the pool floor changes to a greater slope.

(92) Spa--A body of water intended for the immersion of persons in temperature-controlled water circulated in a closed system and not intended to be drained and refilled after each use. The term includes a swim spa or exercise spa.

(93) Steps, stairs, and recessed steps--A riser or tread or a series of risers or treads extending down from the deck and terminating at the pool or spa floor. Recessed steps have the risers recessed into the pool wall.

(94) Suction outlet--A submerged fitting, fitting assembly, cover or grate, and related components that provide a localized low-pressure area for the transfer of water from a pool or spa. Submerged suction outlets are referred to as main drains.

(95) Surf pool--A pool, with less than 20,000 square feet of water surface area, in which waves are generated and dedicated to the activity of surfing on a surfboard or analogous surfing device commonly used in the ocean and intended for sport. A surf pool is intended for the sport of surfing as opposed to general play activities in wave pools.

(96) Swimout--An underwater seat area that is placed completely outside of the perimeter shape of the pool.

(97) TCEQ--Texas Commission on Environmental Quality.

(98) TDLR--Texas Department of Licensing and Regulation.

(99) Therapeutic pool or spa--A pool or spa that is operated exclusively for therapeutic purposes, such as physical therapy, and is under the direct supervision and control of licensed or certified medical personnel.

(100) Turnover rate--The period of time, usually in hours, required to circulate a volume of water equal to the pool or spa capacity.

(101) UL--An independent testing laboratory (formerly Underwriters Laboratories).

(102) Underwater ledge--A narrow shelf projecting from the side of a vertical structure.

(103) Underwater seat--An underwater ledge that is placed completely inside the perimeter shape of the pool, generally located in the shallow end of the pool.

(104) USCG--United States Coast Guard.

(105) Vanishing edge--A pool-wall structure and adjacent pool deck that is designed in such a way that the top of the pool wall and adjacent deck are not visible from certain vantage points in the pool or from the opposite side of the pool. Water from the pool flows over the edge and is captured and reused through the normal pool circulation system. Also referred to as an infinity edge, negative edge, or zero edge.

(106) VGBA--The Virginia Graeme Baker Pool and Spa Safety Act. A federal law that requires all public pools and spas to be fitted with suction outlets that meet the ANSI/APSP-ICC-16 standard.

(107) Vortex pool--A circular pool equipped with a method of transporting water in the pool for the purpose of propelling users at speeds dictated by the velocity of the moving stream of water.

(108) Wading pool--A pool with a maximum water depth that is no greater than 18 inches. A wading pool can contain a PIWF.

(109) Water lounge--A horizontal area of a pool that may be slightly sloped and that adjoins the pool wall at a depth of 2 inches to 12 inches and is used for seating and play. A water lounge is also known as a tanning ledge or sun shelf.

(110) Wave pool--A pool, with less than 20,000 square feet of water surface area, designed to simulate breaking or cyclic waves for purposes of general play. A wave pool is intended for general play as opposed to a surf pool that is intended for sport.

§265.183. Plans and Instructions.

(a) Plans for new construction of pools and spas. The department may review plans for pools and spas in order to ensure compliance with construction requirements. If the department intends to review plans it will notify the owner/operator in writing.

(b) Licensed engineer required.

(1) Design, construction, or renovation of Class A and Class B pools and spas, therapeutic pools and spas, surf pools, wave pools, and pools with a movable bottom, drop slide, or waterslide constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer.

(2) Design and construction of Class C pools and spas constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer if the pool or spa has a diving board, climbing wall, slide, movable bottom, interactive water feature or fountain, or any aquatic play feature that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act), or is one of the following:

- (A) a therapeutic pool or spa; or
- (B) a surf pool or wave pool.

(3) Renovation of Class A and Class B pools and spas constructed before the effective date of this subchapter shall be planned and designed by a licensed engineer. Renovation of Class C pools and spas constructed before the effective date of this subchapter shall be planned and designed by a licensed engineer if the pool or spa has a diving board, climbing wall, slide, movable bottom, interactive water feature or fountain, or any aquatic play feature that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act), or is one of the following:

- (A) a therapeutic pool or spa; or
- (B) is a surf or wave pool.

(c) Operational Instructions. Upon completion of construction of a pool or spa, the owner shall obtain from the pool or spa builder complete written operational instructions for the pool or spa. Written instructions shall include items such as procedures for filtration, backwash, cleaning, and operation of all chemical feed devices, clean filter pressures, normal operating pressures, and pressure differential(s) that indicate the need for filter cleaning and general maintenance of the pool and spa.

§265.184. General Construction and Design for Pools and Spas.

(a) Structural design and materials for pools and spas. Construction design and materials used in construction or renovation of

pools and spas shall comply with the requirement of this section as well as other requirements expressly stated in this subchapter.

(b) Non-toxic, durable, and sound materials for pools and spas. Pools and spas shall be constructed of materials that:

- (1) are nontoxic to humans and the environment;
- (2) are impervious and enduring;
- (3) will withstand design stresses; and

(4) will provide a watertight structure with a smooth and easily cleanable surface without cracks, or joints, excluding structural joints, or that will provide a watertight structure to which a smooth, easily cleaned surface or finish is applied or attached.

(c) User contact material surfaces. Material surfaces that come in contact with the user shall be finished, so that they do not constitute a cutting, pinching, puncturing or abrasion hazard under casual contact and intended use.

(d) Accepted practice for pools and spas. The structural design and materials for pools and spas shall be in accordance with generally accepted industry engineering practices and methods prevailing at the time of original construction unless otherwise stated in this subchapter.

(e) NSF Standard 50. Where equipment for a pool or spa such as pumps, filters, skimmers, chemical feeders, and any other equipment, falls within the scope of NSF Standard 50, such equipment shall meet the standard as confirmed by a testing laboratory, except as otherwise noted in §265.193 of this subchapter (related to Suction Outlet Systems (Suction Outlets) and Return Inlets for Pools and Spas). Conformity with standards noted above shall be evidenced by the listing or labeling of such equipment by such a laboratory or by separate documentation.

(f) Prohibition of earth material.

(1) Earth shall not be permitted as an interior finish in a pool or spa. Clean sand or similar material if used in a beach environment:

- (A) shall only be used over an impervious surface;
- (B) shall be designed to perform in such an environment; and

(C) shall be controlled so as not to adversely affect the proper circulation, filtration, treatment system, maintenance, safety, sanitation, and operation of the pool or spa.

(2) When sand or similar material is used, positive upflow circulation through the sand shall be provided as necessary to ensure sanitary conditions are maintained at all times.

(g) Interior color of pools and spas.

(1) The colors, patterns, or finishes of a pool or spa interior shall not obscure the existence or presence of objects or surfaces within the pool or spa.

(2) For pools and spas constructed prior to the effective date of this subchapter interior surfaces shall be a light enough color so that an 8-inch black disk or Secchi disk on the pool or spa floor at the deepest point of the pool or spa can be clearly and immediately seen by an observer standing on the deck at a point closest to the disk.

(3) For pools and spas constructed on or after the effective date of this subchapter interior surfaces and finishes shall be at least 6.5 on the Munsell color value scale.

(4) Lane markings, floors of Class A pool diving wells, step and edge markings, water line tiles, and depth change indicator tiles

shall be in darker colors or in colors in contrast to the pool and spa finish and surface.

(h) Areas subject to freezing. Where constructed in areas subject to freezing, pools and spas and appurtenances shall be designed to protect against damage due to freezing.

(i) Hydrostatic relief. A hydrostatic relief valve, plug, or a more extensive hydrostatic system shall be installed to prevent ground water pressure from displacing or otherwise damaging a pool or spa.

(j) Interior surface footing. The surfaces within a pool or spa intended to provide footing for users shall be slip resistant. The roughness or irregularity of such surfaces shall not cause injury to feet during normal use.

(k) General shape. This subchapter is not intended to regulate the perimeter shape of pools or spas. It is the designer's responsibility to consider the effect a given shape will have on the health and safety of the users.

(l) Dimensional variations. Dimensions for pools and spas may vary in limited areas where access for persons with disabilities has been provided, as long as the general safety of all users is maintained. The design shall comply with the applicable requirements for persons with disabilities under federal, state, and local fair housing and disability access laws.

(m) Entanglement or entrapment avoidance. Pools shall be constructed without protrusions, extensions, means of entanglement, or other obstructions in a pool or spa that may cause the entrapment or injury of the user or interfere with proper operation.

(n) Construction tolerances for pools and spas constructed on or after the effective date of this subchapter.

(1) Construction tolerances for Class A pools shall be determined by the sanctioning authority that provides the accreditation of the pool for competitive events.

(2) For all other pools and spas designed by a licensed engineer, construction tolerances shall be in accordance with Figure 25 TAC §265.184(n)(2) or with the construction plan submitted by the design engineer.
Figure: 25 TAC §265.184(n)(2)

(o) Maximum user load. The maximum user load in a pool or spa shall be based upon the following:

(1) The maximum number of users in Class A pools being used for competitive events shall be determined by the sanctioning authority under which the events are being held.

(2) Maximum number of users in Class A pools not being used for competitive events, and Class B and Class C pools and spas are set forth in Figure 25 TAC §265.184(o)(2).
Figure: 25 TAC §265.184(o)(2)

(3) The maximum number of users may be lowered but must not exceed the number that is determined in accordance with paragraphs (1) or (2) of this subsection, as applicable.

(4) Pool and spa equipment sizing including the circulation system, deck area, and any other equipment or utility used to maintain the pool or spa shall be based upon the maximum number of users determined in accordance with paragraphs (1) or (2) of this subsection, as applicable.

(5) Maximum number of users in waterslide landing pools and surf pools at any given time shall be established by the slide and surf pool manufacturer. For purposes of this paragraph, a waterslide landing pool can be either a separate pool located at the exit of one or

more waterslide flumes or the area of a pool that is located at the exit of one or more waterslide flumes.

(p) Walls joining floors in pools and spas constructed on or after the effective date of this subchapter. Walls shall intersect with the floor at an angle or a transition profile. Where a transitional profile is provided at water depths of 3 feet or less, a transitional radius shall not exceed 6 inches, shall be tangent to the wall, and may be tangent or intersect the floor. Wall to floor radiuses may encroach on tread unobstructed surface areas.

(q) Floor slopes in pools and spas constructed on or after the effective date of this subchapter. All pool floor slopes shall drain and be uniform within the different activity areas of the pool. Floor slopes in Class A pools shall be determined by the authority that provides the accreditation of the pool for competitive events. All other pool floor slopes shall meet the following requirements:

(1) The slope of the floor in water less than 5 feet shall not exceed 1 foot in 10 feet to the point of the first slope change.

(2) The slope of the floor in water five feet deep or more shall not exceed one foot in three feet.

(3) The slope of the floor may vary in limited areas where access for persons with disabilities has been provided.

(r) Visual separation for pools and spas. Any area of a pool, excluding steps and ramps, that is less than 3 feet in depth shall be visually set apart from deeper areas of the pool by a minimum 4-inch wide tile band, pointed line, or similar means of contrasting color across the floor of the pool.

(s) Vanishing edge in a pool or spa constructed on or after the effective date of this subchapter. The vanishing edge overflow trough, basin, or capture drain is not a skimmer and does not replace the number of required skimmers in pools constructed on or after the effective date of this subchapter. A vanishing edge in a pool shall:

(1) not exceed more than 50% of the entire perimeter of the pool or of the spa unless the entire pool or spa is surrounded by a deck meeting the requirements of §265.185 of this subchapter (relating to Decks and Deck Equipment for Pools and Spas);

(2) not be required to have skimmers when 100% of the entire pool or spa is a vanishing edge;

(3) not have any part of the vanishing edge at a distance exceeding 15 feet from the deck; and

(4) be designed to overflow into a trough, basin, or capture drain.

(t) Underwater seats and benches. Underwater seats and benches in pools and spas constructed or renovated on or after the effective date of this subchapter shall:

(1) have the horizontal surface not greater than 20 inches below the waterline;

(2) have a minimum seating width of 10 inches projecting from the wall at least 24 inches in width;

(3) be located fully outside of the diving water envelope in a pool with diving equipment;

(4) be visually set apart with a permanent solid or broken stripe 1-inch wide on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied;

(5) have a slip-resistant surface; and

(6) shall not be used as the required entry and exit access.

(u) Water lounges in pools and spas. Water lounges shall be designed to be used as a lounge or sunning area and must not be designed to be used as wading pools. Water ledges shall:

(1) be a minimum of 20 inches wide and provide a minimum of 10 square feet of horizontal surface over a distance of not less than 3 feet;

(2) be at a depth of 2 to 12 inches below the design water level;

(3) be visually set apart with a permanent solid or broken stripe 1-inch wide, on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied;

(4) have a slip resistant surface;

(5) be located fully outside of the diving water envelope in a pool with diving equipment; and

(6) be located in shallow areas of the pool only.

(v) Underwater toe ledges. Underwater toe ledges in pools and spas constructed or renovated on or after the effective date of this subchapter shall:

(1) be slip resistant;

(2) only be provided in water 5 feet deep or greater and at least 4 feet below the design water level;

(3) be visually set apart with a permanent solid or broken stripe 1-inch wide, on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied; and

(4) have a minimum horizontal tread depth of 4 inches and a maximum uniform horizontal tread depth of 6 inches.

(w) Wading pools.

(1) Wading pools, including wading pools containing a PIWF or fountain shall have a maximum water depth of 18 inches.

(2) Wading pools containing a PIWF that are constructed on or after the effective date of this subchapter and all wading pools constructed on or after October 1, 1999, shall:

(A) be separate and physically set apart from beginner or shallow water areas by at least 15 feet or by a pool yard enclosure meeting the requirements in §265.203 of this subchapter (relating to Pool Yard and Spa Yard Enclosures) for Class C pools and spas;

(B) be separate and physically set apart from deep water areas by at least 35 feet or by a pool yard enclosure meeting the requirements in §265.203 of this subchapter for Class C pools and spas; and

(C) maintain clear visibility through the barrier.

(3) Wading pools constructed on or before October 1, 1999, are exempt from the distance and barrier requirements for wading pools.

(4) For wading pools constructed or renovated on or after the effective date of this subchapter the following shall apply:

(A) At the perimeter wall of the wading pool, the vertical distance from the deck or walkway to the bottom of the pool or to perimeter seating bench underwater shall not be greater than 18 inches. The vertical distance from the bottom of the pool to the deck or walk may be reduced and brought to zero at the shallowest point.

(B) The slope of zero level deck entries shall not exceed 1 foot in 12 feet.

(C) Floors of wading pools shall be uniform, sloped to drain with a maximum slope of 1 foot in 12 feet and shall be slip resistant.

(5) Wading pools constructed or renovated on or after the effective date of this subchapter shall not have submerged suction outlets (main drains). Skimmers or overflow gutters shall be installed and shall accommodate 100% of the circulation system flow rate.

(x) Bulkheads. The bulkhead position shall be maintained such that it cannot encroach on any required clearances of other features such as diving boards. If a bulkhead is operated with an open area underneath, users shall be prevented from swimming underneath the bulkhead.

§265.185. Decks and Deck Equipment for Pools and Spas.

(a) Accessibility requirements for pool and spa decks. Entrances and exits, including hand and grab rails, walkways, and decks, shall comply with applicable requirements for access to aquatic recreation facilities for persons with disabilities under federal, state, and local fair housing and disability access laws.

(b) Concrete decks. Concrete that is used as a deck material shall be installed in accordance with the American Concrete Institute ACI Standard 302.1R-15, "Guide for Concrete Floor and Slab Construction", or in accordance with the requirements established by the design engineer, and in accordance with local building codes, as applicable.

(c) Decks other than concrete decks. Decks, other than concrete decks, shall be designed and installed in accordance with good public health engineering practices, and, when applicable, by a method required by a local regulatory authority. This includes the design and quality of the subbase, deck material used, reinforcing, and joints.

(d) Deck renovation or repair. Renovation or repair of decks shall be in accordance with the requirements of this subchapter.

(e) Deck slip resistance. Decks, ramps, coping, and steps shall be slip-resistant. Cleanable special features in or on decks such as markers, brand insignias, and similar materials shall be slip-resistant and shall not cause injury during normal use.

(f) Pool and spa decks and circulation paths. Pool and spa decks and circulation paths for pools and spas constructed or renovated on or after the effective date of this subchapter shall comply with the following requirements.

(1) A continuous and unobstructed circulation path shall be provided in conformance with the Americans with Disabilities Act (ADA) requirements for an accessible route.

(2) Wing walls or peninsulas with widths greater than 18 inches shall be considered part of the pool or spa deck but cannot be accounted for in calculating the pool perimeter.

(3) Pool or spa deck may serve as part of the circulation path.

(4) The deck width, which can include flush coping, must meet the following requirements.

(A) All Class A pool deck widths shall meet the standards of the appropriate sanctioning body that regulates the type of competition to be held.

(B) Decks between pools, spas, or any combination of pools and spas, constructed on or after the effective date of this subchapter shall have a minimum width of 6 feet.

(C) Decks of Class B pools constructed on or after September 1, 2004, shall have a minimum width of 6 feet.

(D) All Class C pool and spa decks constructed on or after the effective date of this subchapter shall have minimum width of 6 feet.

(5) Pool and spa decks shall be flush with the pool or spa walls or coping except where special conditions exist, such as elevated beam or parapet, raised transfer walls, or where otherwise permitted in this subchapter. Wood, wood composite, and indoor or outdoor carpet decks, with the exception of artificial turfs that are designed for use at aquatic facilities, are waterproof, cleanable, and do not support biologic growth, shall not be allowed within the distance specified in paragraph 4 of this subsection.

(6) Up to 35% of the deck for Class B and Class C pools may be replaced with other structures including diving rocks and diving ledges that meet the requirements in §265.188(b)(10) of this subchapter (relating to Diving Facilities for Pools), however, in no case shall other structures restrict emergency access, be improperly used as diving platforms, or create other safety or sanitary hazards.

(7) In pools and spas constructed on or after the effective date of this subchapter, unobstructed deck a minimum of 4 feet in width shall be provided for access around diving equipment, diving boards, diving rocks and diving ledges, special feature stairways such as a waterslide, lifeguard stands, ADA access equipment and structural columns.

(8) Decks shall be sloped to effectively drain to perimeter areas or to deck drains.

(9) For pools and spas constructed on or after the effective date of this subchapter drainage shall remove pool and spa splash water, deck cleaning water, and rainwater without leaving standing water deeper than 1/8 inch, 20 minutes after cessation of the addition of water to the deck. Deck slopes shall meet the requirements in Figure 25 TAC §265.185(f)(9).
Figure: 25 TAC §265.185(f)(9)

(10) The maximum gap between pool decks and adjoining decks or walkways, including joint material shall be not greater than 3/4 inch. The difference in vertical elevation between the pool deck and the adjoining circulation path shall not be greater than 1/4 inch.

(11) Isolation joints that occur where pool coping meets the deck shall be water tight. Joints shall be installed to protect the coping and its mortar bed from damage. Joints in a deck shall be provided to minimize visible cracks outside the control joints due to shrinkage or movement of the slab. Areas where decks join existing concrete work shall be provided with a joint to protect the pool from damage caused by relative movement.

(12) The edges of decks shall be radiused, tapered, or otherwise designed to eliminate sharp corners.

(13) Step risers for decks at pools and spas constructed on or after the effective date of this subchapter shall be uniform and have a height not less than 3-3/4 inches and not greater than 7-1/2 inches. The tread distance from front to back shall be not less than 11 inches.

(14) Deck steps at pools and spas constructed on or after the effective date of this subchapter having three or more risers shall be provided with a handrail.

(15) Valves installed in or under decks shall be accessible for operation, service, and maintenance. Where access through the deck walking surface is required, an access cover shall be provided for the opening in the deck. Such access covers shall be slip resistant and secured.

(16) Hose bibs with backflow prevention equipment shall be provided for rinsing the entire deck and shall be located not farther than 150 feet apart. Water powered devices, such as water-powered lifts, shall have either a dedicated hose bib water source or valve.

(g) Landscaping. Loose plant material or bedding, including planters, shall not be permitted on pool or spa decks constructed on or after the effective date of this subchapter.

§265.186. Islands in Pools and Spas Constructed on or After the Effective Date of This Subchapter.

(a) An island not more than 18 inches in width along the entire length of the island and not designed for walking on, shall have no stairs, ladders or bridges to the island that can be accessed by users.

(b) An island designed to be walked on by lifeguards shall be a minimum of 18 inches in width along the entire length of the island.

(c) Any island not designed or intended for walking on by pool users shall have signs stating "No Entry" in letters minimum of 2 inches in height.

(d) An island designed for pool and spa users shall be accessible by bridge, ramp, ladder or stairway from the pool.

(e) All bridges spanning a pool, or any other structure not intended for interactive play that span a pool, shall have a minimum clearance of 7 feet from the bottom of the pool to any bridge or structure overhead.

(f) Any bridge or ramp shall have a minimum 42-inch high barrier on both sides of the bridge.

(g) The island shall have a demarcation tile line on the perimeter of the island that is a minimum of 4 inches in height.

§265.187. Pool and Spa Entry/Exits.

(a) Two entry/exits required. With the exception of waterslide landing pools, waterslide runouts, surf pools, and wave pools, pools shall have a minimum of two entry/exits located to serve both ends of the pool. If the pool has a shallow area and a deep area at least one entry/exit shall be located in the shallow end and one located in the deep end.

(b) Entry/exit locations for specific pools and spas. Entry/exit locations for specific pools constructed on or after the effective date of this subchapter shall be in accordance with Figure 25 TAC §265.187(b).
Figure: 25 TAC §265.187(b)

(c) Entry/exit structures and devices for persons with disabilities not counted. Pool or spa lifts, transfer walls, and transfer systems that provide for pool or spa entry and exit for persons with disabilities shall not be counted as a required means of entry or exit.

(d) Entry/exit in water less than 24 inches in depth. Where pools or spas, excluding wading pools, have areas with water depths of 24 inches or less at the pool or spa wall, such areas shall be considered a required entry/exit.

(e) Distances between entry/exits. A means of entry/exit in pools shall be provided and shall consist of pool stairs, a swimout, ramp, or beach entry and shall be located no further than 75 feet of travel distance apart from any other entry/exit.

(f) Single entry/exit. Pools or spas where the entry/exit extends at least 75% of the length of the longest wall in areas of the pool or spa not more than 3-1/2 feet deep are not required to comply with subsection (e) in this section if:

(1) the depth of the pool does not exceed 5 feet; and

(2) the pool perimeter deck extends around the pool such that any area of the pool can be accessed by a non-telescoping reaching pole.

(g) Entry/exit in pools. A means of entry/exit in the deep end of the pool shall be provided and shall consist of one of the following:

- (1) steps or stairs;
- (2) ladder;
- (3) grab rails with recessed treads;
- (4) ramps or beach entry; or
- (5) a swimout with a step meeting the requirements in sub-section (n) of this section.

(h) Deep water entry/exit in pools greater than 30 feet wide. Pools constructed or renovated on or after the effective date of this subchapter that are greater than 30 feet in width shall be provided with an entry/exit on each side of the deep area of the pool. The entry/exits in the deep area of the pool shall be located not more than 82 linear feet apart as measured along the coping.

(i) Entry/exit in pools with diving areas. Where the pool is designed for use with diving equipment, any entry/exit, pool stairs, ladders, underwater benches, special features and other accessories shall be located outside of the diving envelope.

(j) Slip resistant surface. Steps, ladders, and recessed treads shall have slip-resistant surfaces.

(k) Stairs in pools and spas. Stairs in pools constructed on or after the effective date of this subchapter and extending into the pool in either shallow or deep water, including recessed pool stairs, shall comply with the following:

(1) Step treads shall not be less than 24 inches at the leading edge. Each tread shall have an unobstructed surface area of not less than 240 square inches and an unobstructed horizontal depth of not less than 10 inches at the centerline.

(2) Step risers, except for the bottom riser, shall have a uniform height of not greater than 12 inches measured at the centerline. The bottom riser height is allowed to taper to the floor and may vary due to potential cross slopes with the pool floor but may not exceed the maximum allowable riser height.

(3) The vertical distance from the pool coping, deck, or step surface to the uppermost tread shall not be greater than 12 inches.

(4) In pools constructed on or after the effective date of this subchapter where stairs are located in water depths greater than 48 inches, the lowest tread shall not be less than 48 inches below the deck and shall be recessed in the pool wall.

(5) Underwater steps shall have a horizontal solid or broken stripe at least 1-inch wide on the top surface along the front leading edge of each step that is plainly visible to persons on the deck and is in a color contrasting the background on which it is applied. The color shall be permanent in nature and shall be slip resistant.

(6) A handrail shall be provided in pools for which a life-guard is required or provided under this subchapter. When provided in pools and spas, handrails shall comply with the following:

(A) Handrails, if removable, shall be installed in such a way that they cannot be removed without the use of tools.

(B) Handrails shall be constructed of corrosion-resistant materials.

(C) Handrails for use by persons with disabilities shall comply with applicable federal, state and local requirements for access by persons with disabilities.

(7) In pools and spas constructed or renovated after the date of this subchapter, handrails shall meet the following requirements:

(A) The top of the gripping surface of handrails shall be 34 inches to 38 inches above the ramp or step surface as measured at the nosing of the step or finished surface of the slope.

(B) The leading edge of handrails for stairs, pool entries and exits shall be located not greater than 18 inches from the vertical face of the bottom riser.

(C) The outside diameter or width of handrails shall be not less than 1-1/4 inches and not greater than 2 inches.

(D) Handrails for use by persons with disabilities shall comply with applicable federal, state and local requirements for access by persons with disabilities.

(8) For pools or spas with perimeter gutter systems, the gutter may serve as a step if the gutter has a grating or cover and conforms to all construction and dimensional requirements in this subchapter.

(l) Recessed treads in pools and spas constructed or renovated after the effective date of this subchapter. Recessed treads in pools and spas constructed or renovated on or after the effective date of this subchapter shall meet the following requirements:

(1) Recessed treads shall have a minimum depth of not less than 5 inches and a width of not less than 12 inches.

(2) The vertical distance between the pool coping edge, deck or step surface and the uppermost recessed tread shall not be greater than 12 inches.

(3) Recessed treads at the centerline shall have a uniform vertical spacing of not less than 7 inches and not more than 12 inches.

(4) Recessed tread shall be designed to be slip resistant, easily cleaned, and to drain into the pool.

(m) Ladders in pools and spas constructed or renovated on or after the effective date of this subchapter. Ladders constructed or renovated on or after the effective date of this subchapter shall be constructed of corrosion resistant materials and shall be anchored securely to the deck. Ladders in pools and spas shall comply with the following:

(1) Two handrails shall be provided for each ladder, one on each side of the ladder with a clear distance between ladder handrails of not less than 17 inches and not greater than 24 inches.

(2) Ladder treads shall have a uniform horizontal depth of not less than 2 inches. There shall be a uniform distance between ladder treads not less than 7 inches and not greater than 12 inches, and ladder treads shall be slip-resistant.

(3) The top tread of a ladder shall be located not greater than 12 inches below the top of the deck or coping.

(4) Wall clearance between the pool wall and the ladder shall be not less than 3 inches and not greater than 6 inches.

(n) Swimouts. Swimouts constructed on or after the effective date of this subchapter shall be located completely outside of the water current or wave action of the pool or spa and can be located in shallow or deep water and shall comply with the following:

(1) The horizontal surface shall be unobstructed and have a horizontal depth of not less than 11 inches.

(2) Each tread shall have an unobstructed surface area of not less than 240 square inches.

(3) Where a swimout is used as an entry/exit, it shall be provided with a step that meets pool stair requirements for stairs in subsection (k) of this section.

(o) Beach entry, zero-depth entry, and sloping entries in pools and spas. For purposes of this subchapter, beach entries, zero-depth entries, and sloping entries will be referred to as beach entries. Beach entries in pools constructed or renovated on or after the effective date of this subchapter shall comply with the following:

(1) The slope of beach entries used as a pool entry shall not exceed 1:10.

(2) Where benches are used in conjunction with beach entries, the vertical riser height shall not exceed 12 inches.

(3) Where steps are used in conjunction with beach entries, the steps must comply with subsection (k) of this section.

(4) Trench drains shall be used along beach entries at the waterline to facilitate surface skimming and may be flat or follow the slope of the entry.

(p) Starting platforms in pools. In pools constructed on or after the effective date of this subchapter, starting platforms shall be located at a water depth of not less than five feet or shall meet the requirements of the sanctioning authority that provides accreditation of the pool for competitive events. In pools renovated on or after the effective date of this subchapter, starting platforms intended for non-sanctioned competitive swimming events shall be located in water not less than 4-1/2 feet. Starting platforms at all pools regardless of the date of construction shall comply with the following requirements:

(1) Starting platforms in Class A pools shall be installed in accordance with the appropriate sanctioning body that regulates the type of competition to be held.

(2) Starting platforms shall have slip resistant tread surfaces.

(3) Starting platforms shall be installed and secured per the manufacturer's instructions.

(4) Starting platforms shall only be used during official competition or when there is direct supervision by the team coach or other qualified instructor.

(5) Starting platforms shall be removed or secured to prevent inadvertent use when the use of the starting blocks is not directly supervised.

§265.188. Diving Facilities for Pools.

(a) Competitive diving pool construction. Pools designed with platform diving or springboard diving facilities intended for competitive diving events shall comply with the pool dimension design requirements of the sanctioning authority that provides accreditation of the pool for competitive diving events such as FINA, the United States Swimming Association, the United States Diving Association, the National Federation of State High Schools Association or the NCAA.

(b) Non-competitive diving pool construction. Pools constructed or renovated on or after the effective date of this subchapter that are designed for non-competitive diving shall comply with the following:

(1) Diving stands higher than 21 inches measured from the deck to the top of the butt end of the board or platform shall have steps with 2 handrails or a ladder with 2 handrails. The steps or ladder treads

shall be self-draining, corrosion resistant, non-slip and designed to support the maximum expected load.

(2) Diving stands or platforms that are 1 meter, 3.4 feet, or higher above the pool deck shall be protected with guard rails that are at least 30 inches above the board, extending at least to the edge of the water along with intermediate rails.

(3) Diving stands or platforms that are at a height greater than 5 feet shall have a manufacturer's designed or recommended fall protection guard on each side of the diving stand or platform. The installation of the guard shall be in accordance with manufacturer's instructions.

(4) All diving equipment shall be installed in accordance with the manufacturer's specifications.

(5) A label shall be permanently affixed to the diving equipment or jump board in a readily visible location and shall include the following:

(A) The minimum diving water envelope required for each diving board and diving stand combination.

(B) Manufacturer's name and address.

(C) Manufacturer's identification and date of manufacture.

(D) Maximum allowable weight of the user.

(6) The diving equipment manufacturer shall provide diving equipment use instructions.

(7) Supports, platforms, stairs, and ladders for diving equipment shall be designed to carry the anticipated loads.

(8) Pools with non-competitive diving boards or platforms shall comply with the following dimension requirements in subparagraphs (A) and (B) of this paragraph represented in subparagraphs (C) and (D) of this paragraph, except that non-competitive pools with 1 meter or 3-meter diving boards or platforms may instead comply with the FINA competitive diving pool and diving board or diving platform requirements.

(A) Figure 25 TAC §265.188(b)(8)(A), Diving Board Height and Dimensions.

Figure: 25 TAC §265.188(b)(8)(A)

(B) Figure 25 TAC §265.188(b)(8)(B) Minimum Dimensions of Components Related to Diving Wells by Diving Board Height.

Figure: 25 TAC §265.188(b)(8)(B)

(C) Figure 25 TAC §265.188(b)(8)(C) Diving Board or Platform Longitudinal Section.

Figure: 25 TAC §265.188(b)(8)(C)

(D) Figure 25 TAC §265.188(b)(8)(D) Diving Board or Platform Cross Section: Front View.

Figure: 25 TAC §265.188(b)(8)(D)

(9) Non-competitive pools with diving boards or diving platforms constructed before the effective date of this subchapter shall comply with either the FINA competitive diving pool and diving board or diving platform requirements or with paragraph (8) of this subsection.

(10) Diving or jumping rocks and ledges shall be designed by a licensed engineer and must comply with the requirements for decks in §265.185(f) of this subchapter (relating to Decks and Deck Equipment).

§265.189. Slides and other Aquatic Play Features.

(a) Proper installation of a slide or other aquatic play feature. A slide or other aquatic play feature, such as a climbing wall, floating amusement island, zip line, or anchored floats, shall be installed according to manufacturer's instructions or in accordance with the design engineer's specifications.

(b) Slide or aquatic play feature design requirements. A slide or other aquatic play feature that is designed and constructed or renovated on or after the effective date of this subchapter and that is not a pre-manufactured slide or aquatic play feature, shall be planned and designed by a licensed engineer.

(c) An aquatic play feature or slide that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act) shall comply with that chapter.

(d) Any feature that meets the definition of a "slide" in the Consumer Product Safety Commission's Safety Standard for Swimming Pool Slides as published in Title 16 Code of Federal Regulations, Part 1207, shall comply with those standards in addition to the requirements in this section.

§265.190. Circulation Systems for Pools and Spas.

(a) General circulation requirements for pools and spas. A circulation system consisting of pumps, piping, return inlets and outlets, filters and other necessary equipment shall be provided for the complete circulation of the water.

(b) Filtering systems for wading pools and spas. Wading pools and spas constructed on or after the effective date of this subchapter shall have separate and independent filtering systems.

(c) Turnover times for pools and spas.

(1) For pools and spas constructed on or after the effective date of this subchapter, the circulation equipment shall be sized to turn over the entire pool or spa water capacity as specified in Figure 25 TAC §265.190(c)(1). The circulation system shall be designed to provide the required turnover rate based on the maximum pressure and flow rate recommended by the manufacturer of the filter with clean filter media. The total volume of the pool or spa shall include water in the surge or balance tank.

Figure: 25 TAC §265.190(c)(1)

(2) For pools and spas constructed before the effective date of this subchapter, the circulation equipment shall be sized to turn over the entire pool or spa water capacity in accordance with the pool and spa turnover rate requirements in effect at the time the pool or spa was constructed. When a pool or spa is renovated, to the extent possible, turnover times shall comply with the requirements of this section.

(d) Circulation system operation at pools and spas. Circulation systems shall circulate treated and filtered water for 24 hours a day unless the recirculation rate is reduced below the minimum required design values when the pool is unoccupied. The flow turndown system shall be designed as follows:

(1) the system flowrate shall not be reduced more than 25% lower than the minimum design requirements and may be reduced only when the pool is unoccupied; and

(2) water clarity is maintained as required, no algae are present, and disinfectant levels and pH are maintained as required in §265.206 of this subchapter (related to Water Quality at Pools and Spas).

(e) Off season circulation system operation. When an outdoor pool or spa is not in use for an extended period of time (such as off

season), clarity shall be maintained. Circulation rates shall be permitted to be reduced provided that acceptable water clarity as required in §265.206 of this subchapter is maintained.

(f) Unfiltered water and total volume. Unfiltered water such as water that may be withdrawn from and returned to the pool or spa by a pump separate from the filtration systems, such as for slides, shall not factor into the turnover time.

(g) Servicing circulation components. Pool and spa circulation system components that require replacement or servicing shall be provided with access for inspection, repair, or replacement and shall be installed in accordance with the manufacturer's specifications.

(h) Equipment anchorage. Pool and spa equipment and related piping shall be installed in accordance with the manufacturer's instructions.

(i) Piping and fittings. Plastic pipe and fittings used in circulation systems in pools and spas constructed or renovated on or after the effective date of this subchapter shall be nontoxic and shall be able to withstand the design operating pressures and conditions of the pool or spa. Plastic pipe shall be listed and labeled in compliance with NSF 14 and one of the standards listed in Figure 25 TAC §265.190(i).
Figure: 25 TAC §265.190(i)

(j) Fittings. Suction outlet fitting assemblies and manufacturer-components certified in accordance with ANSI/APSP/ICC-16, skimmers and manufacturer-provided components of skimmers, and gutter overflow grates and fittings installed above or outside of the overflow point of the pool or spa are not required to meet the standards listed in Figure: 25 TAC §265.190(i). All other fittings used in circulation systems shall be listed and labeled in compliance with one of the standards in Figure 25 TAC §265.190(j).
Figure: 25 TAC §265.190(j)

(k) Joints. Joints shall be made in accordance with manufacturer's instructions.

(l) Piping subject to freezing. Piping subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves for drainage or shall be capable of being evacuated to remove water. Pool or spa piping shall be adequately supported and designed to prevent entrapment of air, water, or dirt. Provision shall be made for expansion or contraction of pipes.

(m) System draining. Equipment shall be designed and fabricated to drain the water from the equipment, together with exposed face piping, by removal of drain plugs, manipulating valves, or by other methods. Drainage shall be in accordance with manufacturer's specifications.

(n) Pressure and vacuum gauges. Pool and spa circulation shall be equipped with the following:

(1) a pump suction (vacuum or combination vacuum/pressure) gauge installed according to manufacturer's instruction and located on the suction side of the pump;

(2) a filter inlet pressure gauge installed in the area of greatest pressure;

(3) a filter outlet gauge; and

(4) a flow measuring device, certified, listed and labeled to NSF/ANSI Standard 50, designed for pools and spas, NSF Standard 60, or NSF Standard 61 located to show the rate of flow through the filter. The flow rate measuring device shall indicate gpm and shall be selected and installed to be accurate within plus or minus 10 percent of actual flow.

(o) Instructions and schematic. Written operation and maintenance instructions shall be provided for the circulation system of the pool or spa. Exposed piping shall be labeled to identify the piping function and direction of flow. For pools and spas constructed on or after the effective date of this subchapter, a complete, easily readable schematic of the entire recirculation system shall be openly displayed in the mechanical room or available to maintenance and inspection personnel.

(p) Hydrostatic pressure test. Air pressure testing of pool and spa circulation systems is prohibited. In pools and spas that are constructed on or after the effective date of this subchapter, the circulation system piping, other than that integrally included in the manufacture of the pool or spa, shall be subjected to a hydrostatic pressure test of 25 pounds per square inch performed before concrete operations with the pressure held until the pool shell is in place.

(q) Piping labeled. All pools and spas shall be labeled to identify the piping function and direction of flow. The name of the liquid or gas and arrows indicating the direction shall be permanently indicated on the pipe by labelling or other method regardless of the date of construction.

§265.191. Filters for Pools and Spas.

(a) Filters required. Filtration shall be required for all pools and spas that recirculate water.

(b) Certified filters and media. All pool and spa filters and filter media, including alternative filter media, shall be certified, listed, and labeled to NSF/ANSI 50. Filters shall use the appropriate filter media within size specifications as recommended by the filter manufacturer and NSF/ANSI 50.

(c) Filter design. Filters shall have a flow rating equal to or greater than the design flow rate of the circulation system. Filters shall be designed and installed so that filtration surfaces can be inspected and serviced.

(d) Internal pressure. For pressure-type filters a means shall be provided to allow the release of internal pressure.

(1) Filters incorporating an automatic means of internal air release as the principal means of air release shall have one or more lids that provide a slow safe release of pressure as part of the design and shall have a manual air release in addition to an automatic release.

(2) The following statement shall be posted in letters at least 1/2 inch in height, in a conspicuous location, and within the areas of the air release: "DO NOT START THE SYSTEM AFTER MAINTENANCE WITHOUT FIRST PROPERLY REASSEMBLING THE FILTER AND SEPARATION TANK AND OPENING ALL AIR RELEASE VALVES."

(3) A separation tank used in conjunction with a filter tank, shall have a manual method of air release or a lid that provides for a slow release of pressure as it is opened.

(e) Filter and separation tank instructions. Filters and separation tanks for pools and spas shall have operation and maintenance instructions permanently installed on the filter or separation tank.

(f) Observable waste discharge. Pools and spa filters shall be provided with a readily observable free fall or sight glass installed on the waste discharge line in order that the filter washing progress may be observed. Sight glasses must be readily removable for cleaning.

(g) Backwashing. Pool and spa filters designed to be backwashed shall be backwashed and maintained according to manufacturer's instructions.

§265.192. Pumps and Motors for Pools and Spas.

(a) Safe pump operation. A pump for a pool or spa shall not be operated if the owner or operator of the pool or spa knows or should know in the exercise of ordinary care that the drain grate, suction outlet, or any suction outlet cover is missing, broken or loose. If such a condition exists, the pool or spa shall be closed immediately and remain closed until a proper repair or replacement has been made.

(b) Pump design and installation. The pump design, construction and installation of the pump and component parts shall be installed according to manufacturer's instructions and be listed with UL.

(c) Performance. A pump shall be provided for circulation of the pool and spa water. The pump shall be capable of providing the flow required for filtering the pool or spa water and filter cleaning, if applicable, against the total dynamic head developed by the complete system.

(d) Pump intake protection. A cleanable strainer, skimmer basket, or screen shall be provided for pools and spas, upstream or as an integral part of circulation pumps, to remove solids, debris, hair, and lint on pressure filter systems.

(e) Pump and motor location. Pumps and motors shall be accessible for inspection and service in accordance with the manufacturer's specifications.

(f) Isolation valves. Isolation valves (also known as shutoff valves) shall be installed on the suction side and discharge sides of pumps that are below the waterline. Such valves shall be accessible to service personnel.

(g) Motor performance. Motors shall comply with UL 1004-I, UL 1081, CSA C22.2 No. 108 or the relevant motor requirements of UL 1563 or CSA C22.2 No. 218.1, and Department of Energy minimum energy efficiency ratings as applicable.

(h) Operation and overload protection. Pump motors shall be capable of operating the pump under full load with a voltage variation of plus or minus 10% from the nameplate rating. Motors shall have thermal or current overload protection, either built in or in the line starter, to provide locked rotor and running protection.

§265.193. Suction Outlet Systems (Suction Outlets) and Return Inlets for Pools and Spas.

(a) Suction outlet system design. A suction outlet system shall be designed to protect against suction entrapment, evisceration, and hair entanglement or entrapment hazards in accordance with ANSI/APSP-16, American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs and Catch Basins.

(b) Wading pool suction outlets.

(1) A wading pool or any pool having a depth of 24 inches or less that does not contain a PIWF and that is constructed or renovated on or after the effective date of this subchapter shall not have fully submerged suction outlets (main drains). Skimmers or overflow gutters shall be installed and shall accommodate 100% of the circulation system flow rate.

(2) A wading pool or any pool having a depth of 24 inches or less containing a PIWF and that is constructed on or after the effective date of this subchapter may install two or more main drains. These main drains shall comply with VGBA and ANSI/APSP/ICC requirements for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins, and shall be placed where they are inaccessible by users.

(c) Skimmers not suction outlets. For purposes of this section, skimmers are not considered to be suction outlets.

(d) Closure when a cover is missing, broken or loose. If the cover or grate on a suction outlet including a vacuum outlet is missing, broken, or loose the pool or spa shall be closed immediately and shall remain closed until a proper repair is made or a replacement is installed.

(e) Fully submerged suction outlets (main drains) not required. Fully submerged suction outlets are not required. When fully submerged suction outlets are not installed, surface skimming or overflow systems shall be designed and permitted to provide 100% of the circulation flow rate.

(f) Field fabricated suction outlets and sumps. Field fabricated suction outlet covers, or grates, sump, fasteners, and assemblies shall be designed and certified by a licensed engineer. Field built sumps shall be constructed in accordance with the suction outlet fitting assembly manufacturer's instructions or, as may be site specific, designed by a licensed engineer.

(g) Single points of suction. Pools and spas constructed or renovated on or after the effective date of this subchapter shall not have a single fully submerged suction outlet (main drain).

(h) Dual outlets and three or more outlets. Pools and spas constructed or renovated on or after the effective date of this subchapter shall have dual or three or more suction outlets that are designed, constructed, manufactured, and installed in accordance with ANSI/APSP/ICC.

(1) The distance between dual VGBA-compliant suction outlets, as measured from center to center of the suction outlet cover or grate, shall be no less than three feet.

(2) The flow rate through a fitting, cover, or grate shall not exceed the approved flow rate for that fitting, cover, or grate when one suction fitting in a suction outlet system is blocked.

(3) No means of isolating suction outlets is permitted that could allow one suction outlet to serve as the sole source of water to a pump.

(4) A single pipe to a pump suction inlet that serves two or more suction outlets may have a valve to shut off the flow to the pump.

(i) Compliance with ANSI/APSP 16. Submerged suction outlets, including covers or grates, sump, fasteners, and assemblies shall be certified, listed, and labeled to the requirements of ANSI/APSP-16.

(j) Suction vacuum release systems. Pools and spas constructed prior to the effective date of this subchapter, that have single points of suction (single submerged suction outlet) are required to install a Suction Safety Vacuum Release System (SVRS) and Automatic Pump Shut-off System (APSS) that meets the following requirements:

(1) When used, SVRS and APSS devices shall be tested and certified by a third-party test lab accredited by the International Laboratory Accreditation Cooperation as conforming to ASME/ANSI A112.19.17, ASTM F 2387 or any successor standards recognized by the U.S. Consumer Product Commission.

(2) For substantially varying environmental conditions, including freezing temperatures, extreme heat, salt spray and humidity the suitability of a SVRS or APSS must be confirmed with the manufacturer prior to installation and use.

(3) Licensed engineers or certified installers shall confirm suitability with the SVRS or APSS manufacturer prior to installation and use and that the SVRS or APSS is not being installed in an incompatible configuration such as with the use of check valves, hydrostatic relief valves, skimmers, solar systems, elevated or submerged pump suction, multilevel bodies of water, water features, or two or more suction outlets.

(k) Vacuum outlets. Vacuum outlets in pools and spas shall comply with IAPMO SPS 4 and be provided with a cover that automatically closes and automatically latches and cannot be opened by pool and spa users. The vacuum outlet cover must be installed according to manufacturer's instructions and be no greater than 12 inches below the water level. The vacuum piping shall be equipped with a valve to remain in the closed position when not in use. Vacuum outlets in skimmers are not required to have a separate cover. If the vacuum outlet cannot be equipped with an automatic closure and latch, the vacuum outlet shall be permanently sealed.

(l) Skimmer equalizer lines.

(1) For pools and spas constructed on or after the effective date of this subchapter skimmer equalizer lines shall not be installed.

(2) Skimmers shall be vented to the atmosphere through openings in the lid.

(3) Pools and spas constructed prior to the effective date of this subchapter with skimmers having equalizers shall comply with all submerged suction outlet requirements in ANSI/APSP/ICC.

(m) Maximum suction system flow rate. The maximum system flow rate in suction systems shall be determined in accordance with the ANSI/APSP/ICC-7 and ANSI/APSP-16 in effect at the date of construction.

(n) Return water velocity. The water velocity in return lines of pools and spas constructed on or after the effective date of this subchapter shall not exceed 8 feet per second except:

(1) the feet per second velocity between the pump strainer and filter shall meet the manufacturer's requirements; and

(2) the 8 feet per second velocity is not required to be met in water jets, spray nozzles, and wall nozzle returns.

(o) Return inlets and fittings. A pool or spa constructed or renovated on or after the effective date of this subchapter shall have return fittings that are provided and arranged to facilitate a uniform circulation of water and maintain a uniform sanitizer residual and pH throughout the entire pool and spa.

(1) A pool shall be provided with a minimum of one return inlet for every 300 square feet of pool surface area, or fraction thereof.

(2) A spa shall have a minimum of one return inlet for every 150 square feet of surface area with a minimum of 2 inlets per spa.

(3) Floor inlets shall be flush with the floor of the pool or spa.

(4) Return inlets shall be designed to not constitute a hazard to the user.

(5) Wall return inlets must not project more than 1 inch beyond the pool or spa wall surface and must be submerged at least 12 inches below the design water level.

§265.194. Pool and Spa Surface Skimming and Perimeter Overflow (Gutter) Systems.

(a) Surface skimming system required. A surface skimming system shall be provided for pools and spas. Surface skimming systems shall be listed and labeled in accordance with NSF 50. Where installed, surface skimming systems shall be designed and constructed to create a skimming action on the pool water surface when the water level in the pool is within operational parameters.

(b) UL listing for spa skimmers. Skimmers that are an integral part of a spa that has been listed and labeled with UL 1563 shall not be required to be listed and labeled in accordance with NSF 50.

(c) Surface skimming systems in certain pools. Installation of surface skimming systems is not required for the following pools if the pools are planned and designed by a licensed engineer:

- (1) wave action pools;
- (2) activity pools;
- (3) catch pools;
- (4) run out slide pools;
- (5) leisure river; or
- (6) vortex pools.

(d) Skimming system sizing. Skimming systems shall be designed to maintain effective skimming action throughout the pool or spa and to handle 100% of the water flow through the surface skimmers. Where automatic surface skimmers are used the following shall apply:

(1) In pools, one skimmer shall be provided for every 500 square feet of pool surface area or fraction thereof.

(2) In spas, one skimmer shall be provided for every 150 square feet of spa surface area or fraction thereof.

(e) Perimeter overflow (gutter) coverage. Where a gutter type surface skimming system is used as the sole surface skimming system, the system shall extend around not less than 50 percent of the pool or spa perimeter.

(f) Pool gutter system surge capacity. Where perimeter surface skimming systems are used, they shall be connected to a circulation system with a system surge capacity of not less than 1 gallon for each square foot of water surface except the surge capacity may be less than 1 gallon if the maximum user load capacity calculated in accordance with Figure 25 TAC §265.184(o)(2) (related to Maximum Number of Users in Class A Pools Not Being Used for Competitive Events and Class B and Class C Pools and Spas) is lowered. The capacity of the perimeter overflow system and related piping may be considered as a portion of the surge capacity.

(g) Spa gutter system surge capacity. Where a gutter system surface skimming system is used in a spa it shall be connected to the circulation system with a system surge capacity of not less than 2 gallons for each square foot of spa surface.

(h) Skimmer covers and equalizers. Skimmer covers located on a walking surface shall be securely seated, slip-resistant, of sufficient strength to withstand normal use, and not constitute a tripping hazard. For pools and spas constructed on or after the effective date of this subchapter skimmer equalizer lines shall not be installed.

(i) Automatic makeup water. Automatic makeup water supply equipment shall be provided to maintain continuous skimming in pools and spas constructed on or after the effective date of this subchapter.

§265.195. Electrical Requirements for Pools and Spas.

(a) Electrical equipment and lines. Electrical equipment and lines at pools and spas constructed or renovated after the effective date of this subchapter shall comply with:

(1) the NEC adopted by TDLR at the time of construction or renovation of the pool or spa; or

(2) the local electrical code to the extent the local electrical code is more restrictive than the NEC; and

(3) electrical requirements for aquatic facilities in accordance with NFPA 70.

(b) Licensed electrician. A pool or spa electrical system shall be installed, maintained, repaired or replaced by a licensed electrician in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305 and related rules.

(c) National testing and listing of electrical equipment. Electrical equipment for pools and spas shall be approved and listed for use in pools and spas by a nationally recognized electrical testing laboratory, such as UL, at the time of installation.

(d) Manufacturer's instructions for installation of electrical equipment. Electrical equipment and related electrical components for pools and spas shall comply with the manufacturer's installation instructions.

(e) Ground fault circuit interrupters (GFCIs) required. All electrical outlets in the pool or spa yard and in dressing or sanitary facilities serving a pool or spa shall be protected with a GFCI. Each electrical line to an underwater light in a pool or spa shall be protected with a GFCI located in the circuit breaker for the light at the breaker box or in an outlet through which the power for the light passes.

(f) GFCI compliance with the NEC. All GFCIs and circuit breakers shall comply with the NEC. Other electrical equipment, including pumps, must be grounded and bonded in accordance with the NEC. Pumps shall be both internally and externally grounded.

(g) Bonding. Pools and spas shall be bonded in accordance with the NEC or with UL 1563 as applicable.

(h) Plastic coated rebar. Plastic coated or epoxy coated rebar in pools or spas is prohibited.

(i) Indoor aquatic facilities and interior chemical storage spaces. For purposes of compliance with the NEC, an indoor aquatic facility and interior chemical storage spaces shall be considered a wet and corrosive environment.

(j) Wet and corrosive chemical storage. Electrical conduit shall not enter or pass through an interior chemical storage space, except as required to service devices integral to the function of the room, such as pumps, vessels, controls, lighting and safety devices.

(k) Sealed and inert. Where required, the electrical conduit in an interior chemical storage space shall be sealed and made of materials that will not interact with any chemicals in the chemical storage space.

(l) Protected lighting. Lamps, including fluorescent tubes, installed in interior chemical storage spaces shall be protected against breakage with a lens or other cover, or otherwise protected against release of hot materials.

(m) Overhead wiring and lines. Overhead wiring and power lines shall be elevated over the indoor or outdoor pool or spa in compliance with the NEC and NESC.

(n) Service personnel electrical disconnects. Electrical disconnects for pools and spas intended to protect service personnel shall be accessible to service personnel, located within sight of the pool and spa equipment and located at least 5 feet away from the inside walls of a pool or spa. Each disconnecting means shall disconnect all ungrounded conductors to the equipment it serves. If electricity to equipment is supplied through a line that plugs into an outlet and if the line may be disconnected by removing the plug from the outlet, a separate disconnect switch is not required for that equipment.

(o) Emergency shutoff switch required for spas only.

(1) An emergency shutoff switch shall be provided to disconnect power to circulation and jet system pumps and air blowers in a spa.

(2) Emergency switches shall be accessible to users, located within sight of the spa and located not less than 5 feet, but not greater than 10 feet from the inside walls of the spa.

(3) A sign notifying users of the location of the spa emergency shutoff switch shall be posted in a location that is visible from the spa and that meets the requirements in §265.208(e) of this subchapter (relating to Certain Requirements for Spas).

(4) For spas constructed or renovated on or after the effective date of this subchapter, the emergency shutoff switch, when activated, shall produce an audible alarm rated at not less than 80 decibel sound pressure level and illuminate a light near the spa that will operate continuously until the shutoff switch is operated that deactivates the alarm and the light. A sign notifying users that the spa should not be used when the alarm sounds, and the light is illuminated shall be provided and posted in a location that is visible from the spa meeting the requirements in §265.207(e) of this subchapter (relating to Request for Alternate Method of Disinfectant).

§265.196. Lighting Requirements for Pools and Spas Constructed or Renovated on or After the Effective Date of this Subchapter.

(a) Artificial lighting required. When a pool or spa is open for use during periods of low natural illumination, pools and spas shall provide artificial lighting. At a minimum artificial lighting shall be provided 30 minutes before sunrise and 30 minutes after sunset or until the pool is closed.

(b) Lighting provided for pools and spas.

(1) Lighting shall be provided to illuminate all areas of the pool and spa, including all suction outlets on the bottom of the pool or spa such that the suction outlets shall be visible and that the pool water is transparent and free from cloudiness.

(2) Illumination shall be sufficient to enable a lifeguard or other persons standing on the deck or sitting on a lifeguard stand adjacent to the pool edge to determine if a pool user is lying on the bottom of the pool or spa.

(3) The conditions in paragraphs (1) and (2) of this subsection are met when all suction outlets are visible from the edge of the deck at all times when artificial lighting is illuminated. When an eight-inch diameter disk or Secchi disk is placed at the bottom of the pool in the deepest point, it shall be visible from the edge of the pool deck at all times when artificial lighting is illuminated.

(c) Pool and spa deck lighting required. Overhead or underwater lighting, or both, shall be provided to illuminate the pool and deck areas. The lighting shall be listed and labeled and shall be installed in accordance with the NFPA 70 and the current NEC.

(d) Lighting levels required. Any combination of overhead and underwater lighting may be used to provide maintained illumination at the required lighting levels.

(1) Outdoor pools: Not less than 10 horizontal foot-candles (10 lumens per square foot or 108 lux) at the pool water surface.

(2) Indoor pools: Not less than 30 horizontal foot-candles (30 lumens per square foot or 323 lux) at the pool water surface.

(3) Deck area: Not less than 10 horizontal foot-candles (10 lumens per square foot or 108 lux) at the walking surface of the deck.

(e) Underwater lighting requirements in pools and spas. Underwater lighting shall provide not less than 8 horizontal foot-candles (8 lumens per square foot or 86 lux) at the pool water surface area. Where fixtures and lamps are rated in watts, not less than a total wattage of 1/2 watt/ft² of pool water surface for incandescent underwater lighting is required.

(f) Outdoor pool and spa underwater lighting exception. Where outdoor pools and spas are open for use from 30 minutes before sunset to 30 minutes after sunrise, or during periods of low illumination, underwater lighting may be excluded where:

(1) maintained illumination surface lighting levels are a minimum of 15 horizontal foot-candles (15 lumens per square foot or 161 lux); and

(2) all portions of the pool, including the bottom and main drains, are readily visible without glare.

(g) Dimmable or color changing lighting. Dimmable or changing color lighting shall not be used for underwater lighting.

(h) Emergency illumination. Pools, spas, and pool yards that operate during periods of low illumination shall be provided with emergency lighting that will automatically turn on to permit evacuation of the pool and securing of the area in the event of power failure.

(1) Emergency lighting facilities shall be arranged to provide initial illumination that is not less than 0.1 foot-candle (0.1 lumen per square foot or 1 lux) measure at any point on the water surface and at any point on the walking surface of the deck, and not less than an average of 1 foot-candle (1 lumen per square foot or 11 lux).

(2) At the end of the emergency lighting time duration, the illumination level shall be not less than 0.06 foot-candle (0.06 lumen per square foot or 0.65 lux) measured at any point on the water surface and at any point on the walking surface of the deck, and not less than an average of 0.6 foot-candle (0.6 lumen per square foot or 6.46 lux).

(3) A maximum-to-minimum illumination uniformity ratio of 40 to 1 shall not be exceeded.

(i) Security lighting. Where security lighting is provided, it shall be sufficient to illuminate the pool at all times during periods of low illumination or when the pool or spa is closed. Security lighting may be overhead lighting, underwater lighting, or a combination of both.

(j) Lighting levels of the pool or spa, regardless of the date of construction, may be reduced for scheduled special events such as movies, holiday events, or similar activities.

(k) Lighting for pools and spas constructed before the effective date of this subchapter. Pools and spas constructed before the effective date of this subchapter shall comply with the pool and spa lighting requirements in effect at the time the pool or spa was constructed. When a pool or spa is renovated, to the extent possible, lighting shall comply with the requirements of subsections (a) - (k) of this section.

§265.197. Heaters.

(a) Installation and replacement of heaters. Pools and spas constructed on or after the effective date of this subchapter and pre-existing pools and spas replacing heaters shall comply with the following requirements.

(b) Accessible on-off switch required. Electric power to heaters shall be controlled by a readily accessible on-off switch that is an integral part of the heater, mounted on the exterior of the heater or external to and within 3 feet of the heater.

(1) Operation of the switch shall not change the setting of the heater thermostat.

(2) Switches shall be in addition to a circuit breaker for the power to the heater.

(c) Gas fired heaters. Gas fired heaters shall not be equipped with continuously burning ignition pilots.

(d) Heated pool and spa cover requirements. Cover requirements for outdoor heated pools and spas.

(1) Outdoor heated pools and outdoor permanent spas shall have a vapor-retardant cover or other vapor-retardant means that is as effective as a cover.

(2) Where more than 70 percent of the energy for heating, computed over an operating season, is from a heat pump or solar energy source, covers or other vapor-retardant means shall not be required.

(e) Heaters and hot water storage tanks. Heaters and hot water storage tanks shall be listed and labeled in accordance with Figure 25 TAC §265.197(e).
Figure: 25 TAC §265.197(e)

(f) Heater sized. Heaters shall be sized in accordance with the manufacturer's specifications.

(g) Installation of heaters. Heaters, except solar thermal water heaters, shall be installed in accordance with the manufacturer's specifications and the International Fuel Gas Code, International Mechanical Code, International Energy Conservation Code, and NFPA 70 (NEC).

(1) A means shall be provided to monitor water temperature.

(2) A means to prevent public access to heater controls is required. Public access to heater controls is prohibited.

(h) Solar thermal water heaters. Solar thermal water heaters shall be installed in accordance with the International Mechanical Code. Solar thermal collectors and panels shall be listed and labeled in accordance with ICC 901/SRCC 100 or ICC 900/SRCC 300. Collectors and panels shall be permanently marked in a post-installation readily viewable location with manufacturer's name, model number, and serial number.

(i) Heater circulation system. Water flow through the heater bypass piping, back-siphonage protection, and the use of heat sinks shall be in accordance with the heater manufacturer's specifications. Where required by the manufacturer, heaters shall be installed with an automatic device that will ensure that the pump continues to run after the heater shuts off for the time period specified by the manufacturer.

(j) Special requirements for fuel-fired and electric appliances for spas. Components provided for water temperature controls shall be suitable for the intended application and shall be in compliance with the following.

(1) Water temperature regulating controls shall comply with UL-873 or UL 372. A means shall be provided to indicate the water temperature in the spa; or

(2) Water temperature regulating controls that are integral to the heating appliance and listed in accordance with the end use appliance standard shall be considered in compliance with this subsection.

(k) Water temperature limiting controls. Controls limiting water temperature in a pool or spa shall comply with UL 873 or UL 372. Water temperature at the heater outlets shall not exceed 140°F.

(l) Maximum spa water temperature. The maximum water temperature of a spa shall not exceed 104°F.

(m) Registration with TDLR. All pool and spa heaters with an input of 200,000 British thermal units (btu) or more shall be registered and installed in accordance with the requirements of TDLR.

§265.198. Pool or Spa Water Supply and Drinking Water for All Pools and Spas.

(a) Water supply. For all pools and spas, the initial fill water and make-up water used to maintain the water level and water used as a vehicle for sanitizers or other chemicals, for pump priming, or for other additions shall be from a public water system as defined by 30 TAC §290.38 (relating to Definitions) or from a water well that complies with the requirements of subsection (d) of this section.

(b) Water distribution system. All portions of the water distribution system shall be protected against backflow and back siphonage using a high hazard preventer such as a reduced-pressure-principle backflow preventer meeting the requirements of the American Society of Sanitary Engineering Standard 1013 2013, as amended, and approved for use in potable water systems possibly subjected to back siphonage or high back pressure or an air gap designed to ASME Standard A112.1.2.

(c) Over-the-rim spouts. Over-the-rim spouts shall be located under a diving board, adjacent to a ladder, or otherwise shielded so as not to create a hazard. The open end of the spout shall have a secured soft pliable end and shall not protrude more than 2 inches beyond the edge of the pool. The open end shall be separated from the water by an air gap of not less than 1.5 pipe diameters measured from the pipe outlet to the rim.

(d) Private water supply. If the water supply providing water to the pool or spa does not meet the TCEQ definition of a public water system, that water supply shall comply with the following requirements.

(1) Water pressure system shall:

(A) be designed to maintain a minimum pressure of 35 pounds per square inch (psi) at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection;

(B) be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions when the system is intended to provide firefighting capability; and

(C) maintain a minimum distribution pressure not less than 20 psi at any time.

(2) Coliform testing of the well water shall be performed each month the pool or spa is open for use. Records of any bacteriological tests shall be kept on site for three years and made available during inspection.

(3) Chemical analysis shall be for the secondary constituent levels set out by 30 TAC §290.118 (relating to Secondary Constituent Levels).

(A) Water samples for chemical analysis obtained from the entry point to the distribution system shall be submitted to a laboratory certified by the TCEQ once every 3 years.

(B) Records of all chemical testing shall be kept on site for three years and made available during inspection.

(d) Drinking water provided. At least one drinking water fountain or other source of drinking water such as bottled water, shall be provided and available for pool and spa users at all times the pool or spa is open for use. Glass containers shall not be allowed on a deck, in the pool or spa, or anywhere within the pool/spa enclosure.

(1) The drinking water is not required to be chilled.

(2) The drinking water is not required to be located in the pool or spa yard.

(3) When the drinking water is not located in the pool or spa yard, a sign shall be posted so that it is visible to users that informs the users of the location of the drinking water.

(e) Hose bibs. Hose bibs in the pool or spa yard shall be protected with a vacuum breaker.

§265.199. Wastewater Disposal for Pools and Spas.

(a) Filter backwash wastewater disposal. Filter backwash and drainage water that is not reused in the pool or spa shall be discharged or disposed of in accordance with the requirements of the TCEQ or local regulatory authority.

(b) No direct connection. No direct mechanical (hard) connection shall be made between the pool or spa, the drains, the chemical treatment equipment, or the system of piping and the sanitary sewer system, septic system, or other wastewater disposal system.

(c) Pool and spa backwash. Backwash water and draining water shall be discharged through an air gap formed by positioning the discharge pipe opening at least two pipe diameters above the overflow level of any barriers that could cause flooding and submergence of the discharge opening or by other means in accordance with TCEQ requirements. Splash screening barriers are permitted as long as the barriers do not destroy air gap effectiveness.

(d) Wastewater post treatment. Where necessary, filter backwash water and drainage water shall be treated either chemically or through the use of settling tanks to eliminate or neutralize chemicals, diatomaceous earth, and other contaminants in the water that exceed discharge limits set by TCEQ or the local regulatory authority.

(e) Other wastewater or drainage water disposal facilities or lines. The location of other wastewater disposal facilities or lines shall meet applicable standards of 30 TAC, Chapter 307, Texas Surface Water Quality Standards, Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, Chapter 311, Watershed Protection, and Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution, or local regulatory authority.

§265.200. Disinfectant Equipment and Chemical Feeders.

(a) Disinfectant agent. Pool and spa water shall be continuously disinfected by a disinfectant agent, chlorine or bromine, with a residual that can be easily measured by simple and accurate field tests.

(b) Environmental Protection Agency (EPA) registration. A sanitizer, disinfectant, or other chemical used to treat the water shall be EPA-registered under the FIFRA for use in pools and spas.

(c) Chlorine gas prohibited. Use of compressed chlorine gas is prohibited.

(d) Training and protection. Personnel responsible for the operation of the disinfectant agent and other potentially hazardous chemicals, whether it is the trained and certified operator, or someone assigned to maintain a pool or spa when the trained and certified operator is not on site, shall be properly trained and provided with appropriate protective equipment and clothing, including rubber gloves and goggles, safety information, and safety data sheets. Safety data sheets covering all chemicals for which personnel are responsible shall be kept onsite and be readily available.

(e) Application of disinfectant in a pool or spa. Automated controllers that adjust chemical feed based on demand or manually, or remotely managed controllers for pool and spa disinfection and pH control shall be installed.

(1) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be achieved under all conditions.

(2) Disinfectant feed systems shall have the capacity to maintain up to 5 parts per million (ppm) (or equivalent bromine level) in outdoor pools and spas and up to 3 ppm chlorine (or equivalent

bromine level) in indoor pools and spas under all conditions of intended use.

(f) Hand distribution of chemicals. Hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algacides is prohibited when users are in the pool or spa. Before users are allowed to reenter the pool or spa following hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algacides the following shall apply:

(1) tests of disinfectant levels and pH shall be performed;

(2) the tests shall be performed 30 minutes after hand distribution; and

(3) no one may reenter the pool or spa until the disinfectant levels and pH are checked and are found to be within the required range for disinfectant level and pH.

(g) Bulk chemical tanks. All chemical bulk and day tanks shall be clearly labeled to indicate the tank's contents.

(h) Chemical storage areas.

(1) Disinfectant agents, other chemicals, and feed equipment shall be stored so that pool and spa users do not have access.

(2) Dry chemicals shall be stored off the floor or in water-proof containers in a dry room and protected against flooding or wetting from floors, walls and ceiling.

(3) Chlorine compounds shall not be stored in the same storage room or storage area as petroleum products.

(i) Chemical feeders. Chemical feeders for pools and spas shall meet NSF Standard 50 and shall operate in a manner that does not invalidate the NSF 50 rating for the system and system equipment. Chemical feeders shall:

(1) be installed, maintained, and operated in accordance with the manufacturer's instructions;

(2) be installed so that the solution is introduced downstream from the filter and heater and, when possible, at a point lower than the heater outlet fitting or according to manufacturer's instructions;

(3) incorporate failure-proof features so that the chemical cannot feed into the pool or spa, the pool or spa piping system, or water supply system, or into the pool and spa enclosure area if equipment or power fails; and

(4) if the system has chemical feed pumps, be wired so they cannot operate unless there is adequate return flow to properly disburse the chemical in the pool or spa and be regulated to ensure constant feed with varying supply or back pressure.

§265.201. Safety Features for Pools and Spas.

(a) Handholds and coping. Where the depth of the water below the design waterline of a pool or spa exceeds 42 inches and there is no seat or bench, swimout-installed handholds along the perimeter shall be provided.

(b) Handholds in wave action pools or leisure rivers. Handholds shall not be required for wave action pools, surf pools, and leisure rivers.

(c) Location and placement of handholds. Handholds shall be located not more than 12 inches above the design waterline and horizontally spaced not greater than 4 feet apart.

(d) Handhold type. Handholds can include one or more of the following:

(1) top of pool deck or coping;

(2) secured rope;

(3) rail;

(4) rock;

(5) ledge;

(6) ladder; or

(7) stair step.

(e) Safety float lines and floor markings.

(1) For Class A pools not being used for competitive events:

(A) A rope and float line shall be provided between 1 and 2 feet on the shallow water side of the 5-foot depth. The floats shall be spaced at not greater than 7-foot intervals; and the floats shall be secured so they will not slide or bunch up. The stretched rope and float line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by users.

(B) Rope and float lines shall be securely fastened to wall or deck anchors made of corrosion-resisting materials and of the type that is recessed or removable and shall have no projection that will constitute a hazard when the line is removed.

(2) Class B pools that are over 5 feet deep shall comply with the following:

(A) The transition point of the pool from the shallow area to the deep area of the pool shall be visually set apart with a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom.

(B) A rope and float line shall be provided meeting the requirements of paragraph (1)(A) and (B) of this subsection.

(3) For Class C pools that are over 5 feet deep:

(A) The transition point of the pool from the shallow area to the deep area of the pool shall be visually set apart by a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom.

(B) A rope and float line may also be used in addition to the transition line and shall meet the requirements of paragraph (1)(A) and (B) of this subsection.

(4) Certain pools exempted. 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.

(5) Where an activity pool constructed on or after the effective date of this subchapter or an activity pool constructed prior to effective date that is being renovated has a user accessible depth greater than 5 feet, the floor shall be visually set apart with a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom just above the 5-foot water depth.

(f) Depth markers in pools constructed or renovated on or after October 1, 1999. Depth markers in pools constructed, renovated, or that are replacing depth markers on or after October 1, 1999, shall meet the following.

(1) Depth markers shall be permanent, and can consist of metal tiles or letters, ceramic tiles, and engraved concrete with letters and numbers filled with Lithichrome enamel paint or an equivalent paint. The numbers and letters shall be not less than 4 inches in height, shall be clearly marked in a color contrasting to the background on which they are applied, and located on the deck and the vertical wall of the pool at:

(A) the minimum and maximum water depths;

(B) on both sides and at each end of the pool; and

(C) at all points of slope change.

(2) Depth markers shall be installed at water depth increments not to exceed 2 feet and shall be spaced at intervals not to exceed 25 feet and shall comply with the following:

(A) Depth markers shall have units of measurement in feet, fractions of a foot, or inches. The depth markers must be spelled out in "feet" or "inches" or abbreviated as "FT" or "IN".

(B) Depth markers may also use units of measurement in meters. The depth markers must be spelled out in "meters" or abbreviated as "M."

(3) Depth markers shall indicate the actual pool depth within \pm 3 inches at normal operating water level where measured 3 feet from the pool wall or at the tangent point where the cove radius meets the floor, whichever is deeper.

(4) Depth marker positions.

(A) Depth and unit markers on the pool wall shall be positioned in the top 4-1/2 inches of the pool wall just under the coping and be positioned to be read by a user while in the pool.

(B) Depth and unit markers on decks shall be slip resistant, placed within 18 inches of the water's edge, and positioned to be read while standing on the deck facing the water.

(C) Deck depth markers shall not be placed on the deck above entry/exits including steps, ladders, recessed treads, water lounges, and beach entries of the pool.

(5) Sidewall depth and unit markers shall not be required of a beach entry pool on the beach entry.

(6) Vanishing edge and overflow gutter pool depth markers shall comply with the following:

(A) On roll out gutter pools or other pools without a vertical wall that does not have at least 3 inches of pool wall above the operating water level, the depth markers and any unit markers shall be readable from the pool and shall be placed in the first 6 inches of deck, or on a vertical wall or fence, if one exists, within 10 feet of the water's edge. If there is no practical location for installation of vertical depth markers, no depth or unit markers shall be required in those areas.

(B) On vanishing edge pools, depth markers and any unit markers shall not be required on that portion of the vanishing edge that has no pool wall above the design water level and shall not be required on that portion of the vanishing edge that is inaccessible to patrons on the deck. Sidewall and deck markers must be installed on the vanishing edge immediately at the end of the vanishing edge in the top 4.5 inches of the pool.

(7) Depth markers are not required on wave pool or surf pool decks.

(g) Depth markers for spas. Spa depth markers shall comply with the following:

(1) Depth markers shall be permanent with numbers and letters not less than 4 inches in height and shall 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.

(2) There shall not be less than two depth markers for each spa, regardless of spa size and shape.

(3) Depth markers shall be spaced at not more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.

(4) Deck depth markers shall be positioned to be read while standing on the deck and shall be slip resistant.

(5) Depth markers shall have units of measurement in feet, fractions of a foot, or inches. The depth markers must be spelled out in "feet" or "inches" or abbreviated as "FT" or "IN".

(6) Depth markers may also use units of measurement in meters. The depth markers must be spelled out in "meters" or abbreviated as "M".

(h) Movable bottom pool and spa depth markers. Pools or spas with movable floors shall have a sign indicating movable floor and varied water depth. The posted water depth shall be the water level to the floor of the pool or spa measured vertically 3 feet from the wall of the pool or spa. A sign shall be posted to inform the user that the pool or spa has a varied depth and refer to the sign showing the current depth.

(i) Deck "NO DIVING" markers for pools.

(1) The warning words "NO DIVING" and the international symbol for no diving shall be clearly marked on the pool deck with contrasting colors and letters at least 4 inches high. The warning shall be placed at least every 25 feet or fraction thereof, around the pool where the water depth is 5 feet or less. At least two warnings including the "NO DIVING" and the international no diving symbol, shall be provided at the extreme ends of the minimum depth and at the extreme ends of the maximum depth at 6 feet on each side of the pool or on each of the longer dimensional sides of the pool. These warnings shall be slip-resistant. The warning "NO DIVING" and the international no diving symbol on the deck shall be within 18 inches of the water's edge and positioned to be read while standing on the deck facing the water. The international no diving symbol consists solely of a diver's profile in a circle with a 45-degree slash through the diver and may be red and/or black on a light background.

(2) If a permanent structure above the pool deck is within 5 feet of the water's surface, the international no diving symbol and the warning "NO DIVING" in contrasting colors and letters at least 4 inches high, shall be permanently affixed to the structure so that such warnings are visible to persons who may attempt to use the structure for diving. The international no diving symbol and the warning are not required on diving boards or diving platforms, ADA-compliant chair lifts, slide flumes, lifeguard stands, bridges, or waterwalks.

(3) Deck "NO DIVING" markers and international symbol for no diving shall not be placed on the deck above entry/exits, including steps, ladders, recessed treads, water lounges, and beach entries of the pool.

(4) Deck "NO DIVING" markers and the international symbol for no diving are not required for spas.

(5) "NO DIVING" markers are not required on the interior tile line of a pool or spa.

(j) Signs for pools.

(1) Signs shall be in the pool yard, securely mounted as applicable, and readily visible to the pool user. Signs shall be posted within the pool yard unless otherwise stated within this subchapter.

(2) Sign panels shall be durable for the weather conditions and shall be resistant to damage from guests. The message surface shall be clean and smooth and shall readily accept paint or precut lettering adhesives.

(3) Pictograms should be included whenever possible. When pictograms are included on the signs they shall always be accompanied by text indicating the same message. Pictograms shall be designed to illustrate one clear and specific meaning to all individuals.

(4) Theming or artwork applied to signs shall not invade the message panel. Signs shall have a distinct border.

(5) Multiple signs may be used, or the messages may be combined on one sign.

(6) Safety signs for pools constructed on or after the effective date of this subchapter or safety signs that are replaced at pools constructed prior to the effective date shall be in compliance with Figure 25 TAC §265.201(j)(6).

Figure: 25 TAC §265.201(j)(6)

(7) In areas of Texas where a majority of citizens are non-English speaking, in addition to signs in English, signs and other written warnings or information required by these standards may be posted in the predominant language.

(k) Instructional signs for pools such as wave pools, slide pools, and other pools. requiring additional instructions or information. Instructional signs in pools and spas constructed, renovated, or rehabilitated on or after the effective date of this subchapter shall be provided and inform guests of specific instructions for the use of the ride. Instructional signs shall be located along the queue approaching the ride dispatch area. Lettering shall be a minimum of 1-inch in height. Signs for waterslides shall indicate riding instructions, warnings, and requirements in accordance with the manufacturer's recommendations and be posted at the waterslide entry.

(l) Ring buoy, throw rope, and reaching pole. A pool shall 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. If the pool has over 6000 square feet of surface area an additional ring buoy, throw rope, and reaching pole shall be provided for each additional 4000 square feet of surface area or fraction thereof.

(1) The reaching pole shall be light, strong, non-telescoping, and at least 12 feet long. The pole shall be constructed of fiberglass or other material that does not conduct electricity and shall have a body hook or shepherd's crook with blunted ends attached. The reaching pole shall be in the immediate vicinity of the water and accessible to users.

(2) The throwing rope shall be 1/4-inch to 3/8-inch in diameter, with a length at least two-thirds the maximum width of the pool. A USCG-approved ring buoy shall be attached to the throwing rope.

(m) Emergency summoning device. The pool or spa shall 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 at all times the pool or spa is open for use. Where a pool or spa has a seasonal operation schedule, the emergency summoning device shall be functioning 24 hours a day during the entire season the pool or spa will be in use. Clear operating instructions for the emergency summoning device shall be provided.

(1) A fixed location telephone, emergency monitoring device, or alternative communication system shall be visible, 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) A telephone or emergency monitoring device shall not be answered by an on-site office. The alternative communication sys-

tem shall not be answered by an on-site office unless the alternative communication system complies with paragraph (5) of this subsection.

(3) A telephone shall be capable of making calls to 911 dispatch or to an emergency service.

(4) An emergency monitoring contact device, when activated, shall directly connect to a 24-hour monitoring service, or directly to 911 dispatch or to emergency medical services.

(5) An alternative communication system that contacts an on-site office may be used if the pool 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 mounted in the pool yard for public use and labeled as the emergency phone may be used if the cell phone is activated by a service provider.

(7) A sign shall 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, GPS location, or other location identifying information in letters a minimum of 1-inch in height.

§265.202. Lifeguard Personnel Requirements and Standards at Pools.

(a) Lifeguards required. Pools and spas shall be required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is being operated as a Class C pool or spa, but is also made available to the public, with or without a fee, shall meet Class B lifeguard standards. A minimum of two lifeguards shall be provided at:

(1) Class A pools during competitive events;

(2) Class B pools at all times the Class B pool is open;

(3) any pool where a user enters the water from any height above the deck or wall, including from diving boards, diving platforms, drop slides, waterslides, starting platforms, zip lines, or climbing walls that are open for use;

(4) any wave or surf pool; or

(5) any pool while it is being used for the recreation of youth groups, including youth camps, visiting childcare groups, or visiting school groups.

(b) Closing diving boards, diving platforms, drop slides, waterslides, starting platforms, zip line or climbing wall. A diving board, diving platform, drop slide, waterslide, starting platform, zip line, climbing wall, or any other structure that allows entry from any height above the deck will be considered open unless there is a lock or chain, or other method used to prevent access to these structures and a sign is posted on the entry to these structures stating that they are closed.

(c) Lifeguards at spas. Lifeguards are not required at spas.

(d) Lifeguard staffing plan required. A staffing plan specifying the number of on-duty lifeguards shall be prepared by the pool operator, lifeguard supervisor, or pool owner and shall be sufficient to provide adequate supervision and close observation of all users at all times. A copy of the plan shall be available on site and be provided to a department or local regulatory authority inspector upon request.

(e) Surveillance area. Each lifeguard shall be given an assigned surveillance area commensurate with ability and training. The lifeguard shall be capable of viewing the entire assigned surveillance area.

(f) Other duties shall not distract. Lifeguards conducting surveillance of users shall not be assigned duties that would distract the lifeguard's attention from proper observation of the users, or that would prevent immediate assistance to persons in the water.

(g) Lifeguard rotation required. When lifeguards are provided or required, a rotation procedure for lifeguards is required. Lifeguards shall have sufficient break time from guarding activities as recommended by ARC or equivalent aquatic safety organization.

(h) Lifeguard training and drills. When lifeguards are provided or required, alertness and response drills and any other training shall be provided as follows:

(1) A pre-season training program.

(2) A continual "in-service" program totaling a minimum of 60 minutes for every 40 hours of employment by a lifeguard or other aquatic safety personnel.

(3) Review of the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood.

(4) Performance audits as recommended by the ARC, Young Men's Christian Association, or by an equivalent aquatic safety organization.

(5) Facility Emergency Action Plans for events such as submersions, suspected spinal injury, medical emergencies, thunderstorms, missing persons, bad weather, or chemical exposure.

(i) Emergency action plan. Any pool or spa emergency action plan shall contain the following:

(1) a list of emergency phone numbers and contacts, including the trained and certified operator;

(2) the location of the first-aid kit and other rescue equipment such as the AED, BVM, and backboard;

(3) a response plan for inclement weather such as thunderstorms, lightning, or high winds, including evacuation areas; and

(4) a plan following the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood.

(j) Lifeguard records. All training shall be reviewed as necessary and kept current. Lifeguard records shall be kept on site or shall be made available to the department or local regulatory authority within 3 business days of the inspection. The following records pertaining to lifeguards shall be kept 3 years:

(1) each lifeguard's certification including the expiration date; and

(2) records of the most current training, including date, length of training, training topic(s), trainer name(s), and attendees.

(k) Lifeguard access to safety equipment. Lifeguards shall have access to safety equipment including:

(1) an Occupational Safety and Health Administration (OSHA)-compliant, minimum 24-unit first aid kit housed in a durable weather-resistant container that is fully stocked and ready for use. The kit shall include disease transmission barriers and cleaning kits meeting OSHA standards;

(2) at least one backboard equipped with a head immobilizer and with sufficient straps to immobilize a person to the backboard,

in locations sufficient to affect a two-minute response time to an incident; and

(3) at least one portable AED and one BVM kept in a secure location that can be easily and quickly accessed by lifeguards or other trained personnel.

(l) Platforms or stands for lifeguards only are required where water depth is greater than 5 feet and shall have a protective umbrella or sunshade high enough to give lifeguards a complete and unobstructed view of the assigned area of surveillance for the lifeguards.

(m) Personal lifeguard equipment. Each lifeguard shall be provided with the following personal equipment:

(1) uniform attire that readily identifies the lifeguard as a staff member and a lifeguard;

(2) a rescue tube with attached rope or strap;

(3) personal protective devices including a resuscitation mask with one-way valve and non-latex, non-powdered, single use disposable gloves worn as a hip pack or attached to the rescue tube; and

(4) a whistle or other signaling device for communicating to users, other lifeguards, or staff.

§265.203. Pool Yard and Spa Yard Enclosures.

(a) Fence or barrier required. All pool yards and spa yards shall be completely enclosed by a fence, wall, or equivalent barrier. An enclosure can surround multiple pools and spas within an aquatic facility.

(b) Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas. Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas shall meet the following requirements.

(1) Class A and B pools and spas and pools and spas at resident youth camps shall have an enclosure consisting of a fence, portion of a building, wall or other durable enclosure or an equivalent structure.

(2) A building that serves as part of the enclosure shall have doors or gates that open into the pool or spa yard only if:

(A) any doors or gates between the building and the pool or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa; and

(B) the room does not have any door or gate openings to the outside of the pool or spa yard enclosure.

(3) The enclosure, including doors and gates, shall:

(A) have a minimum effective perpendicular height of at least 6 feet as measured from the ground surface on the outside of the fence;

(B) have no openings in the enclosure, either through or under it, which would allow passage of a 4-inch sphere;

(C) have no horizontal mid-rail and be designed and constructed so that it cannot be readily climbed; and

(D) have all doors, gates, and windows in the enclosure directly and continuously supervised by staff at the pool during hours of operation or locked to prevent unauthorized entry.

(4) Gates and doors of Class A and Class B pool and spa enclosures. Gates and doors of Class A and Class B pool and spa enclosures shall be capable of being locked and shall be locked if the pool

or spa is not open for use. The gate or door shall be locked if the pool or spa is closed for repairs, hazards, weather related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(c) Enclosures for pools and spas subject to Texas Health and Safety Code, Chapter 757. A pool or spa that is subject to Texas Health and Safety Code, Chapter 757, shall have an enclosure as required in Chapter 757.

(d) Enclosures for all other Class C pools and spas. A Class C facility not subject to Texas Health and Safety Code, Chapter 757 shall have an enclosure that complies with this subsection and subsection (h) of this section, referring to indoor pool and spa enclosures, of this section.

(1) The pool or spa yard enclosure shall consist of one or a combination of a fence, portion of a building, wall, or other durable enclosure. The enclosure shall comply with the following:

(A) The enclosure must have a minimum perpendicular height of at least 48 inches as measured from the ground surface on the outside of the enclosure.

(B) Openings in or under the enclosure shall not allow the passage of a 4-inch diameter sphere.

(C) Planters, light poles, and site furnishings shall not be permitted within 36 inches, measured horizontally, from the outside of the enclosure. Tree limbs shall be kept trimmed to prevent a tree or the limbs of the tree to be used by children to climb over the enclosure.

(D) Chain link fencing material is prohibited for pools and spas constructed on or after the effective date of this subchapter.

(E) The enclosure shall have no horizontal mid-rail and be designed and constructed so that it cannot be readily climbed. The distance between horizontal members of a fence that is 48 inches in height shall be no less than 45 inches.

(F) Windows that are capable of being opened are not allowed as a part of a pool or spa enclosure unless those windows are above the required enclosure height. Doors or gates of a building that are capable of being opened are not allowed as part of an enclosure unless:

(i) the doors or gates between the building and pool yard or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa;

(ii) the room does not have any door or gate openings to the outside of the pool yard or spa yard enclosure; or

(iii) the pool or spa yard is indoor and complies with the requirements of subsection (h) of this section.

(2) Gates and doors of the pool or spa enclosure subject to this subsection shall:

(A) be equipped with self-closing and self-latching devices meeting the definition in §265.182(85) of this subchapter (relating to Definitions), that are designed to close and keep the gate or door securely closed and latched at all times the gate or door is not in use;

(B) open outward away from the pool or spa;

(C) have hand activated door or gate opening hardware located at least 3-1/2 feet above the deck or walkway. Pools and spas constructed or that renovate the pool/spa fence and gates on or after the effective date of this subchapter shall have the gate opening hardware only on the pool/spa side of the gate and the gate and fence shall have

no openings greater than 1/2 inch within 18 inches of the door or gate opening hardware;

(D) be capable of being locked and be locked if the pool or spa is not open for use; and

(E) be locked if the pool or spa is closed for repairs, hazards, weather related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(e) Entry into pool yard or spa yard. Pool yard and spa yard enclosures shall be constructed so that all persons will be required to pass through an enclosure gate or door in order to gain access to the pool or spa. All gates and doors exiting a pool yard shall open into a public area or walkway accessible by all users of the pool or spa.

(f) Propping open gates prohibited. No gate or door into a pool yard or spa yard shall be propped open or remain propped open unless an agent, employee, or contractor of the owner is present and doing construction, maintenance, or repair work in the pool yard or spa yard or on its enclosure that reasonably requires the gate to be propped open.

(g) Service gates or doors. Service gates or doors, used only by service personnel such as chemical delivery services, facility maintenance services, and lawn and landscaping services are not required to be self-closing and self-latching. Service gates and doors shall not be used as a user entry or exit and shall be kept securely closed and locked when not in actual use by service personnel.

(h) Enclosures for pools and spas in a building. For pools and spas that are in a building, the interior or exterior building walls may be designated as the enclosure.

(1) Entry/exit gates or doors into the pool or spa located in a building shall comply with the requirements for entry/exit gates and doors for Class A, Class B, or Class C pool and spa gates and doors in subsections (b), (c), and (d) of this section as applicable.

(2) Elevator doors are not to be used as entry/exits into the pool or spa yard when the pool or spa is inside a building or accessed from the interior of a building.

(3) Where separate indoor and outdoor pools and spas are located at the same site a door or gate may be provided between them if they comply with all the requirements in subsections (b), (c), and (d) of this section for Class A, Class B, and Class C pool and spa gates and doors, as applicable, except that if the gate or door between the indoor and outdoor pool or spa does not provide an exit from the pool or spa yard, that gate or door may open inward into the outdoor pool or spa yard.

§265.204. Dressing and Sanitary Facilities at Pools and Spas (Bath-houses).

(a) Fixture design. Fixtures at dressing and sanitary facilities shall be designed so that the fixtures are readily cleanable.

(b) Fixture installation. Fixtures at dressing and sanitary facilities shall be installed in accordance with plumbing codes in effect at the time the fixtures are installed.

(c) Cleaning of sanitary facilities. Dressing and sanitary facilities shall be cleaned as necessary to maintain sanitary conditions at all times.

(d) Ventilation of sanitary facilities. Adequate ventilation shall be provided in dressing and sanitary facilities to prevent objectionable odors.

(e) Dressing and sanitary facilities at Class A, Class B and Class C pools and spas. Class A, Class B, and Class C pools and spas constructed before the effective date of this subchapter shall provide

dressing and sanitary facilities in accordance with the requirements in place at the time of construction. Dressing and sanitary facilities shall be provided for Class A, Class B, and Class C pools and spas constructed or renovated on or after the effective date of this subchapter and must comply with the following requirements.

(1) Separate dressing and sanitary facilities for men and women shall be provided. The rooms shall be well lit, drained, and ventilated, in accordance with good public health engineering practices in place at the time of construction. They shall be planned and developed so that sanitation is maintained. An appropriate number of dressing rooms that can accommodate families are allowed.

(2) Partitions between portions of the dressing room area, screen partitions, shower, toilet, and dressing room booths shall be constructed of durable material not subject to damage by water and shall be designed so that waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

(3) An adequate number of hose bibs and a hose of adequate length shall be provided for washing down all areas of the dressing facility interior. Adequate cross-connection control devices, approved by TCEQ or the local regulatory authority shall be provided. When not in use, hoses shall be stored in such a manner as to prevent a trip hazard.

(4) Floors in dressing rooms and sanitary facilities shall have a smooth, easy-to-clean, impervious-to-water, slip-resistant surfaces. The floors shall have a minimum dynamic coefficient of friction at least equal to the requirements of ANSI A137.1 as measured by the DCOF AcuTest.

(5) Lavatory, shower, and toilet facilities shall be located to encourage use of the sanitary facilities by users of the pool or spa.

(6) Cleansing showers and lavatories shall be provided with hot and cold running water.

(7) Sanitary napkin receptacles. Sanitary napkin receptacles shall be provided in each water closet compartment for females and in the area of showers for female use only.

(f) Number of fixtures at Class A, Class B, and Class C pools and spas constructed on or after the effective date of this subchapter. The number of fixtures at Class A, Class B, and Class C pools and spas constructed on or after the effective date of this subchapter shall comply with Figure 25 TAC §265.204(f) and shall be based upon the total user loads found in Figure 25 TAC 265.184(o)(2) Maximum number of users in Class B and Class C pools.

Figure: 25 TAC §265.204(f)

(g) Sanitary facilities at apartments, hotels, condominiums, or motels. Sanitary facilities for pools and spas in apartments, hotels, condominiums, or motels are not required to have the following:

(1) cleansing or rinsing showers;

(2) dressing rooms;

(3) toilets;

(4) urinals unless the facility has toilets for persons using the pool or spa;

(5) hand drying towels unless the facility has a lavatory;

(6) baby changing table unless a lavatory with a faucet and soap are provided; or

(7) a lavatory unless a faucet and soap are provided and there is proper wastewater disposal.

(h) Cleansing showers not required. Cleansing showers are not required at homeowners' association (HOA) or property owner's association (POA) pools and spas.

(i) Additional requirements for all sanitary facilities. Where sanitary facilities are required or provided they shall comply with the following:

(1) Soap dispensers with liquid or powdered soap shall be provided at each lavatory. The dispenser shall be metal or plastic, with no glass permitted.

(2) When provided, mirrors shall be shatter resistant.

(3) Toilet paper holders and toilet paper shall be provided at each toilet.

(4) Covered waste receptacles shall be provided in the toilet area or dressing room areas.

(5) Single-use hand drying towels or hand drying devices shall be provided near the lavatory.

§265.205. Operation and Management of Pools and Spas.

(a) Required operator certification. All Class A, Class B, and Class C pools and spas shall be maintained under the supervision and direction of a properly trained and certified operator.

(1) The operator is not required to be on site at all times the pool or spa is open.

(2) The operator may be responsible for multiple pools and spas and shall ensure any on-site staff is properly trained in day-to-day pool and spa operations and maintenance.

(3) The trained and certified operator's name and contact information shall be made available to on-site staff, such as lifeguards, and to property management companies, or property managers, and shall be made available at the request of the department or a local regulatory authority.

(b) Operator training and certification. Operator training and certification can be obtained by completion of one of the following courses or their equivalent:

(1) the NRPA, "Aquatic Facility Operator;"

(2) the PHTA, "Certified Pool Operator;"

(3) the ASPSA, "Licensed Aquatic Facility Technician;" or

(4) an equivalent course which requires testing and provides certification that is approved by the local regulatory authority.

(c) Operational standard for all pools and spas. Pools and spas shall be required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is being operated as a Class C pool or spa, but is also made available to the public, with or without a fee, shall meet Class B operational standards.

(d) Water clarity standards for pools and spas. The water in a pool or spa shall be clear such that the bottom is clearly visible while the water is static at all times the pool or spa is open or available for use. Visual occlusion by sediment or other matter shall be checked before opening and periodically, as necessary, while the pool or spa is in use. The pool or spa shall be open for use only if the bottom and the main drains, when present, are clearly visible.

(e) Off season water quality. When an outdoor pool or spa is not in use for an extended period time, such as off-season, clarity shall be maintained, and algae growth shall be prevented; however, other water quality parameters as required in §265.206 of this subchapter

(relating to Water Quality at Pools and Spas), do not need to be maintained. Other methods may be used to maintain pools and spas during extended periods of non-use if approved by local regulatory officials in writing and water clarity is maintained.

(f) Off season pool and spa safety. When a pool or spa is not in use after seasonal operation, while under construction, renovation, or for any reason, the facility shall not be allowed to give off objectionable odors, become a breeding site for insects, or create any other nuisance condition or hazard.

(g) Domestic animals prohibited at pools and spas. Domestic animals and other pets shall not be allowed within a pool or spa enclosure area or in the pool or spa. Service animals shall be allowed on the deck and within the pool enclosure, but not in the pool. Pools and spas must comply with the provisions set forth in 28 CFR §36.302(c) concerning service animals.

(h) Actual water level at pools and spas. The actual water level in pools and spas shall be maintained within the design operating water level range of the rim, gutter, or skimmer system. When the water level is below the operating water level range of the pool or spa rim, gutter, or skimmer system, the pool or spa shall be closed.

(i) Use of personal floatation devices (PFD). No person shall be prohibited from the use of a USCG-approved PFD in a pool or spa.

(j) Proper use and protection from chemicals in pools and spas. Personnel in charge of maintaining a pool or spa, whether it is the trained and certified operator, or someone assigned to maintain a pool or spa when the operator is not on site, shall be properly trained in accordance with §265.200 of this subchapter (relating to Disinfectant Equipment and Chemical Feeders).

(1) The use of chemicals at pools and spas shall be according to the chemical manufacturer's directions.

(2) No chemical shall be used in a way that violates the manufacturer's instructions for the chemical feed system or NSF 50 certification of that chemical feed system.

(k) Food and beverages. Food and beverages may be consumed in the pool or spa only if it is privately owned and operated. Consumption of food and beverages in a pool or spa that is not privately owned and operated is prohibited.

(l) Glass containers prohibited. Food and beverages shall be served only in non-breakable containers. Glass containers shall not be allowed on a deck, in the pool or spa, or anywhere within the pool/spa enclosure.

(m) Covered trash receptacles required. Covered trash containers shall be provided where food and beverages are allowed or served.

§265.206. Water Quality at Pools and Spas.

(a) Environmental Protection Agency (EPA) registration. A sanitizer, disinfectant, or other chemical used to treat the water shall be EPA-registered for use in pools and spas under the Federal Insecticide, Fungicide, and Rodenticide Act and shall be a pesticide as defined by the EPA.

(b) Required chemical levels. Water quality for a pool or spa shall meet the following criteria when the pool or spa is open for use. The water quality parameters in Figure 25 TAC §265.206(b) shall apply to both pools and spas unless otherwise indicated. Figure: 25 TAC §265.206(b)

(c) Cyanuric acid. Cyanuric acid shall not be used in any indoor pool or spa or in therapy pools.

(d) Water clarity. Water clarity shall be sufficient such that an eight-inch black disk or Secchi Disk on the floor at the deepest part of the pool can be clearly and immediately seen by an observer on the water surface above the disk or by someone standing on the deck closest to the disk.

(e) Reliable means of water testing required. A reliable means of testing for pH, free and total (combined) chlorine, bromine, cyanuric acid (when used) alkalinity, and calcium hardness, shall be provided at the pool or spa when the pool or spa is open for use.

(f) DPD chemical test. Free available chlorine levels and bromine levels shall be determined by the use of the DPD method.

(g) ORP reading frequency. ORP readings shall be recorded at the same time sanitizer and pH tests are performed where in-line ORP meters are used.

(h) Storage of test kits and reagents. Test kits and reagents shall be stored according to the manufacturer's instructions and protected from extreme heat and cold and from exposure to water, chemicals, petroleum products or any other element or environment that could adversely affect the efficacy of water quality test results.

(i) Testing reagent accuracy. Testing reagents shall be changed at frequencies recommended by the manufacturer to ensure accuracy of the tests.

(j) Chemical balance. Water in the pool or spa shall be chemically balanced. Testing methods to determine the chemical balance of the water in the pool or spa, such as the Langelier Saturation Index, shall be conducted at a minimum, every 10 days while the pool or spa is open.

(k) Testing frequency and record keeping when pools and spas are open for use.

(1) When Class A and Class B pools and spas are open, they shall be tested for disinfectant levels, and pH every 2 hours. If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made at least once per day and a reading of the automatic control device shall also be made. Cyanuric acid levels shall be measured once each week.

(2) Class C pools and spas that have on-site staff, such as lifeguards, shall be tested for disinfectant levels and pH a minimum of 3 times a day. If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made once a day and a reading of the automatic control device shall also be made. Cyanuric acid levels shall be measured once per week.

(3) Class C pools and spas that do not have on-site staff, such as lifeguards, shall be tested for disinfectant levels and pH a minimum of one time a day. If a system is used to control disinfectant and pH electronically, and the system has the ability to transmit the mV level, or free chlorine level and pH to the trained and certified operator once a day, sanitizer level and pH shall be measured once a week using a test kit. A reading of the automatic control device shall also be recorded. Cyanuric acid levels shall also be measured once per week.

(4) Other required tests for pools and spas. Tests for alkalinity, calcium hardness, and chemical balance shall be performed every 30 days or as often as is necessary to maintain required water quality parameters and water clarity.

(5) Records of all testing of the pool and spa water shall be maintained at least 2 years and be available or made available upon request by the department or local regulatory authority. Records of testing can be kept on-site or off-site. If records are stored off-site they must be provided within 7 business days.

(1) Cyanuric acid levels shall not exceed 50 ppm. Whenever cyanuric acid levels exceed 50 ppm, the level must be reduced to 50 ppm or less and the sanitizer level, pH, and cyanuric acid levels must be measured once a day until the cyanuric acid level drops to 50 ppm or less.

§265.207. Request for Alternate Method of Disinfectant.

(a) Application. Pursuant to Texas Health and Safety Code, §341.064(b-1), an owner or operator may apply to use an alternate method of disinfectant.

(b) Submission. A completed application for use of an alternate method of disinfectant must be submitted to the department's Consumer Protection Division, no later than 180 days before the opening of the pool or spa. The application shall include:

- (1) the type and level of primary disinfectant;
- (2) the type and level, where applicable, of any supplemental method of water treatment;
- (3) the method for and equipment used for storing, delivering, and measuring primary disinfectant levels and supplemental water treatment levels;
- (4) data supporting the effectiveness of the primary disinfectant and supplemental method of water treatment in maintaining required water quality;
- (5) descriptions of any specialized equipment, application methods, or other water treatment methods that may differ from the requirements in §265.206 of this subchapter (relating to Water Quality at Pools and Spas);

(6) a proposed testing schedule for determining levels of biological and chemical levels as specified by the department to ensure the health and safety of the public;

(7) a detailed drawing or map of the pool that indicates swimming areas and non-swimming areas; and

(8) any additional information the department requires to make its decision.

(c) Decision. The department shall approve or reject a request to use an alternate method of disinfectant no later than 90 days after the completed application is submitted.

(d) Additional information. If the department requires additional information to make its decision, the application is not considered completed for purposes of subsections (b) and (c) of this section until the department receives the additional information as requested.

§265.208. Certain Requirements for Spas.

(a) Spas and Exercise Spas constructed or installed on or after the effective date of this subchapter. For purposes of this subsection, spas and exercise spas shall be referred to as spas. The maximum water depth for spas shall be 4 feet as measured from the design water level. The maximum water depth for exercise spas shall not exceed 6 feet 6 inches.

(1) Where multilevel seating is provided, the maximum water depth of any seat or sitting bench shall be 28 inches as measured from the design water line to the deepest point in the spa, except for spas designed for special purposes and approved by the local regulatory authority.

(2) Spa decks shall be a minimum of 4 feet wide. Continuous and unobstructed deck shall be provided a minimum of 50% around the spa perimeter. The deck may include the coping.

(b) Emergency shutoff switch required for spas only.

(1) An emergency shutoff switch shall be provided to disconnect power to circulation and jet system pumps and air blowers in a spa.

(2) Emergency switches shall be accessible to users, located within sight of the spa and located not less than 5 feet, but not greater than 10 feet from the inside walls of the spa.

(3) A sign notifying users of the location of the spa emergency shutoff switch shall be posted in a location that is visible from the spa and that meets the requirements in subsection (e) of this section.

(4) For spas constructed or renovated on or after the effective date of this subchapter, the emergency shutoff switch, when activated, shall produce an audible alarm rated at not less than 80 decibel sound pressure level and illuminate a light near the spa that will operate continuously until the shutoff switch is operated that deactivates the alarm and the light. A sign notifying users that the spa should not be used when the alarm sounds, and the light is illuminated shall be provided and posted in a location that is visible from the spa meeting the requirements in subsection (e) of this section.

(c) Air induction system. An air induction system, when provided, shall prevent water back up that could cause electrical shock hazards and shall be properly sized in accordance with the manufacturer's sizing specification. Air intake sources shall not permit the introduction of toxic fumes or other contaminants.

(1) The air induction system shall be installed in accordance with the NEC and any federal, state, or local codes, and shall be accessible for inspection or service.

(2) If an air blower or other means of introducing air is provided, a manually operated timer switch located so as to require the exiting of the spa to reset shall be provided. Such a timer shall operate the spa blower and booster pump and shall automatically shut the blower and booster pump off in 15 minutes or when manually switched to the off position.

(d) Break-resistant thermometer. A break-resistant thermometer (plus or minus 1-degree Fahrenheit tolerance) that is designed for use in a spa environment shall be available for patrons and staff to monitor spa temperature.

(e) Required spa signs. Signs for spas shall be securely mounted and readily visible to spa users and shall be inside the spa enclosure as required in Figure 25 TAC §265.208(e) Required Spa Signs. The signs can be combined on one sign or posted individually. Figure: 25 TAC §265.208(e)

§265.209. Additional Requirements for Aquatic Activity Devices and Specific Pools.

(a) Waterslides. Waterslides constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer and shall be in conformance with ASTM F2375-17a and ASTM F2461-16e1. Waterslides shall be installed in accordance with the manufacturer's instructions or in accordance with the design engineer's specifications.

(b) Flumes. Flumes constructed on or after the effective date of this subchapter shall be made of inert, nontoxic, smooth, and easily cleaned surfaces. All flume valleys and dips shall have proper drainage, safety measures that ensure a rider cannot fall from the flume, and a means of egress in the event the ride malfunctions or a rider stops on the slide.

(c) Exit into landing pools. Waterslides constructed on or after the effective date of this subchapter shall be designed with an exit system which shall provide safe entry into the landing pool or waterslide runoff. The waterslide exit system shall be in accordance with

the manufacturer's recommendations or the design engineer's specifications and ASTM F2376-17a.

(d) Landing pools. Landing pools constructed on or after the effective date of this subchapter that provide steps or recessed steps with handrails instead of exit ladders shall install the steps at the opposite end of the landing pool from the flume exit. The steps shall be provided with a handrail. The steps and handrail shall be offset from the slide. If the waterslide flume ends in a pool, the landing area shall be divided from the rest of the pool by a float line, wing wall, peninsula or other similar feature to prevent collisions with other bathers.

(e) Slide runouts. Waterslide runouts shall be designed in accordance with the slide manufacturer's recommendations or the design engineer's requirements and ASTM F2376-17a.

(f) Drop slide pools. For drop slide pools constructed on or after the effective date of this subchapter, the landing area of a drop slide shall be in accordance with the slide manufacturer's recommendations or the design engineer's requirements and ASTM F2376-17a. Steps shall not infringe on the landing area of a drop slide.

(g) Wave pools. For wave pools constructed on or after the effective date of this subchapter, access to a wave pool shall be a beach entry with the exception of an allowable Americans with Disabilities Act (ADA) designated entry point.

(1) Recessed steps shall not be allowed along the walls of the wave pool.

(2) Wave pools shall be fitted with a rope and float line located to restrict access to the caisson wall if required by the wave pool equipment manufacturer. Safety rope and float lines typically required at the shallow to deep water transition shall not apply to wave pools.

(3) A minimum of two emergency shutoff switches to disable the wave action shall be provided, one on each side of the wave pool.

(4) Deck depth markers are not required at wave pools.

(5) Caisson barriers shall have no openings that would allow passage of a 4-inch sphere and shall be provided for all wave pools.

(h) Leisure rivers. Leisure rivers constructed on or after the effective date of this subchapter shall comply with the following:

(1) Handrails for steps, and propulsion jets for leisure rivers shall not protrude into the leisure river.

(2) Obstructions such as landscaping, walls, or bridges shall be allowed provided they do not impact lifeguarding, sight lines, or rescue operations.

(3) Bridges spanning a leisure river shall have a minimum clearance of both 7 feet from the bottom of the leisure river and 4 feet above the water surface to any structure overhead.

(4) Depth markers are required at all entry/exits to the leisure river but not along leisure rivers, in the landscape, where there is no deck, or in the channel.

(5) Leisure rivers may have limited entry/exit access to the water for users and do not require an entry/exit every 75 feet along the leisure river.

(i) Movable floor pools. Pools with movable floors constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer and shall comply with the following:

(1) The use of starting platforms in the area of a movable floor shall be prohibited when the water depth is shallower than 5 feet.

(2) When a movable floor is installed into a diving pool, diving shall be prohibited if the dimensions of the pool do not meet the requirements in §265.188 of this subchapter (relating to Diving Facilities for Pools).

(3) The surface of a movable pool floor shall be slip-resistant if it is intended for installation in water depths less than 5 feet.

(4) Use of the moveable floor portion of the pool shall not be open to users when the floor is being raised or lowered.

(j) Therapeutic pools and spas. Therapeutic pools and spas constructed on or after the effective date of this subchapter shall be constructed and operated in accordance with the requirements for pools and spas in this subchapter except that:

(1) therapeutic pools and spas that contain 1,000 or less gallons shall have a water turnover rate at 30 minutes or less; and

(2) therapeutic pools that have design characteristics that vary from this chapter shall be planned and designed by a licensed engineer.

(k) Surf pools.

(1) Surf pools shall be fitted with a float line located to restrict access to the caisson wall if required by the surf pool equipment manufacturer.

(2) Wave caisson barriers shall be provided for all surf pools and shall have no opening that would allow passage of a 4-inch sphere. Surf pools using forced air to generate waves shall not be required to have caisson barriers unless recommended by the manufacturer.

(3) Safety rope and float lines required at the shallow to deep water transition shall not apply to surf pools.

(4) In addition to the requirements for lifeguards in §265.202 of this subchapter (relating to Lifeguard Personnel Requirements and Standards at Pools), lifeguards shall be provided with any equipment necessary to reach the deepest area of the surf pool during an emergency. The equipment shall be accessible to all lifeguards, clearly labeled as "For Lifeguard Use Only" and shall be available at all times the surf pool is open and used for surfing.

(5) No surfer shall enter the surf pool unless:

(A) tethered to the surf board;

(B) wearing a USCG approved PFD; or

(C) a lifeguard is in the surf pool in the surfing area directly supervising surfing activity.

(6) Non-surfing users shall not be allowed to enter the wave areas of the surf pool over 5 feet of depth while waves are being generated unless they are wearing a USCG approved PFD.

(7) Surf pools constructed or renovated on or after the effective date of this subchapter shall comply with the following:

(A) Access to a surf pool shall be at the shallow or beach entry end with the exception of an allowable ADA designated entry point.

(B) A minimum of two emergency shutoff switches capable of immediately stopping wave generation shall be provided, shall be clearly marked as emergency shutoffs, and shall be readily accessible to lifeguards.

§265.210. Compliance, Inspections, and Investigations.

(a) A department or local regulatory authority shall have the right to enter at all reasonable times any area or environment, including

a building, storage, equipment room, bathhouse, or office to inspect and investigate for compliance with this subchapter, to review records, to question any person, or to locate, identify, and assess the condition of the pool or spa.

(b) Advance notice or permission for entry is not required.

(c) A department or local regulatory authority shall not be impeded or refused entry during its official duties by reason of any company policy.

(d) It is a violation of this subchapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department or a local regulatory authority.

§265.211. Enforcement.

(a) If a person violates Texas Health and Safety Code, §341.064, or this subchapter, the department or local regulatory authority may, in accordance with Texas Health and Safety Code §341.092, institute a civil suit in district court for the assessment of civil penalties, injunctive relief, or both.

(b) A person who violates Texas Health Safety Code, §341.064, or this subchapter may also be subject to a criminal penalty under Texas Health and Safety Code, §341.091.

(c) If the pool or spa closes, either voluntarily or by court order, public access to the pool or spa shall be restricted and a notice posted notifying the public that the pool or spa is closed until further notice.

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

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TRD-202002878

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 231-5719



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER C. TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

28 TAC §§5.2001 - 5.2006

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.2001 - 5.2006, concerning the Texas Medical Liability Insurance Underwriting Association (JUA) Plan of Operation (Plan). These amendments are proposed because two trade associations named in the Plan to select members to the JUA Board of Directors have merged, making the current rule outdated.

EXPLANATION. The Texas Legislature formed the JUA in 1975 to be the residual market for medical liability insurance. The JUA is governed by a board of directors composed of nine members who are representatives from various industry groups and public members. Insurance Code §2203.052(a)(1) provides that five of the nine members of the board must be representatives of insurers, elected by association members.

Section 5.2002(d)(2)(B) fulfills that requirement, in part, by requiring that the Property Casualty Insurers Association of America (PCI) and the American Insurance Association (AIA) each select a member. PCI and AIA merged into the American Property Casualty Insurance Association (APCIA) effective January 1, 2019. To address the change, at their meeting on February 27, 2020, the JUA board voted to replace PCI and AIA with APCIA and the National Association of Mutual Insurance Companies (NAMIC). The amendments to §5.2002(d)(2)(B) will allow APCIA to appoint one member and NAMIC to appoint another, so the number of board members remains at nine.

Also, this proposal updates several statutory references, makes changes for agency style, and adds the option for a foreign insurer to be a board member. A "foreign insurer" is an insurer that is licensed to do business in Texas but is domiciled in another state.

Section 5.2001.

This section is amended to update statutory citations and make other nonsubstantive edits for current agency style by removing the use of "shall" and replacing it with a clearer word.

Section 5.2002.

Section 5.2002(d)(2)(B) is amended to allow APCIA to appoint one member and NAMIC to appoint another, so the number of board members remains at nine.

Section 5.2002(d)(C)(ii) is amended to add an option for one board member slot to be filled either by an insurer who is not a member of the listed trade associations or by a foreign insurer. This will add flexibility in choosing board members.

Section 5.2002 is also amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style. This includes removing "shall" and replacing it with a clearer word, capitalizing "Commissioner," and editing for plain language.

Section 5.2003.

This section is amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style by replacing "shall" with a clearer word, capitalizing "Commissioner," and editing for plain language.

Section 5.2004.

Section 5.2004(a)(2)(B) is amended to provide a more specific statutory citation.

This section also has nonsubstantive edits to update the language to current agency style, including capitalizing "Commissioner" and revising punctuation.

Section 5.2005.

This section is amended to replace the word "shall" with "must" and capitalize "Commissioner" to conform with current agency style.

Section 5.2006.

This section is amended to update statutory citations, remove "shall" and replace it with a clearer word, and capitalize "Commissioner" to conform with current agency style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Baker does not anticipate a measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Baker expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 2203 and that the necessary stakeholders are adequately represented in governing the residual medical liability insurance market.

Ms. Baker expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2203.052, because they do not impose requirements beyond those in the statute. Insurance Code §2203.052 requires that five of the nine members of the board of directors represent insurers. The changes to replace PCI and AIA with APCIA and NAMIC serve to maintain the board at nine members. As a result, any cost associated with the rules does not result from the enforcement or administration of the proposed amendments.

The change to allow the option of choosing a foreign insurer does not impose costs because it does not impose a new requirement. It simply adds flexibility to the composition of the board.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The proposed amendments update provisions in the Plan that the JUA must follow and the JUA is not a small or micro business. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare an economic impact statement or a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. The rule amendments assist the JUA and its members to effectively administer the organization and ensure that the board remains at nine members. The costs imposed to members of the JUA by the rule would not change. Even if the substantive amendments incur a cost to a regulated person, they are exempted from the requirements under Government Code §2001.0045(b), because the proposed amendments to §5.2002(d)(2)(B) and §5.2002(d)(C)(ii) are necessary to implement Insurance Code §2203.052.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rules:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 24, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, separately from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. central time, on August 24, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.2001-5.2006 under Insurance Code §§2203.053, 2204.054, and 36.001.

Insurance Code §2203.053(a) provides that the JUA operates under a plan of operation adopted by the Commissioner.

Insurance Code §2203.054 provides that amendments to the Plan must be approved by the Commissioner or made at the direction of the Commissioner.

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

CROSS-REFERENCE TO STATUTE. Sections 5.2001-5.2006 implement Insurance Code Chapter 2203 and Article 21.49-3 §§2, 11, 12, 13.

§5.2001. *Definitions.*

(a) Words defined in the Insurance Code [the Aet]. Unless the context clearly dictates the contrary, words defined in [the] Insurance Code Chapter 2203 and Insurance Code Article 21.49-3, §2, and not specifically defined in this section [these sections shall] have the same definition when used in this subchapter as they have in the Insurance Code [Aet].

(b) Words defined in this subchapter [the sections]. The following words and terms, when used in this subchapter, [shall] have the following meanings unless the context clearly indicates otherwise:

(1) Act--The Texas Medical Liability Insurance Underwriting Association Act, codified as [the] Insurance Code Chapter 2203 and Insurance Code Article 21.49-3, §§2,11, 12, and 13.

(2) Application--An application for medical liability insurance and general liability insurance issued in connection with medical liability insurance.

(3) Association--Texas Medical Liability Insurance Underwriting Association.

(4) Board of directors--The board of directors of the Texas Medical Liability Insurance Underwriting Association.

(5) Chairman of the board--The chairman of the board of directors of the Texas Medical Liability Insurance Underwriting Association.

(6) Charter member of the association--An insurer authorized to write and engaged in writing, in [~~within the State of~~] Texas on a direct basis, automobile liability and/or liability other than automobile insurance at any time between January 1, 1975, and the effective date of the Act.

(7) Commissioner--Commissioner of Insurance.

(8) Department--Texas Department of Insurance.

(9) Member--An insurer required to be a member of the association by Insurance Code §2203.055 [the Aet, §3], or, where the context indicates, any duly authorized agent or representative of such insurer. "Members" means [shall mean] more than one member.

(10) Secretary--The secretary of the Texas Medical Liability Insurance Underwriting Association.

(11) Treasurer--The treasurer of the Texas Medical Liability Insurance Underwriting Association.

(12) Vice chair or vice chair of the board--The vice chair of the board of directors of the Texas Medical Liability Insurance Underwriting Association.

§5.2002. *Operation of the Texas Medical Liability Insurance Underwriting Association.*

(a) Membership. The association is governed [~~created~~] by Insurance Code Chapter 2203 [the Aet]. Any insurer authorized to write and engaged in writing any insurance, the writing of which requires the [such] insurer to become a member of the association under Insurance Code §2203.055, will [pursuant to §3 of the Aet, who becomes authorized to write and engages in writing such insurance after the effective date of the Aet shall] become a member of the association on the first day of January immediately following the date the [such] insurer started [~~engaged in~~] writing such insurance. The [~~and the~~] determination of the [such] insurer's participation in the association will [shall] be made as of the date of such membership in the same manner as for all members of the association. Any member that [which] ceases to be authorized to write or that [which] ceases to engage in the writing of any insurance that [which] would require such insurer to become a member of the association will [shall] remain a member of the association until midnight of December 31 next following the date the [such] insurer ceases to be authorized to write or ceases to write such insurance, and the [such] insurer's participation in the association will [shall] cease as of that time; provided, however, that each member must [shall] participate in any financial deficit of the association for all calendar years subsequent to December 31, 1976, during which the insurer was a member of the association, whenever

such deficit is determined. The member must [shall] be charged or credited in due course with its proper share of all expenses or losses and any recoupment or reimbursement allocable to the member. If [In the event that] a member is merged or consolidated with another insurer, the continuing insurer will [shall] become a member of the association in place of the merged or consolidated member, provided that such member will [shall] be deemed to have become a member of the association on the date the merged or consolidated member became a member and provided, further, that such member will [shall] pay no initial expense fee.

(b) Expense fees.

(1) Initial expense fee. Each member must [shall] pay to the association an initial expense fee of \$100. All members of the association must [shall] pay such fees on or before the date they become members of the association.

(2) Annual expense fee. In addition to the initial expense fee, each member must [shall] pay to the association an annual expense fee in an amount to be determined by the board of directors and approved by the Commissioner [commissioner]. All members of the association must [shall] pay such annual expense fee on or before the first of January for each year during which the association exists.

(3) Remedy for failure to pay fees. If any member fails [shall fail] or refuses [refuse] to pay either the initial expense fee or the annual expense fee after receipt of written notice by the association that such fee is due and payable, then such member will [shall] be subject to the same remedies as provided in §5.2003(d)(4) of this title [chapter] (relating to Property and Casualty Insurance) for the failure of the [such] member to pay any assessment levied by the association.

(4) Use of fees. All expense fees paid to the association will [shall] be used in such manner as the board of directors may from time to time direct in accordance with this subchapter.

(c) Meetings of members.

(1) Notice of meetings. Written or printed notice stating the place, date, hour, subjects of the meeting, and the purpose or purposes for which the meeting is called, must [shall] be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary, or other person calling the meeting, to each member entitled to vote at such meeting. Public notice of meetings must [shall] be given as required by [the] Government Code [,] Chapter 551.

(2) Meetings.

(A) Annual meeting. The annual meeting of the members must [shall] be held not later than the 30th day of September of each year at an hour and place to be determined by the board of directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors is not held on the day designated for any annual meeting of the members, the board of directors must [shall] cause the election to be held at a special meeting of the members as soon as may be convenient after the annual meeting.

(B) Special meetings. The board of directors, the chair of the board of directors, or 20% of the members may call a special meeting of the members and designate any place as the place of the special meeting.

(3) Quorum. Fifty members, represented by person or by proxy, is [shall constitute] a quorum at a meeting of the members. If less than 50 members are represented at a meeting, a majority of the members represented may adjourn the meeting from time to time with-

out further notice. At the next meeting after adjournment at which a quorum is present or represented any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.

(4) Voting.

(A) Each member is [shall be] entitled to one vote at the annual meeting and each special meeting.

(B) A member may vote by proxy executed in writing by the member. No proxy will be [shall be] valid after the next annual meeting after the date of its execution unless otherwise provided in the proxy. Each proxy is [shall be] revocable.

(C) Each member's vote may be voted by such officer, agent, or proxy as the bylaws of such member may authorize or, in the absence of such authorization, as such member may determine.

(D) Voting on any question or in any election may be by voice vote or by show of hands unless the presiding officer orders [shall order], or any member demands [shall demand], that voting be by written ballot.

(5) Rules. To the extent applicable, Robert's Rules of Order [shall] govern the conduct of and procedure at all meetings of the members.

(d) Directors.

(1) Selection. At each annual meeting of members or as otherwise provided in subsection (c)(2) of this section, the members must [shall] elect five directors from [among] member companies for the categories set forth in paragraph (2)(B) and (C) of this subsection. Four directors must [shall] be selected in the manner set forth in paragraph (2)(D) - (F) of this subsection. Directors take office on October 1 of each year and will [shall] hold office until the next election of directors or until a successor has been selected and qualified.

(2) Membership.

(A) The number of the directors of the association must [shall] be nine.

(B) Three directors to be elected in accordance with paragraph (1) of this subsection must [shall] be elected by the members and [shall] be separate members of the association representing each of the following:

(i) the American Property Casualty Insurers Association [a single representative from either the National Association of Independent Insurers or the Alliance of American Insurers; at the choice of the Property Casualty Insurers Association of America];

(ii) the National Association of Mutual Insurance Companies [American Insurance Association]; and

(iii) the Insurance Council of Texas.

(C) Two directors must [shall] be elected by the members and must [shall] be:

(i) a member insurer organized under the laws of and domiciled in [the State of] Texas; and

(ii) a member insurer that is either (or both):

(I) not a member of those associations described in subparagraph (B) of this paragraph, or

(II) an insurer that is not domiciled in Texas.

(D) One director must [shall] be a physician who is appointed by the Texas Medical Association or its successor.

(E) One director must [shall] be a representative of hospitals appointed by the Texas Hospital Association or its successor.

(F) Two directors must [shall] be members of the public to be appointed by the Commissioner [commissioner].

(G) No director may [shall] fill more than one seat on the board of directors, and no member affiliated by ownership, management, or control may [shall] simultaneously occupy seats on the board of directors. No later than 60 days before [prior to] the annual meeting, the board of directors must [shall] select a nominating committee of three member companies. The three directors who will [shall] represent the organizations set forth in subparagraph (B) of this paragraph must [shall] be nominated by the nominating committee. The two directors described in subparagraph (C) of this paragraph must [shall] be nominated by any member of the association by submitting the nominee's name to the nominating committee. To [In order to] be eligible for selection to the board of directors by the members, a member must be nominated at least 30 days before [prior to] the annual meeting at which such directors are selected.

(3) Term of office. Unless removed in accordance with this subchapter, each director will [shall] hold office until the next election of directors or until a successor has been selected and qualified.

(4) Regular meetings. A regular meeting of the board of directors must [shall] be held with notice as provided for in this subsection, immediately after and at the same place as the annual meeting of the members. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings with notice to the directors at least 10 days before each regular meeting as provided in this subsection.

(5) Notice of regular or special meeting. Notice of any regular or special meeting must [shall] be given at least 10 days before [prior to] the meeting. The association must [shall] provide notice by personal delivery, mail, electronic, or other means to each director. If mailed, notice will [shall] be deemed to be delivered when deposited in the United States mail, addressed with postage prepaid. If the notice is by other reasonable means, the association must [shall] maintain a written record of the method of notification. Any director may waive notice of any meeting. The attendance of a director at a meeting is [shall constitute] a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

(6) Special meetings. Special meetings of the board of directors may be called by the chair of the board, or at the request of any two directors. The person or persons who call [authorized to call] special meetings of the board of directors may fix any place that is accessible to the public as the place for holding any special meeting of the board of directors called by them.

(7) Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or special meeting of the board of directors must [shall] be specified in the notice, or waiver of notice, of the meeting, and in the notice required by [the] Government Code [.] Chapter 551.

(8) Quorum. A majority of [the] directors is [shall constitute] a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of [the] directors present at a meeting at which a quorum is present will [shall] be the act of the board of directors. If at any meeting of the board of directors there is less than a quorum present, a majority of those present may adjourn the

meeting from time to time until a quorum is obtained, and no further notice need be given other than by announcement at the meeting which will [shall] be adjourned.

(9) Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken is [shall be] presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting, or unless a written dissent to the [such] action is filed with the person acting as secretary of the meeting before the adjournment. The [Such] right to dissent is not [shall not be] available to a director who voted in favor of the [such] action.

(10) Compensation. By resolution of the board of directors, the directors and members of committees of the association may be paid their expenses, if any, of attendance at each meeting of the board of directors, or each meeting of a committee of the association. No other payment may [shall] be made to directors other than that provided in this paragraph except that nothing in this subchapter may [shall] be construed as preventing any director from receiving compensation for serving the association in any other capacity.

(11) General powers. The board of directors must [shall] manage the business and affairs of the association subject to the supervision and control, at all times, of the Commissioner [commissioner] and the department as set forth in this subchapter and in the Act. Included among the powers of the board of directors, but not in limitation thereof, are the following:

(A) to purchase or otherwise acquire for the association any property, rights, or privileges that [which] the association is authorized to acquire;

(B) to remove any officer summarily for cause, or without cause and, in their discretion, from time to time to dissolve the powers and duties of any officers and to confer the powers and duties upon any other person;

(C) to appoint and remove or suspend such subordinate officers, agents, employees, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change, their salaries or remuneration, and to require security as and when they think fit;

(D) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers or employees;

(E) to determine who may [shall] be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;

(F) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officers or agent (with power to subdelegate) upon such terms as they think fit;

(G) to contract, from time to time, with one or more members for single or multi-year terms, to act as servicing carriers to perform all policy functions of the association, including, without limitation to, underwriting, issuance of policy, coding and premium accounting, settlement of claims to conclusion, and reporting to the association, as may be directed by the association, subject to provisions of law and this subchapter, upon the terms and for the consideration expressed. Such contracts may not become effective until the contracts have been approved by the department;

(H) to approve expenses and levy assessments, including preliminary assessments for initial expenses necessary to commence operations, and assessments to defray losses and expenses;

(I) to establish necessary facilities;

(J) to enter into commission arrangements with agents regarding the sale of medical liability insurance through the association;

(K) to promulgate reasonable and objective underwriting standards;

(L) to either or both accept and refuse the assumption of reinsurance from its members, and cede and purchase reinsurance, [s] provided, however, that the [sueh] reinsurance is [shall be] governed by rules promulgated by the Commissioner [eommissioner]; and

(M) to direct the collection, administration, investment, and valuation of the stabilization reserve funds consistent with the Act and this subchapter.

(12) Committees.

(A) The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate one or more committees, each committee to consist of two or more of the directors of the association that [which], to the extent provided in the resolution or resolutions, will [shall] have and may exercise the powers of the board of directors in the management of the business and affairs of the association. The committee or committees will [shall] have the [sueh] name or names as may be determined from time to time by appropriate resolution. All [sueh] committees must [shall] keep regular minutes of their proceedings and report the minutes to the board of directors when required.

(B) The chair may appoint the members of the committees as may be appropriate to carry out the business of the association.

(C) The delegation to a committee of authority consistent with this section may [shall] not operate to relieve the board of directors, or any director, of any responsibility imposed upon the board of directors or director by law.

(13) Removal. Any person serving as a director may be removed from a position as director either with or without cause at any special meeting of members if notice of intention to remove the director has been stated as one of the purposes of the meeting. This paragraph may [shall] not be construed to allow the removal of any member from the board of directors.

(14) Vacancies.

(A) A director position is [shall be] considered vacant upon the resignation of the member serving as director.

(B) Any vacancy occurring in the board of directors may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of paragraph (2) of this subsection, such vacancy must [shall] be filled by the affirmative vote of a majority of the remaining directors though less than a quorum. A director elected to fill a vacancy must [shall] be elected for the unexpired term of its predecessor.

(15) Executive committee. The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate an executive committee to consist of a chair, a vice chair, a secretary, a treasurer, and the immediate past chair, provided the immediate past chair is a director. The general manager must [shall] be an ex officio member of the executive committee. To the extent provided in the resolution or resolutions, the executive committee has [shall have] and may exercise the powers of the board of directors in the management of the business and affairs of the association. The executive committee must [shall] keep regular minutes of its proceedings and report the minutes to the board of directors. The delegation authority consis-

tent with this section does [shall] not operate to relieve the board of directors, or any director, of any responsibility imposed by law upon the board of directors or any director.

(e) Officers.

(1) Number. The officers of the association are [shall be] the chair of the board of directors, the vice chair of the board of directors, the secretary, the treasurer, and other officers as the Commissioner [eommissioner] may desire, all of whom are [shall be] elected by the board of directors. No two offices may be held by the same person except for the offices of secretary and treasurer.

(2) Election and term of office. The officers of the association are [shall be] elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members or as soon as practical following the annual meeting. Each officer must [shall] hold office until a successor has been duly elected and qualified or until the officer's resignation, death, or removal.

(3) Removal and vacancies. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the association would be served or otherwise in accordance with this subchapter, but such removal is [shall be] without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

(4) Chair of the board. The chair of the board must [shall] preside at all meetings of the members and at all meetings of the directors, appoint and discharge employees and agents of the association subject to the approval of the directors, fix the compensation of employees and agents, make and sign contracts and agreements in the name of the association, and appoint committees. The chair of the board must [shall] ensure that the books, reports, statements, and certificates are properly kept, made, and filed, if necessary, and the chair of the board must [shall] generally do and perform all acts incident to the office of chair of the board or that [which] may be authorized or required by law, by this subchapter, or by the board of directors, not inconsistent with this subchapter.

(5) Vice chair of the board. The vice chair, elected by the board of directors, has [shall have sueh] powers and must [shall] perform [sueh] duties as [shall be] assigned to the vice chair, not inconsistent with this subchapter.

(6) Secretary. The secretary must [shall]:

(A) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;

(B) provide all notices as required by the provisions of this subchapter. In case of the secretary's absence or refusal or neglect to give the required notice, notice may be given at the direction of the chair of the board of directors, or of the members upon whose request the meeting is called;

(C) be custodian of the association's records;

(D) keep a register of the post office address of each member;

(E) annually determine each member's participation in the association in the manner required by the Act and this subchapter and [shall] keep a register of each member's percentage of participation; and

(F) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be delegated to the secretary by the chair of the board or by the board of directors.

(7) Treasurer. The treasurer must [shall] have custody of all funds, securities, evidences of indebtedness, and other valuable documents of the association, including those attributable to the stabilization reserve funds. The treasurer must [shall] receive and give, or cause to be given, receipts and acquittances for money paid in on account of the association, and [shall] pay out of the funds on hand all just debts of the association, of whatever nature, upon maturity of the debts. The treasurer must [shall] enter, or cause to be entered, in books of the association to be kept for that purpose, full and accurate accounts of all money received and paid out on account of the association, and whenever required by the board of directors, the treasurer must [shall] keep, or cause to be kept, other books as would show a true record of the reserves, expenses, losses, gains, assets, and liabilities of the association.

(f) Fiscal year. The fiscal year of the association is [shall be] the calendar year.

(g) Waiver of notice. Whenever any notice is required to be given to any members or director of the association under the provisions of this subchapter a waiver in writing, signed by the person or persons entitled to notice is [shall be] deemed equivalent to the giving of such notice.

(h) Protection of directors and officers.

(1) Any person or insurer made or threatened to be made a party to any civil, criminal, administrative, or investigative action, suit, or proceeding (other than an action by or in the right of the association) because such person or insurer is or was a member or is serving or served on a committee or is or was an officer or employee of the association, or is or was serving any other entity or organization at the request of the association, is [shall be] entitled to be indemnified by the association against all judgments, fines, amounts paid in settlement, reasonable costs and expenses (including attorneys' fees), and other liabilities actually and reasonably incurred (other than for amounts paid to the association itself) as a result of such threatened or actual action, suit, or proceeding except in relation to matters as to which that person or insurer is [shall be] finally adjudged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's or insurer's duties or obligations to the association or other entity as previously provided and, with respect to any criminal actions or proceedings, except when such person or insurer believed or had reasonable cause to believe that their conduct was unlawful.

(2) Indemnification must [shall] be provided whether or not such person or insurer is a member or is holding office or is employed or serving at the time of such action, suit, or proceeding, and whether or not any such liability was incurred prior to the adoption of this subchapter.

(3) Indemnification is not [shall not be] exclusive of other rights such person or insurer may have, and passes [shall pass] to the successors, heirs, executors, or administrators of such person or insurer.

(4) The termination of any such action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent will [shall] not in itself create a presumption that such person or insurer was liable by reason of willful misconduct or that they had reasonable cause to believe that their conduct was unlawful.

(5) In each instance when [in which] a question of indemnification arises, entitlements thereto, pursuant to the condition set forth in this subsection, must [shall] be determined by the board of directors by a majority vote of a quorum consisting of directors that were not parties to such action, suit, or proceeding or by the board of directors, whether interested or disinterested, if based upon a written opinion of legal counsel that the action, suit, or proceeding could qualify for in-

demnification because of reasonable doubt that the directors were liable by reason of willful misconduct in the performance of duties or obligations to the association or other entity as provided in this subsection, or that there was reasonable doubt that the directors believed or had reasonable cause to believe that the conduct was unlawful, and the board of directors must [shall] also determine the time and manner of payment of such indemnification; provided, however, if any such action, suit, or proceeding is terminated by compromise settlement, indemnification in respect of such disposition must [shall] be made only if such settlement had the prior approval of the board of directors, and provided further that a person or insurer who or that [which] has been wholly successful, on the merit or otherwise, in the defense of a civil or criminal action, suit, or proceeding of the character described in this subsection will [shall] be entitled in every instance to indemnification as authorized in this subchapter.

(6) Expense incurred in defending a civil or criminal action, suit, or proceeding may be paid by the association in advance of the final disposition of the [such] action, suit, or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of the person or insurer to repay the [such] amount, unless it is [shall ultimately be] determined that the [such] person or insurer is not entitled to be indemnified by the association.

(7) Nothing in this subsection is [shall be] deemed to preclude a person or insurer who or that [which] the board of directors has determined not to be entitled to indemnification from asserting the right to such indemnification by legal proceedings.

(8) Indemnification as provided in this subsection is [shall be] apportioned among all members, including any named in any such action, suit, or proceeding, in the same manner as other operating expenses of the association.

(i) Annual report. The treasurer must [shall] file with the department annually, on or before the first day of March, a statement that contains [which shall contain] information on the association's transactions, condition, operations, and affairs during the preceding calendar year. Such statement must [shall] be in the form and contain the matters and information prescribed by the department. The department may, at any time, require the association to furnish additional information with respect of its transactions, condition, or any matter considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

(j) Examinations. The department must examine [shall make an examination into] the affairs of the association in accordance with Insurance Code Chapter 401 [Articles 1-15 and 1-16].

§5.2003. *Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association.*

(a) Powers of the association. The association is created by the Act and will [shall] be governed by the provisions of the Act and this subchapter.

(b) Collection and investment of funds.

(1) Collection. The treasurer is [shall, on behalf of the association, be] responsible for the collection of all the premiums received by the association, all assessments levied against the members, all assessments and charges levied against policyholders (including contributions to the stabilization reserve funds), and all proceeds from the investment of funds.

(2) Investment.

(A) All funds collected by the association must [shall] be retained in appropriate accounts in any bank or banks doing business in [the State of] Texas and may be invested only in the following:

(i) interest-bearing time deposits or certificates of deposit in any bank or banks doing business in [the State of] Texas that [which] are members of the Federal Deposit Insurance Corporation; or

(ii) treasury bills, notes, or bonds of the government of the United States of America; or

(iii) other investments as may be proposed by the board of directors and approved by the Commissioner [eommissioner].

(B) The board of directors must [shah] determine what portion of such funds should [shah] be retained in a checking account or accounts and what portion of such funds should [shah] be invested in the investments set forth in subparagraph (A) of this paragraph, as well as which specific investments, if any, should [shah] be made.

(c) Stabilization reserve funds. Insurance Code §2203.301 [The Act, §4A,] creates a policyholder's stabilization reserve fund for physicians and certain health care providers (§2203.301 [§4A] fund), and Insurance Code §2203.303 [§4B] creates a stabilization reserve fund for for-profit and not-for-profit nursing homes and assisted living facilities (§2203.303 [§4B] fund) and further provides that these funds must [shah] be administered as provided in Insurance Code Chapter 2203 [the Act] and this subchapter and that the advisory directors must [shah] be chosen as provided in this subchapter.

(1) General provisions.

(A) In accordance with Insurance Code §2203.101 [the Act, §3A] and §2203.103 [§3B], the Commissioner will [eommissioner shah] establish by order the categories of physicians and other health care providers, including health care practitioners, and health care facilities, who are eligible to obtain coverage from the association. The [Such] order may indicate the stabilization reserve fund appropriate to the new category and may be revised from time to time to include or exclude from eligibility some [particular] categories of health care providers and physicians.

(B) The following provisions also govern the [§4A and §4B] stabilization reserve funds under Insurance Code §2203.301 and §2203.303.

(i) Within 15 days after the effective date of any Commissioner [eommissioner] order establishing eligibility, the board of directors must [shah] extend invitations to the appropriate Texas organizations representing eligible §2203.301 [§4A] fund health care providers and physicians and §2203.303 [§4B] fund for-profit and not-for-profit nursing homes and assisted living facilities to each designate an advisory director to represent each eligible category of §2203.301 [§4A] fund health care provider and physician and §2203.303 [and §4B] fund for-profit and not-for-profit nursing home and assisted living facility, and advise the association of its choice of director.

(ii) Each designated advisory director has [shah have] a vote on any matter coming before any meeting of the entire body of advisory directors for the §2203.301 [particular §4A] fund or §2203.303 [§4B] fund to which the advisory director has been designated. That [, and that] vote will [shah] be weighted in the proportion that the net written premium collected during the most recent calendar year from policies issued to each category of §2203.301 [§4A] fund health care provider and physician or §2203.303 [§4B] fund for-profit or not-for-profit nursing home and assisted living facility bears to the total net written premiums collected from all categories of §2203.301 [§4A] fund health care providers and physicians or to all categories of §2203.303 [§4B] fund for-profit and not-for-profit nursing homes and assisted living facilities as applicable during the same calendar year. The proportion of weighting of the advisory directors' votes for the §2203.301 [§4A] fund and the §2203.303 [§4B] fund respectively

must [shah] be determined annually by the association, not later than August 31.

(iii) The designated advisory directors for the §2203.301 [§4A] fund and the §2203.303 [§4B] fund respectively must [shah] meet not later than September 15 of each year, [annually] at a place in Texas stipulated by the board of directors to consider the amount of funds available and the status of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund. The designated advisory directors for the respective §2203.301 [§4A] fund and §2203.303 [§4B] fund must [shah] inform the board of directors of the percentage to be charged to all policyholders of all policies issued or renewed by the association for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund during the next calendar year. This percentage must [shah] be communicated to the board of directors no later than September 20, annually.

(iv) If any organization described in clause (i) of this subparagraph fails to designate an advisory director, the directors designated by the remaining organizations [shah] constitute the entire body of advisory directors for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund, and their establishment of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [shah] be accepted as valid by the association and imposed pursuant to the operational procedures of the association, upon approval of the department.

(v) In the event that the advisory directors fail to establish a specific percentage charge for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund to be collected for the coming calendar year before the applicable deadline, the board of directors must [shah] immediately submit for approval by the Commissioner [eommissioner] a charge to be collected from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund policyholders of each new and renewal policy during the upcoming [forthcoming] calendar year in accordance with the provisions of the Insurance Code.

(vi) The advisory directors [shah] serve without salary or other fee, and they may [shah] not be reimbursed for any expenses. The advisory directors, in the performance of their duties, will [shah] be afforded the protection of §5.2002(h) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association).

(C) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [shah] be collected annually from each policyholder of the applicable §2203.301 [§4A] or §2203.303 [§4B] fund, as may be appropriate, and must [shah] be stated as a percentage of the annual premium due for all coverages on all policies issued or renewed on or after the effective date of the charge. The [Such] percentage charge will [shah] remain in effect until changed in accordance with subparagraph (B) of this paragraph.

(D) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [shah] be separately stated in the policy, but may [shah] not constitute a part of premium or be subject to premium taxation, servicing fees, acquisition costs, commissions, or any other such charges. Further, the respective fund charge will [shah] not be considered premiums for the purpose of any assessments levied under subsection (d) of this section.

(E) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charges must [shah] be collected and administered by the association and must [shah] be treated as a liability of the association along with and in the same manner as premium and loss reserves. The §2203.301 [§4A] fund and the §2203.303 [§4B] fund must [shah] be valued annually by the board of directors within 90 days of the last day of the preceding calendar year.

(F) Collections of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [shall] continue throughout each calendar year for which they are established; provided, that no charge will be made during the next succeeding calendar year if the net balance in the respective fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the respective fund.

(2) §2203.301 [§4A] fund or §2203.303 [§4B] fund charge. The respective proportionate §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [shall] be based on the total annual written premium for all coverages provided by the association to the applicable §2203.301 [§4A] fund or §2203.303 [§4B] fund policyholders. The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charges are [shall] not be refundable if the policy is cancelled after the 90th day of coverage. If cancelled within the 90th day of coverage, the earned charge will be based on the same earned percentage charged for the insurance premium.

(3) Disbursements from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund. Disbursements from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund may [shall] not be made for any purpose other than to recoup a deficit from operations as defined in subsection (d) of this section. Upon suspension of the association by the Commissioner [commissioner], any funds remaining in the §2203.301 [§4A] fund must [shall] be added to the special fund created by the Commissioner [commissioner], acting as receiver, or a special deputy receiver acting on behalf of the receiver. Any investment income earned on the funds of the §2203.301 [§4A] fund must [shall] be added to that fund. Upon termination of the §2203.303 [§4B] fund, all assets of the fund must [shall] be transferred as provided in the Act.

(d) Participation by members and policyholders of the association.

(1) Deficit and remedy of a deficit.

(A) The association must [shall] have sustained a deficit from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Any deficits sustained by the association in any one calendar year with respect to any category of physicians or health care providers subject to Insurance Code §2203.101 [the Act, §3A(a)] or for-profit or not-for-profit nursing homes or assisted living facilities subject to Insurance Code §2203.102 must [the Act, §3A(e) shall] be recouped, pursuant to this subchapter and the rating plan in effect, by one or more of the following procedures in this sequence:

(i) first, a contribution from the §2203.301 [the §4A] fund or §2203.303 [§4B] fund, as appropriate, until the respective fund is exhausted;

(ii) second, an assessment upon the policyholders pursuant to paragraph (3) of this subsection and Insurance Code §2203.252 [the Act, §5(a)];

(iii) third, an assessment upon the members of the association pursuant to paragraph (4) of this subsection and Insurance Code §2203.053 [the Act, §5(b)].

(2) Surplus and disposition of a surplus.

(A) The association must [shall] have sustained a surplus from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year do not exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Upon approval by the board of directors, surplus from operations must [shall] be ratably distributed as reimbursements to members who have been assessed pursuant to paragraph (4) of this subsection and have paid such assessments, but have not been previously reimbursed and have not been allowed the premium tax credit (offset) pursuant to subsection (e) of this section.

(C) Upon approval of the Commissioner [commissioner], the association must [shall] reimburse the state to the extent that the members have recouped their assessments using premium tax credits pursuant to subsection (e) of this section, with interest at a rate to be approved by the Commissioner [commissioner].

(D) Any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after approved reimbursement of members' contributions, must [shall] be added to the reserves of the association.

(3) Participation by policyholders of the association.

(A) Assessment of policyholders; contingent liability. Each policyholder within either the §2203.301 [§4A] fund or §2203.303 [§4B] fund must [shall] have contingent liability for a proportionate share of any assessment of policyholders in the applicable §2203.301 [§4A] fund or §2203.303 [§4B] fund made by the association pursuant to Insurance Code §2203.252 [the Act, §5(a)] and the provisions of the plan of operation set forth in this subchapter.

(B) Procedure for assessment of policyholders. Assessment of policyholders shall be made in accordance with the following.

(i) Notice of assessment must [shall] be sent by certified mail, return receipt requested, to each policyholder being assessed within 30 days [of the levy of the meeting] of the board of directors meeting at which such assessment was levied. Notice must [shall] be forwarded to the address of each policyholder as it appears on the books of the association. The notice must [shall] state the policyholder's allocated amount of assessment and must [shall] inform each policyholder of the sanctions imposed by clause (ii) of this subparagraph for the failure to pay such assessment within the time prescribed by this section.

(ii) Each policyholder must [shall] remit to the association payment in full of an assessment within 30 days of receipt of notice of assessment. [; provided,] However [however], [that] a policyholder that is not delinquent on any prior assessments, stabilization reserve fund charge, or premium may remit payment of an assessment levied for a deficit incurred in a calendar year in two installments with at least one-half of the assessment paid within 30 days after receipt of notice of assessment and the remaining balance paid within 30 days thereafter. If the association has not received payment of the policyholder's assessment or any installment payment within 10 days after the [such] payment is due, then the association must [shall] promptly cancel any policy of insurance that [which] the policyholder at that time has in force with the association, and the association may [shall be entitled to] offset any unearned premium otherwise refundable on such policy against the amount of that policyholder's unpaid assessment. Such cancellation of current insurance coverage will [shall] in no way affect the right of the association to proceed against the policyholder in any court

of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the policyholder's assessment.

(4) Participation by members of the association.

(A) Assessment of members. Insurance Code Chapter 2203 [The Act] provides that in the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation set forth in this subchapter and contributions from the stabilization reserve funds, all members must [shall], on a basis authorized by the Commissioner [commissioner], as long as the Commissioner [commissioner] deems it necessary, contribute to the financial requirements of the association in the manner provided for in this section and Insurance Code §2203.254 [the Act, §5]. Any assessment or contribution must [shall] be reimbursed to the members as provided in Insurance Code §2203.255 [the Act, §4].

(B) Procedure for assessment of members.

(i) All insurers that [which] are members of the association must [shall] participate in its writings, expenses, and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association during the same calendar year. Each insurer's participation in the association must [shall] be determined annually on the basis of net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by that insurer that may be required by the department. No member may [shall] be obligated in any one year to reimburse the association on account of its proportionate share in the unrecovered deficit from operations of the association in that year in excess of 1.0% of its surplus to policyholders. The [and the] aggregate amount not reimbursed must [shall] be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subsection, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds [shall exceed] 1.0% of their respective surplus to policyholders, the amount of the deficit must [shall] be allocated to each member in accordance with the method of determining participation prescribed in this subsection.

(ii) Notice of assessment must [shall] be sent by certified mail, return receipt requested, to each member within 30 days of the [levy of meeting of the] board of directors meeting at which the [such] assessment was levied. Notice shall be forwarded to the office address of the member as it appears on the books of the association. The notice must [shall] state the member's allocated amount of assessment and must [shall] inform each member of the sanctions imposed by clause (iii) of this subparagraph for the failure to pay the assessment within the time prescribed by this section.

(iii) Each member must [shall] remit to the association payment in full of its assessed amount within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association must [shall] report to the Commissioner [commissioner of insurance] the fact that the [such] assessment has not been paid. The [and the] Commissioner [commissioner of insurance] may take such actions as are permitted under the Insurance Code, including, but not limited to, actions authorized by [the] Insurance Code [§] Chapter 82, to consider revocation of the certificate of authority of the delinquent

member. Any action by the Commissioner will [commissioner of insurance shall] in no way affect the right of the association to proceed against the member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the member's assessment. A member, by mailing payment of its allocated amount of assessment as provided by this section, does [shall] not waive any right it may have to contest the computation of its allocated amount of assessment. A contest does [shall] not, however, toll the time in which the assessment must [shall] be paid, or the report is made to the Commissioner [commissioner of insurance].

(5) Basis of computation of deficit, surplus, and assessments. The computation of the deficit or surplus in operations of the association and the computation of assessment of members and policyholders must [shall] be computed on a calendar-year [calendar year] basis in accordance with the reporting requirements of the annual statement filed with the department.

(e) Premium tax credit (offset) for member [members] assessments. To the extent that a member has been assessed and has paid one or more assessments as contemplated by this subchapter and has not received reimbursement from the association for the assessments, that member, as provided for in Insurance Code §2203.251 [the Act, §4(b)(3)], must [shall] be allowed a credit against its premium taxes under [the] Insurance Code Chapter 221 [Article 4.10], for all lines of insurance that [which] the member is writing in [the State of] Texas, which are subject to a premium tax under Insurance Code Chapter 221 [Article 4.10]. The tax credit, in the aggregate amount of the assessments plus interest at a rate to be approved by the Commissioner, must [commissioner shall] be allowed at a rate of 20% per year for five successive years following the year in which the deficit was sustained and at the option of the member may be taken over an additional number of years. For purposes of this premium tax offset, expense fees paid pursuant to §5.2002(b)(1) and (2) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association) are deemed to be assessments.

(f) Auditing of members. The association may audit the policies, records, book of accounts, documents, and related material of any member that [; which] are necessary to carry out its functions. Such material must [shall] be provided by the members in the form and with the frequency reasonably required by rules adopted by the Commissioner [commissioner].

§5.2004. *Medical Liability Insurance and General Liability Insurance.*

(a) The policy.

(1) Approval. The procedures regarding rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and related statistics must comply with Insurance Code Chapter 2203, Subchapter E.

(2) Duration of policies.

(A) All policies issued by the association must be written for a term of one year or less, as determined by the association, to begin at 12:01 a.m. on their respective effective dates.

(B) The association may not issue a policy with an effective date after a date set under Insurance Code Article 21.49-3, §11 for a plan of suspension to become effective and operative.

(C) All policies must be written on forms approved by the department, and must contain a provision that requires, as a condition precedent to settlement or compromise of any claim, the consent or acquiescence of the insured. If, however, the insured refuses to consent to any settlement recommended in writing by the association and

elects to contest or continue any legal proceedings, the liability of the association must not exceed the amount for which the claim could have been settled plus the cost and expenses incurred up to the date of the refusal.

(3) **Installment payment plan.** The association may offer an installment plan for coverage obtained through the association or for payment of the stabilization reserve fund charge. The association may require the policyholder to pay the stabilization reserve fund charge as an annual lump sum.

(4) **Limits of liability.**

(A) No individual or organization may be insured by a policy issued, or caused to be issued, by the association for an amount exceeding a total of \$1 million per occurrence (for all coverages combined) and \$3 million aggregate per annum (for all coverages combined). As used in this paragraph, the terms "individual" and "organization" mean each physician, health care provider, health care practitioner, and health care facility holding a separate license or accreditation from the appropriate licensing or accrediting agency as applicable.

(B) If provided, general liability limits must be the same as medical liability limits subject to the maximum policy limits specified in subparagraph (A) of this paragraph.

(5) **Special provisions.**

(A) The association may issue policies with deductibles.

(B) The association may issue policies subject to retrospective rating plans.

(C) Policies of excess medical liability insurance and excess general liability insurance written by the association must:

(i) be on a following form basis to the underlying medical liability insurance or underlying general liability insurance coverage over which it is written;

(ii) be issued subject to review of the underlying coverage if review is deemed necessary by the association or its representatives;

(iii) not be issued in those cases where the net retention at risk by the primary carrier is less than \$100,000 per occurrence or less than \$300,000 aggregate per annum after applying any applicable deductible;

(iv) be issued only when the underlying insurance coverage is underwritten by a member of the association and the underlying insurance coverage does not have a deductible in excess of \$25,000;

(v) terminate automatically if the underlying primary medical liability insurance policy or underlying primary general liability insurance is not maintained for any reason, except exhaustion by payment of a loss or losses. If the aggregate underlying primary medical liability insurance or general liability insurance is exhausted by the payment of a loss or losses occurring during the policy period, the insurance provided by the excess policy must apply in the same manner as if the underlying primary insurance was in full force and effect;

(vi) not be accepted for a hospital or other institutional health care provider or health care facility if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners with staff privileges are insured for their individual med-

ical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum; and

(vii) not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who employ or contract with other physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who are eligible to obtain coverage from the association are insured for their individual medical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(D) No hospital or other institutional health care provider, health care facility or physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners that have employed or contracted physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners can be accepted for coverage in the association without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers, or health care practitioners with staff privileges or employed or contracted by the applicant are insured for their individual medical liability with limits of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(E) For purposes of this section, the term "health care providers or health care practitioners" does not include personnel at or below the level of employed registered nurse. Insurance required for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, health care practitioners, or other health care providers with hospital staff privileges or employed or contracted by the applicant must be limited to any one of the following entities:

(i) an insurance company authorized and licensed to write and writing health care liability or medical liability insurance in Texas under Insurance Code Chapter 801;

(ii) an insurance company eligible to write and writing health care liability or medical liability insurance in Texas as a surplus lines carrier under Insurance Code Chapter 981;

(iii) the Texas Medical Liability Insurance Underwriting Association, established under Insurance Code Chapter 2203;

(iv) a self-insurance trust created to provide health care liability or medical liability insurance, established under Insurance Code Chapter 2212;

(v) a risk retention group or purchasing group writing health care liability or medical liability insurance in Texas, registered under Insurance Code Chapter 2201;

(vi) a plan of self-insurance of an institution of higher education that provides health care liability or medical liability coverage, established under Education Code Chapter 59; or

(vii) a plan of self-insurance that meets each of the following criteria:

(I) the plan's liabilities must be fully funded and the plan must be solvent. The plan must have a minimum net worth equal to the lesser of \$1 million or that amount of net worth that results in a capitalization ratio of 5% [percent]. As used in this subclause, "net worth" is calculated by determining the excess, if any, of the plan's total assets over the plan's total liabilities. As used in this subclause, "capitalization ratio" means the ratio of the plan's net worth (as the numerator) to the plan's total assets (as the denominator). Notwithstanding

the preceding, the net worth requirements in this subclause do not apply to a plan that lawfully has taxing authority over a segment of the Texas public, provided that the taxing authority may be used to meet the plan's liabilities and other obligations; and

(II) the plan must annually obtain from a qualified actuary who is a member in good standing of the American Academy of Actuaries an actuarial analysis that reflects that its operations are viable. Notwithstanding the preceding, an actuarial opinion filed with the department under Insurance Code §802.002 may be accepted for purposes of this subsection; and

(III) financial statements of the plan must annually be audited by an independent certified public accountant who is a member in good standing of the American Institute of Certified Public Accountants (AICPA). The audits must use generally accepted auditing standards and must result in a report that attests to whether the financial statements comply with generally accepted accounting principles adopted by the AICPA. Notwithstanding the preceding, an audit report filed with the department under Insurance Code Chapter 401 may be accepted for purposes of this subsection; and

(IV) the plan must have competent and trustworthy management who are generally knowledgeable of insurance matters. A plan is not eligible if a plan officer or member of the plan's board of directors or similar governing body has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(6) Rates, rating plans, and rating rules applicable. The rates, rating plans, rating rules, rating classifications, and territories applicable must be those established under Insurance Code Chapter 2203, Subchapter E.

(b) Application, underwriting standards, and acceptance or rejection.

(1) Eligibility and forms.

(A) Any physician and any health care provider as defined in Insurance Code §2203.002 and any health care practitioner and health care facility as defined in Insurance Code §2203.103 that falls within any of the categories of physicians, health care providers, health care practitioners, or health care facilities established by order of the Commissioner [~~commissioner~~] from time to time as being eligible to obtain coverage from the association[~~s~~] is entitled to apply to the association for a medical liability insurance policy. However, if the applicant is a partnership, professional association, or corporation (other than a nonprofit corporation certified under Occupations Code Chapter 162) ~~composed~~ [~~emprised~~] of eligible health care providers or health care practitioners (such as physicians, dentists, or podiatrists), all of the partners, professional association members, or shareholders must also be individually insured in the association.

(i) Any category of physician or health care provider, which by order of the Commissioner [~~commissioner~~] has been excluded from eligibility to obtain coverage from the association, may be eligible for coverage in the association if, after at least 10 days' notice and an opportunity for a hearing, the Commissioner [~~commissioner~~] determines that medical liability insurance is not available for the category of physician or health care provider. In addition, a for-profit or not-for-profit nursing home or assisted living facility not otherwise eligible for coverage from the association is eligible for coverage if the nursing home or assisted living facility demonstrates, in accordance with the requirements of the association, that the nursing home or assisted living facility made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates.

(ii) All applications for medical liability and general liability insurance must be made on forms prescribed by the board of directors of the association and approved by the department. The application forms must contain a statement as to whether or not there are any unpaid premiums, assessments, or stabilization reserve fund charges due from the applicant for prior insurance. Application may be made on behalf of the applicant by an agent authorized under Insurance Code Chapter 4051. The agent need not be appointed by a servicing company.

(B) The association may issue a general liability insurance policy to an applicant specified in subparagraph (A) of this paragraph only if the association issues to that applicant a medical liability insurance policy.

(2) Licensed agent. If a liability insurance policy is written through a licensed agent then:

(A) the commission paid to the licensed agent must be 10% [~~percent~~] of the first \$1,000 of the policy premium, 5% [~~percent~~] of the next \$9,000 of the policy premium, and 2% [~~percent~~] of the policy premium in excess of \$10,000 for policies written by the association on the form approved for physicians and noninstitutional health care providers;

(B) the commission paid to the licensed agent must be 12.5% [~~percent~~] of the first \$2,000 of the policy premium, 7.5% [~~percent~~] of the next \$3,000 of the policy premium, 5% [~~percent~~] of the next \$15,000 of the policy premium, and 2% [~~percent~~] of the policy premium in excess of \$20,000 for policies written by the association on the form approved for hospitals and other institutional health care providers;

(C) the commission paid to the licensed agent must be 10% [~~percent~~] of the policy premium for an excess liability insurance policy written by the association for a physician or any other health care provider as defined in Insurance Code §2203.002. The commission, however, may not exceed \$250 for a policy written on the form approved for physicians and other noninstitutional health care providers, and may not exceed \$500 for a policy written on the form approved for hospitals and other institutional health care providers; and

(D) no commission may be payable for any assessment payable by the policyholder by reason of a deficit incurred by the association, including charges for the stabilization reserve funds. On cancellation, the agent must refund any unearned portion of the commission to the association.

(3) Submission. Application for medical liability or general liability insurance on the prescribed form must be accompanied by tender of the amount of the deposit premium and the charge for the stabilization reserve fund required to bind the policy.

(4) Underwriting standards.

(A) On initial application and every reapplication to the association, the following underwriting standards must apply for policies of medical liability insurance written by the association:

(i) all applicants to the association must be currently licensed, chartered, certified, or accredited to practice or provide their respective health care services in Texas;

(ii) all health care provider, practitioner and facility and physician applicants to the association must provide evidence of inability to obtain medical liability coverage. The evidence must be two written rejections by carriers licensed and engaged in writing the coverage applied for in Texas or by a self-insurance trust created under Insurance Code Chapter 2212;

(iii) all for-profit and not-for-profit nursing home and assisted living facility applicants to the association must provide evidence of inability to obtain coverage from authorized insurers and eligible surplus lines insurers for substantially equivalent coverage and rates. The evidence must be two written rejections by insurers licensed and engaged in writing the coverage applied for in Texas or by eligible surplus lines insurers. For purposes of this subsection, a rejection has occurred if the applicant:

(I) made a verifiable effort to obtain insurance coverage from authorized insurers and eligible surplus lines insurers; and

(II) was unable to obtain substantially equivalent insurance coverage and rates.

(iv) any material misrepresentation in the application for coverage must be cause to decline coverage on discovery by the association or its authorized representative;

(v) each application must be accompanied by authorization for and consent to investigations of material information bearing on the moral character, professional reputation, and fitness to engage in the activities embraced by the applicant's license with respect to applicants who are to be provided coverage on the form approved for physicians and noninstitutional health care providers, or the reputation, method of operation, accident prevention programs, and fitness to engage in the activities embraced by the applicant's license, charter, certificate, or accreditation for applicants that are to be provided coverage on the form approved for hospitals and other institutional health care providers, including authorization to every person or entity, public or private, to release to the association any documents, records, or other information bearing on this information;

(vi) no coverage may be afforded either by binder or by policy issuance to any applicant whose license, charter, certificate, or accreditation has been ordered canceled, revoked, or suspended, [;] provided that, if the order has been probated by the appropriate regulatory body or licensing agency, the probation may be reviewed by the association for a determination whether and on what basis coverage may be afforded in the association;

(vii) the applicant, to be eligible for coverage in the association, must comply with all significant recommendations arising out of a loss control or risk management report either before binding coverage or as soon as practicable concurrently with coverage;

(viii) there must be no unpaid, uncontested premium; assessment; or charge due from the applicant;

(ix) there must be no unpaid deductible, in whole or part, owed to the association.

(5) Receipt of the application. On receipt of the application, the required deposit premium, and the applicable stabilization reserve fund charge, the association must, within 30 days:

(A) cause a binder or insurance policy to be issued; or

(B) advise the agent or applicant that the applicant does not meet the underwriting standards of the association, in which case the association must indicate the reasons the applicant does not meet the underwriting standards.

(c) Cancellation, nonrenewal, and notice.

(1) Cancellation by the association. The association may not cancel an insurance policy except for:

(A) nonpayment of premium;

(B) nonpayment of the applicable stabilization reserve fund charge;

(C) nonpayment of assessment;

(D) evidence of fraud or material misrepresentation; or

(E) cause that would have been grounds for nonacceptance of the risk under this subchapter had the cause been known to the association at the time the policy was issued; or

(F) any cause arising after the policy is issued that would have been grounds for nonacceptance of the risk under this subchapter had the cause existed at the time of acceptance; or

(G) noncompliance with reasonable loss control or risk management recommendations under subsection (b)(4)(A)(vii) of this section. On cancellation of an insurance policy by the association, the association must refund to the insured the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G on a pro rata basis, provided that all assessments and fund charges earned under Insurance Code Chapter 2203, Subchapter G have been fully paid; otherwise, only that portion of unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association), no portion is refundable.

(2) Cancellation by the insured. An insurance policy may be canceled at any time:

(A) by the insured, on written request for cancellation of the policy; or

(B) by an insurance premium finance company in accordance with Insurance Code Chapter 651.

(3) Refund of unearned portion of paid premium. The association must refund the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G according to the approved short-rate table, provided all assessments and fund charges under Insurance Code Chapter 2203, Subchapter G earned have been fully paid; otherwise, only that portion of the unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title, no portion is refundable.

(4) Exhausted policy limits. If there is an outstanding claim or claims under any insurance policy on which a reserve or reserves have been established, which in the aggregate or when combined with losses previously paid under the policy equal or exceed the aggregate limits of coverage under the policy, the association must notify the insured. At the insured's option, the policy may be canceled. If the policy is canceled, the premium must be considered fully earned and the insured may apply for a new policy to be effective concurrently with the termination date of the canceled policy.

(5) Notice of cancellation, nonrenewal, or premium increase.

(A) The association may cancel a medical liability insurance policy and general liability insurance policy, or decline to re-

new a policy for any reason listed in paragraph (1) of this subsection at any time within the first 90 days from the effective date of the policy by sending 90 days written notice to the insured.

(B) The association may cancel a medical liability insurance policy and general liability insurance policy or decline to renew a policy for nonpayment of premium, assessments, or fund charges under Insurance Code Chapter 2203, Subchapter G, or for loss of license, charter, certification, or accreditation at any time during the policy period by sending 10 days' written notice to the insured.

(C) Notice of cancellation or nonrenewal under subparagraphs (A) and (B) of this paragraph must contain a statement of the reason for the cancellation or nonrenewal and a statement that the insured has the right to appeal under Insurance Code Chapter 2203, Subchapter I.

(D) The association must give at least 90 days' written notice to an insured before increasing the premium by reason of a rate increase on the insured's medical liability insurance policy. The notice must state the amount of the increase.

(6) General liability insurance. A general liability insurance policy issued by the association under Insurance Code §2203.151(b) automatically terminates on the same effective date and time as the termination of the medical liability insurance policy.

(d) Suspension of policy. The association must, on written request from a policyholder subject to the Servicemembers Civil Relief Act of 2003 (50 United States Code App. §§501, et seq.), suspend the policy issued by the association, in accordance with the Servicemembers Civil Relief Act of 2003.

(e) Removal of risks. Any member, or self-insurance trust established under Insurance Code Chapter 2212, at any time, on written consent from the insured filed with the association, may write the risk as regular business, in which event the association must cancel its policy pro rata as of a date and time specified by the manager of the association. The association will require written confirmation that the member or self-insurance trust is taking the risk out of the association before allowing pro rata cancellation.

(f) Payment of claims.

(1) Report of loss. All losses must be reported to the association in the manner prescribed by the board of directors.

(2) Adjustment of loss. All losses must be adjusted in the manner designated by the board of directors subject to the provisions of this plan of operation and the insurance laws of Texas.

§5.2005. *Amendments.*

Amendments to this subchapter may be recommended by the board of directors, subject to the approval of the Commissioner [eommissioner], or may [shall] be made at the direction of the Commissioner [eommissioner].

§5.2006. *Reinsurance.*

Pursuant to Insurance Code §2203.151(a)(3) and (4) [the Aet, §3(b)(4)], the Texas Medical Liability Insurance Underwriting Association may cede and purchase reinsurance. The purpose of this section is to implement Insurance Code §2203.151(a)(3) and (4) [the Aet, §3(b)(4)].

(1) The association may develop a reinsurance program that will provide for the purchase of reinsurance and that will maintain the purpose of the association to provide medical liability insurance and general liability insurance on a self-supporting basis.

(2) A reinsurance program is [shall be] subject to prior approval by the Commissioner [eommissioner], and such prior approval

must be obtained before implementation of the reinsurance program. The program must [shall] include, but is not limited to, the proposed reinsurance program structure and terms, including the reinsurance proposal and proposed reinsurance contract terms and conditions; cost of the proposed reinsurance program; the recommended percentage of reinsured business to be assumed by each individual reinsurer; a summary of the financial condition of each recommended reinsurer; the association's costs to administer the reinsurance program; compliance with Subchapter F of Chapter 7 of this title (relating to Reinsurance), to the extent that provisions do not conflict with this section or Chapter 2203 [Article 21.49-3] of the Insurance Code, or unless such provisions are waived by the Commissioner [eommissioner]; and any other information the Commissioner [eommissioner] deems necessary to enable the Commissioner [eommissioner] to determine whether to approve or disapprove the reinsurance program. The association must [shall] submit to the Commissioner [eommissioner], no later than 90 days before expiration of the reinsurance contract, the proposed renewal reinsurance program or a statement of the reasons why a reinsurance program is no longer necessary.

(3) The association must [shall] submit written notice of any amendment [aamendment(s)] to any existing reinsurance contract to the Commissioner [eommissioner] at least 60 days prior to the effective date of the proposed amendment [aamendment(s)]. The notice must [shall] include an explanation of the reason for the amendment [aamendment(s)] and a copy of the draft amendment [aamendment(s)]. The amendment will [aamendment(s) shall] be deemed approved by the Commissioner [eommissioner] unless within 60 days following the submission of the written notice the Commissioner [eommissioner] disapproves the amendment [aamendment(s)].

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

Filed with the Office of the Secretary of State on July 13, 2020.

TRD-202002883

James Persons

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 676-6587

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.2

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to Title 31, Texas Administrative Code, Part 17, Chapter 520 District Operations, Subchapter A, Election Procedures, §520.2, Definitions.

Background and Purpose

Pursuant to Texas Government Code §2001.039, the State Board conducted a rule review of Title 31, Texas Administrative

Code, Part 17, Chapter 520, District Operations, Subchapter A, Election Procedures. The State Board received no comments.

The proposed amendment to §520.2(5) deletes the former physical address of the State Board headquarters and leaves a physical address out of the rule to avoid future amendments regarding headquarter address changes. The other amendment alphabetizes the definitions.

Section-by-section Summary

The proposed amendment to §520.2(5) removes the former State Office address, 4311 South 31st Street, Temple, Texas.

Fiscal Impact on State and Local Government

Kenny Zajicek, COO/CFO for the State Board, has determined that the proposed amendment does not impose an increased cost to state or local government.

Because there is no effect on local economies for the first five years that the proposed amendment is in effect, no local employment impact statement is required under Texas Government Code §2001.022.

Public Benefit/Cost to Regulated Persons

Mr. Zajicek has determined that the public benefit is the correction of a rule to remove the former address of the State Board headquarters. For each year of the first five years the rule is in effect, there will be no anticipated economic costs to persons.

There are no costs to regulated persons because the State Board does not regulate individuals and because of the nature of the rule change, which deletes the former headquarters address.

One-for-one Rule Analysis

Due to the nature of the amendment and because the State Board does not regulate individuals; the proposed amendment does not impose a cost on a person. The amendment does not impose a cost on another state agency or a special district; therefore, it is not subject to Texas Government Code §2001.0045.

Government Growth Impact

During the first five years of the proposed amendment is in effect, it would not: (1) create or eliminate a government program; (2) require the creation of new employee positions or eliminate existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand or repeal an existing regulation; and (7) not negatively affect the state's economy. Because the amendment only deletes the former physical address of the State Board's headquarters and because the State Board does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposed amendments' applicability.

Local Employment and Impact Statement

The CFO/COO has determined that no local economies are substantially affected by the rule, and, as such, the State Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The CFO/COO has determined that the rule amendment will not have an adverse impact on small or micro-businesses, or rural

communities, because there are no substantial anticipated costs to person who are required to comply with the rule. As a result, the State Board asserts that preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The State Board has determined that there are no private real property interests affected by the rule; thus, the State Board asserts the preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The State Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the State Board asserts that this proposal is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the State Board asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Request for Public Comment

Comments on the proposed amendment may be submitted to Liza Parker, Policy Analyst/Legislative Liaison, Texas State Soil and Water Conservation Board; 1497 Country View Lane, Temple, Texas 76504, within 30 days of publication of this proposed amendment in the *Texas Register*. Comments may also be submitted via fax to (254) 773-3311 or via email to lparker@tss-wcb.texas.gov.

Statutory Authority

The amendment is proposed under Texas Agriculture Code, Title 7, Chapter 201, Subchapter B, State Soil and Water Conservation Board, §201.020, which provides the State Board with the authority to adopt rules as necessary for the performance of its functions under Chapter 201, Texas Agriculture Code.

No other code, article or statutes are affected by this amendment.

§520.2. Definitions.

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

(1) District--A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) [(4)] Eligible Voter--A person or a family farm corporation designated corporate officer as defined in §201.003 Agriculture Code of Texas is eligible to vote in a district election.

(3) [(2)] Executive Director--The Executive Director of the Texas State Soil and Water Conservation Board.

(4) [(3)] State Board--The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(5) State Office--The State Board headquarters office [located at 4311 South 31st Street, Temple, Texas].

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

Filed with the Office of the Secretary of State on July 8, 2020.

TRD-202002811



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an exemption and this amendment provides clarification for commercial driver license exemptions for covered farm vehicles.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department 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 that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed

rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August 10, 2020 at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding General Applicability and Definitions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through June 1, 2020 [~~July 1, 2019~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through June 1, 2020 [~~July 1, 2019~~]. The rules detailed in this section ensure:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Certain terms, when used in the federal motor carrier safety regulations as adopted in subsection (a) of this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Motor carrier--Has the meaning assigned by Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section.

(2) Hazardous material shipper--A consignor, consignee, or beneficial owner of a shipment of hazardous materials.

(3) Interstate or foreign commerce--All movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state.

(4) Department--The Texas Department of Public Safety.

(5) Director--The director of the Texas Department of Public Safety or the designee of the director.

(6) Federal Motor Carrier Safety Administration (FMCSA)--The director of the Texas Department of Public Safety for vehicles operating in intrastate commerce.

(7) Farm vehicle--Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch.

(8) Commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, §390.5 if operated interstate.

(9) Foreign commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §648.001.

(10) Agricultural commodity--Has the meaning as defined in Title 49, Code of Federal Regulations, §395.2 and includes wood chips.

(11) Planting and harvesting seasons--Are January 1 to December 31.

(12) Producer--A person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(13) Off-road motorized construction equipment--Includes but is not limited to, motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road

motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, §382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, §382.501(c).

(c) Applicability.

(1) The FMCSA regulations are applicable to the vehicles detailed in subparagraph (A) - (G) [(A) - (F)] of this paragraph:

(A) a vehicle or combination of vehicles with an actual gross weight or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver;

(D) a vehicle transporting hazardous material requiring a placard;

(E) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; [and]

(F) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers; and[-]

(G) a covered farm vehicle as defined in Texas Transportation Code, §522.004 and in Title 49, Code of Federal Regulations, §390.5 qualifies for the commercial driver license (CDL) exemption only when a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR), whichever is greater, of more than 26,001 lbs. is operated in intrastate commerce. All other covered farm vehicle exemptions apply in intrastate commerce at a GVW or GVWR of 48,000 lbs. or more.

(2) The regulations contained in Title 49, Code of Federal Regulations, §392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, §392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, §392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, §§391.14, 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002772

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of rules in Texas Administrative Code (TAC) Title 40, Part 1, Chapter 51, concerning Medically Dependent Children Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal obsolete rules for the Medically Dependent Children Program (MDCP), a Medicaid §1915(c) waiver program that provides medical assistance benefits to children and young adults. The rules in 40 TAC, Chapter 51 governed the delivery of MDCP under a fee-for-service payment system.

Senate Bill 7, 83rd Legislature, Regular Session, 2013, amended the Texas Government Code, Chapter 533, by adding §533.00253, STAR Kids Medicaid Managed Care Program. Section 533.00253 required HHSC to establish a STAR Kids capitated managed care program to provide medical assistance benefits to children with disabilities. Section 533.00253 also required HHSC to provide medical assistance benefits through the STAR Kids managed care program to children who were receiving benefits in MDCP.

HHSC adopted managed care rules in 1 TAC, Chapter 353, Medicaid Managed Care, including §353.1155, Medically Dependent Children Program, effective November 1, 2016, that govern MDCP services provided under a Medicaid managed care program. On November 1, 2016, HHSC transitioned children and young adults enrolled in MDCP to the Medicaid managed care program.

In addition to adopting MDCP rules in 1 TAC §353.1155, HHSC staff completed an analysis in January 2018, to ensure that all MDCP requirements under managed care were included in the Uniform Managed Care Contract, Uniform Managed Care Manual, STAR Kids Managed Care Contract, STAR Health Managed Care Contract, and the STAR Kids Handbook.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§51.101, 51.103, 51.201, 51.203, 51.207, 51.211, 51.213, 51.215, 51.217, 51.219, 51.221, 51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245, 51.247, 51.251, 51.301, 51.303, 51.305, 51.307, 51.309, 51.321, 51.323, 51.325, 51.327, 51.329, 51.331, 51.401, 51.403, 51.405, 51.407, 51.409, 51.411, 51.413, 51.415, 51.417, 51.418, 51.419, 51.421, 51.423, 51.431, 51.433, 51.441, 51.461, 51.463, 51.465, 51.471, 51.473, 51.475, 51.477, 51.479, 51.481, 51.483, 51.485, 51.505, 51.509, 51.511, 51.513, and 51.515 deletes obsolete rules in 40 TAC, Part 1.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues to state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be repealed:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to HHSC;
- (5) the proposed repeals will not create a new rule;
- (6) the proposed repeals will repeal existing rules;
- (7) the proposed repeals will not change the number of individuals subject to the repeals; and
- (8) the proposed repeals will not affect the state's economy.

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the proposed repeals. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the repeals are in effect, the public will benefit from the removal of obsolete rules that no longer govern MDCP.

Liz Prado has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no requirement to alter current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 18R006" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §§51.101, 51.103

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.101. *Purpose.*

§51.103. *Definitions.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002779

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501



SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

DIVISION 1. ELIGIBILITY

40 TAC §§51.201, 51.203, 51.207

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.201. *MDCP Interest List.*

§51.203. *Eligibility Requirements.*

§51.207. *Medical Necessity.*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3501



DIVISION 2. ENROLLMENT

40 TAC §§51.211, 51.213, 51.215, 51.217, 51.219, 51.221

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.211. *Enrollment.*

§51.213. *Enrollment of Former Nursing Facility Residents.*

§51.215. *Home Visit.*

§51.217. *Individual Plan of Care.*

§51.219. *Maintaining Enrollment.*

§51.221. *Other Responsibilities.*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3501



DIVISION 3. SERVICES

40 TAC §§51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245, 51.247

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.231. *Service Limitations.*

§51.233. *Choosing a Program Provider.*

§51.235. *CDS Option.*

§51.237. *Service Schedule Changes.*

§51.241. *Service Suspensions by DADS.*

§51.243. *Denials, Terminations, and Service Reductions.*

§51.245. *Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area.*

§51.247. *HCSSA Transfer to a Different Contracted Service Delivery Area.*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3501



DIVISION 4. APPEALS

40 TAC §51.251

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeal affects Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.251. *Appeals.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501



SUBCHAPTER C. RESPONSIBILITIES OF THE INDIVIDUAL IN SECURING ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS

DIVISION 1. ADAPTIVE AIDS

40 TAC §§51.301, 51.303, 51.305, 51.307, 51.309

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.301. *Procurement.*

§51.303. *Specifications for Adaptive Aids.*

§51.305. *Bids for Adaptive Aids.*

§51.307. *Enhancements to Adaptive Aids.*

§51.309. *Vehicle Modifications and Adaptive Equipment.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002785

Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3501



DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§51.321, 51.323, 51.325, 51.327, 51.329, 51.331

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.321. *Minor Home Modifications.*

§51.323. *List of Minor Home Modifications.*

§51.325. *Specifications for Minor Home Modifications.*

§51.327. *Owner Approval for Minor Home Modifications.*

§51.329. *Bids for Minor Home Modifications.*

§51.331. *Enhancements to Minor Home Modifications.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002786

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501



SUBCHAPTER D. PROVIDER REQUIREMENTS

DIVISION 1. CONTRACTING REQUIREMENTS

40 TAC §§51.401, 51.403, 51.405, 51.407, 51.409

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.401. *Contracting Requirements.*

§51.403. *Use of Third-Party Resources.*

§51.405. *Monitoring Medicaid Eligibility.*

§51.407. *Written Information.*

§51.409. *Utilization Review.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002787

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501



DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

40 TAC §§51.411, 51.413, 51.415, 51.417, 51.418, 51.419

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive

Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

- §51.411. *General Service Delivery Requirements.*
- §51.413. *Response to Service Authorization.*
- §51.415. *Notification to the Individual.*
- §51.417. *Notification to the Case Manager.*
- §51.418. *Protective Devices.*
- §51.419. *Service Suspensions by Program Provider.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002788

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501



DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND FLEXIBLE FAMILY SUPPORT SERVICES

40 TAC §51.421, §51.423

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

- §51.421. *Requirements for Attendants Providing Respite and Flexible Family Support Services.*
- §51.423. *Respite and Flexible Family Support Services.*

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002789

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 23, 2020

For further information, please call: (512) 438-3501

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DIVISION 4. SERVICE DELIVERY REQUIREMENTS FOR HOST FAMILIES

40 TAC §51.431, §51.433

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.431. *Host Family Requirements.*

§51.433. *Host Family Duties.*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3501



DIVISION 5. SERVICE DELIVERY REQUIREMENTS FOR CONSUMER DIRECTED SERVICES

40 TAC §51.441

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeal affects Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.441. *CDS Backup Plans.*

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

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Karen Ray
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DIVISION 7. SERVICE DELIVERY REQUIREMENTS FOR ADAPTIVE AIDS

40 TAC §§51.461, 51.463, 51.465

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.461. Delivery of Adaptive Aids.

§51.463. Follow-up After Delivery of Adaptive Aids.

§51.465. Reimbursement of Adaptive Aids.

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

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DIVISION 8. SERVICE DELIVERY REQUIREMENTS FOR MINOR HOME MODIFICATIONS

40 TAC §§51.471, 51.473, 51.475, 51.477, 51.479

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government

Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.471. General Requirements.

§51.473. Time Frames for Completion of Minor Home Modifications.

§51.475. Inspection and Follow-Up.

§51.477. Reimbursement of Minor Home Modifications.

§51.479. Accountability for Minor Home Modifications.

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

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DIVISION 9. SERVICE DELIVERY REQUIREMENTS FOR EMPLOYEE ASSISTANCE AND SUPPORTED EMPLOYMENT

40 TAC §§51.481, 51.483, 51.485

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.481. Employment Assistance.

§51.483. Supported Employment.

§51.485. Service Provider Qualifications for Providing Employment Assistance and Supported Employment.

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

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SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§51.505, 51.509, 51.511, 51.513, 51.515

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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed repeals affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§51.505. *Purchase Completion Documentation.*

§51.509. *Claims and Service Delivery Records.*

§51.511. *Billable Time and Activities.*

§51.513. *Non-billable Time and Activities.*

§51.515. *Record Keeping.*

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

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.10

TWC proposes amendments to the following section of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.3

TWC proposes the following new subchapters to Chapter 800, relating to General Administration:

Subchapter H. Vendor Protests, §800.300 and §800.301

Subchapter I. Enhanced Contract Monitoring, §§800.350 - 800.352

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule amendments is to align TWC rules with the following sections of the Texas Government Code requiring state agencies to adopt rules regarding contracting and purchasing:

--Section 2252.202 requires agencies to adopt rules to promote compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

--Section 2155.076 requires agencies to establish, by rule, procedures for resolving vendor protests relating to purchasing issues; and

--Section 2261.253 requires agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract performance monitoring.

Additionally, minor nonsubstantive revisions are required to correct the Texas Comptroller of Public Accounts (Comptroller) rule citation and to remove the obsolete Comptroller division reference related to the Historically Underutilized Business (HUB) program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§800.3. Historically Underutilized Businesses

Section 800.3 is amended to correct the Comptroller rule citation related to the HUB program and to remove the obsolete Comptroller division reference.

§800.10. Purchase of Certain Products

New §800.10 is added to comply with Texas Government Code, Chapter 2252, Subchapter G, §2252.202, requiring that governmental entities adopt rules to promote compliance with the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States.

The rule language states that TWC complies with the statutory requirements of Texas Government Code, Chapter 2252, Subchapter G.

SUBCHAPTER H. VENDOR PROTESTS

TWC proposes new Subchapter H:

According to Texas Government Code §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules." TWC has procedures in place, and staff has ensured that its procedures are consistent with the Comptroller's rules in 34 Texas Administrative Code §1.72. However, pursuant to §2155.076,

these procedures must be in rule. New Subchapter H language reflects TWC's current procedures regarding bid protest procedures.

New §800.300 provides the following definitions related to vendor protests:

--Interested Parties--respondents in connection with the solicitation, evaluation, or award that is being protested.

--Protestant--A respondent vendor that submits a protest under TWC vendor protest procedures.

--Respondent--A vendor that submits an offer or proposal in response to a TWC solicitation.

--Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for Proposals, or Request for Qualifications that contains a request for responses from vendors to provide specified goods and services. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.

--Vendor--A potential provider of goods or services to TWC.

New §800.301 describes the vendor protest procedures. The procedures state that any bid respondent who is allegedly aggrieved in connection with the solicitation, evaluation, or award of a contract by TWC may formally protest, in writing, to the TWC's director of business operations.

The protest must be received by the TWC's director of business operations within 10 working days after the protestant knows, or should have known, of the occurrence of the action that is protested.

The rules state that a protest that is not filed timely shall not be considered unless the director of business operations determines that a protest raises issues that are significant to the TWC's procurement practices or procedures.

The protest must be signed by an authorized representative for the protestant, and the signature notarized and contain the following details:

--the identifying name and number of the solicitation being protested

--identification of the specific statute or regulation that the protestant alleges has been violated

--a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2)

--a precise statement of the relevant facts, including:

--sufficient documentation to establish that the protest has been timely filed; and

--a description of the resulting adverse impact to the protestant

--a statement of the argument and authorities that the protestant offers in support of the protest

--an explanation of the action the protestant is requesting from TWC

--a statement confirming that copies of the protest have been mailed or delivered to any other interested party known to the protestant.

The protestant may appeal determination of a protest to TWC's deputy executive director. The appeal must be in writing,

addressed to TWC's deputy executive director, and the protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

Finally, in order to protect the best interests of TWC or the state, the rules provide that TWC may move forward with a solicitation or contract award without delay, in spite of a timely filed protest.

SUBCHAPTER I. ENHANCED CONTRACT MONITORING

TWC proposes new Subchapter I:

Texas Government Code §2261.253(c) requires state agencies to establish, by rule, a procedure to identify contracts, prior to award, that require enhanced contract or performance monitoring and submit the information to the agency's governing body. In its Procurement and Contract Management Guide, the Comptroller has indicated that this requirement applies to "high-dollar and high-risk contracts." TWC has a procedure implementing the requirement; however, pursuant to §2261.253(c), these procedures must be in rule. New Subchapter I language reflects the current TWC procedures regarding enhanced contract monitoring.

New §800.350 describes the purpose and scope of the subchapter. The purpose of this subchapter is to implement the requirements of Texas Government Code, §2261.253(c) requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

Pursuant to Texas Government Code, §2261.253(d), this subchapter does not apply to:

--memoranda of understanding;

--interagency contracts;

--interlocal agreements; or

--contracts for which there is not a cost.

New §800.351 describes the enhanced contract monitoring policy and procedures. The rules state that:

TWC shall identify contracts requiring enhanced monitoring by evaluating the risk factors, which include:

--the complexity of the goods and services to be provided;

--the contract amount;

--the length and scope of the project supported by the contract;

--whether the services are new or have changed significantly since the last procurement of the same services;

--whether TWC has experience with the contractor;

--whether the project affects external stakeholders or is of particular interest to third parties;

--whether TWC data is accessed by the contractor; and

--any other factors TWC determines in a particular circumstance will create a level of risk to the state or TWC such that enhanced monitoring is required.

The rule states that for contracts requiring enhanced monitoring, the contractor shall report to the assigned TWC contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by TWC to assess progress toward achieving performance requirements.

Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

Texas Government Code, §2261.253 requires TWC to submit information on each contract identified for enhanced contract monitoring to TWC's three-member Commission (Commission). New §800.352 describes the reporting requirements for enhanced contractor monitoring as follows:

--The director of Procurement and Contract Services (PCS Director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

--The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

--If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or

§19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align TWC rules with the Texas Government Code requiring state agencies to adopt rules regarding contracting and purchasing.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Lowell A. Keig, Director, Business Operations Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with statutory contracting and procurement requirements.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on December 10, 2019. TWC also conducted a conference call with Board executive directors and Board staff on December 20, 2019, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.3, §800.10

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.3. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the Agency adopts by reference the rules of the Texas Comptroller of Public Accounts, found at Title 34 TAC, §§20.281 - 298, concerning the Historically Underutilized Business (HUB) program [Texas Procurement and Support Services at 34 TAC Chapter 20, Subchapter D, Division D, Historically Underutilized Businesses]. These rules were promulgated by the Texas Comptroller of Public Accounts, as required under Texas Government Code §2161.002.

§800.10. Purchasing of Certain Products.

Iron and Steel Products. The Agency complies with the requirements of Texas Government Code, Chapter 2252, Subchapter G, relating to the purchase of iron or steel products made in the United States for certain governmental entity projects.

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

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Texas Workforce Commission

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SUBCHAPTER H. VENDOR PROTESTS

40 TAC §800.300, §800.301

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt,

amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.300. Definitions.

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

(1) Interested Parties--Respondents in connection with the Solicitation, evaluation, or award that is being protested.

(2) Protestant--A Respondent Vendor that submits a protest under the Agency Vendor Protest Procedures.

(3) Respondent--A Vendor that submits an offer or proposal in response to an Agency Solicitation.

(4) Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for Proposals, or Request for Qualifications that contains a request for responses from Vendors to provide specified goods and services. The term also refers to the process of obtaining responses from Vendors to provide specified goods and services.

(5) Vendor--A potential provider of goods or services to the Agency.

§800.301. Vendor Protest Procedures.

(a) Any Respondent who is allegedly aggrieved in connection with the Solicitation, evaluation, or award of a contract by the Agency may formally protest to the Agency's director of business operations.

(1) Such protests must be made in writing and timely received by the Agency's director of business operations.

(2) The protest must be received by the Agency's director of business operations within 10 working days after the Protestant knows, or should have known, of the occurrence of the action that is protested.

(3) The Protestant shall mail or deliver copies of the protest to: Director of Business Operations, 101 E. 15th Street, Room 316T, Austin, Texas 78778. The Protestant must also mail or deliver copies of the protest to Interested Parties known to the Protestant.

(b) A protest that is not filed timely shall not be considered unless the director of business operations determines that the protest raises issues that are significant to the Agency's procurement practices or procedures.

(c) The protest must be in writing and contain:

(1) the identifying name and number of the Solicitation being protested;

(2) identification of the specific statute or regulation that the Protestant alleges has been violated;

(3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2) of this section;

(4) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the protest has been timely filed; and

(B) a description of the resulting adverse impact to the Protestant;

(5) a statement of the argument and authorities that the Protestant offers in support of the protest;

(6) an explanation of the action the Protestant is requesting from the Agency; and,

(7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant.

(d) The protest must be signed by an authorized representative for the Protestant and the signature notarized.

(e) The Protestant may appeal determination of a protest to the Agency's deputy executive director.

(1) The appeal filed under these procedures must be in writing, addressed to the Agency's deputy executive director; and

(2) The protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

(f) The Agency may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.

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

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SUBCHAPTER I. ENHANCED CONTRACT MONITORING

40 TAC §§800.350 - 800.352

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.350. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to implement the requirements of Texas Government Code, §2261.253(c), requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

(b) Scope. Pursuant to Texas Government Code, §2261.253(d) and (g), this subchapter does not apply to:

- (1) memoranda of understanding;
- (2) interagency contracts;
- (3) interlocal agreements; or
- (4) contracts for which there is not a cost.

§800.351. Enhanced Contract Monitoring Policy.

(a) The Agency shall identify which contracts for goods and services require enhanced monitoring by evaluating the risk factors, which include:

(1) the complexity of the goods and services to be provided;

(2) the contract amount;

(3) the length and scope of the project supported by the contract;

(4) whether the services are new or have changed significantly since the last procurement of the same services;

(5) whether the Agency has experience with the contractor;

(6) whether the project affects external stakeholders or is of particular interest to third parties;

(7) whether Agency data is accessed by the contractor; and

(8) any other factors the Agency determines in a particular circumstance will create a level of risk to the state or Agency such that enhanced monitoring is required.

(b) For contracts requiring enhanced monitoring, the contractor shall report to the assigned Agency contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on any issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

(c) Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by the Agency to assess progress toward achievement of performance requirements.

(d) Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

§800.352. Reporting of Enhanced Contract Monitoring.

(a) Pursuant to the Texas Government Code §2261.253, the Agency shall submit information on each contract identified for enhanced contract monitoring to the Commission.

(b) The director of Procurement and Contract Services (PCS director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

(c) The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

(d) If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.

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CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11, 813.13, and 813.34

Subchapter D. Allowable Activities, §§813.31 - 813.34

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule change is to comply with the Agriculture Improvement Act of 2018 and other federal requirements.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

TWC proposes the following amendments to Subchapter B:

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services

Amended §813.11 adds clarification regarding Local Workforce Development Board (Board) responsibilities in monitoring SNAP E&T participation.

§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services

Amended §813.13 adds clarification regarding actions that Boards must take when a mandatory work registrant fails to respond to an outreach notification or fails to participate in SNAP E&T activities.

§813.14. Special Provisions Regarding Sanctions for Noncooperation

Amended §813.14 amends the 120-hour monthly participation limitation to comply with 7 USC §2015(d)(4)(F)(ii).

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services

Amended §813.31 updates the activities that may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services to comply with the requirements of the Agriculture Improvement Act of 2018.

§813.32. SNAP E&T Activities for ABAWDs

Amended §813.32 adds, as an allowable SNAP E&T activity, employment and training programs for veterans operated by the US Department of Labor or the US Department of Veterans Affairs.

§813.33. Job Retention Activities

Amended §813.33 updates Board requirements regarding the provision of job retention activities to comply with the require-

ments of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

§813.34. Job Retention Support Services

Amended §813.34 updates Board requirements regarding the provision of job retention support services to comply with the requirements of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to comply with the Agriculture Improvement Act of 2018 and other federal requirements.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or

limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

- the proposed amendments will not create or eliminate a government program;
- implementation of the proposed amendments will not require the creation or elimination of employee positions;
- implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;
- the proposed amendments will not require an increase or decrease in fees paid to TWC;
- the proposed amendments will not create a new regulation;
- the proposed amendments will not expand, limit, or eliminate an existing regulation;
- the proposed amendments will not change the number of individuals subject to the rules; and
- the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with the Agriculture Improvement Act of 2018 and other federal requirements.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 7, 2020. TWC also conducted a conference call with Board executive directors and Board staff on January 17, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

40 TAC §§813.11, 813.13, 813.14

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services.

(a) A Board shall ensure that allowable SNAP E&T activities and support services, as set forth in Subchapters D and E, respectively, of this chapter, are provided as specified in the annual state plan of operations approved by the United States Department of Agriculture (USDA), to individuals who are:

- (1) classified as the General Population; or
- (2) ABAWDs.

(b) A Board shall ensure that the monitoring of SNAP E&T requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:

- (1) tracking and reporting SNAP E&T participation hours;
- (2) tracking and reporting support services hours;
- (3) determining and arranging for any intervention needed to assist the individual in complying with SNAP E&T service requirements;

(4) monitoring and ensuring progress toward achieving the goals and objectives in the employment plan; and

- (5) monitoring all other requirements.

(c) A Board shall ensure that all ABAWDs in full-service SNAP E&T counties are provided with an offer of a work activity within 10 calendar days from the date of referral from HHSC.

(d) A Board shall ensure that HHSC is notified in a timely manner if a mandatory work registrant fails to comply with participant responsibilities, as set forth in §813.12 of this subchapter.

(e) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) (29 USC [U.S.C.] §201 et seq.), as follows:

(1) The [the] amount of time per week that a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the SNAP benefits amount being divided by the minimum wage, so that the amount paid to the mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services would be equal to or more than the amount required for payment of wages, including minimum wage and overtime. [~~;~~ and]

(2) If [if] a Board provides activities that meet all the following criteria set forth in this paragraph, the activities are [activity is] considered "training" under FLSA and minimum wage and overtime are not required, as follows:

- (A) The training is similar to that given in a vocational school.
- (B) The training is for the benefit of the trainees.
- (C) Trainees do not displace currently employed workers.

(D) Employers derive no immediate advantage from trainees' activities.

(E) Trainees are not entitled to a job after training is completed.

(F) Employers and trainees understand that trainees are not paid.

(f) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.

§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services.

(a) Good cause applies only to mandatory work registrants who are required to participate in SNAP E&T services. A Board shall notify HHSC of a SNAP E&T participant's noncompliance within seven days of the noncompliance. A Board also shall ensure that all good cause claims are forwarded to HHSC for determination before SNAP benefits are denied when mandatory work registrants state that they have a legitimate reason for failing to:

- (1) failing to respond to the outreach notification; and
- (2) failing to participate in SNAP E&T activities.

(b) For purposes of this chapter, the following are legitimate reasons a Board may consider when making a good cause recommendation to HHSC after a SNAP E&T participant fails for failing to respond to outreach notifications or fails failing to participate in SNAP E&T activities:

- (1) Temporary temporary illness or incapacitation[;]
- (2) Court court appearance[;]
- (3) Caring earing for a physically or mentally disabled household member who requires the recipient's presence in the home[;]
- (4) No no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board[;]

(5) Distance distance from the home of the mandatory work registrant who participates in SNAP E&T services, to the Workforce Solutions Office, or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), the distance prohibits walking, and there is no available transportation[;]

(6) Farmworkers farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date that the individual notified the Board of his or her seasonal farmwork assignment[;]

(7) An an inability to obtain needed child care, as defined by the Board and based on any of the following reasons:

(A) Informal informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent.[;]

(B) Eligible eligible formal child care providers, as defined in Chapter 809 of this title (relating to Child Care Services), are unavailable.[;]

(C) Affordable affordable formal child care arrangements within maximum rates established by the Board are unavailable.[; and]

(D) Formal formal or informal child care within a reasonable distance from home or the work site is unavailable.[;]

(8) An an absence of other support services necessary for participation[;]

(9) Receiving receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law[;]

(10) An an individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided that the mandatory work registrant who participates in SNAP E&T services engages in problem resolution through appropriate referrals for counseling and support services[; or]

(11) An an individual is a victim of family violence[;]

(c) A Board shall ensure that good cause is monitored at least on a monthly basis and results are shared with HHSC if there is a change in the circumstances surrounding the good cause exception.

§813.14. Special Provisions Regarding Sanctions for Noncooperation.

Mandatory General population mandatory work registrants who are scheduled to participate more than 120 hours per month may not be sanctioned for noncooperation after 120 hours have been reached, as described in the Food and Nutrition Act, 7 USC [U.S.C.] §2015(d)(4)(F)(ii). The 120 hours include hours in all SNAP E&T activities, including any hours worked for paid or unpaid compensation.

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

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Patricia Martinez

Interim Deputy Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §§813.31 - 813.34

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services.

The following activities may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, subject to the limitations specified in §813.32 of this subchapter:

(1) Supervised job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

(i) Employability [job skills] assessment[;]

(ii) Counseling [counseling;]

~~(iii) job search skills training;~~

(iii) Information [information] on available jobs[;]

(iv) Occupational [occupational] exploration, including information on local emerging and demand occupations[;]

(v) Interviewing [interviewing] skills and practice interviews[;]

(vi) Assistance [assistance] with applications and resumés [resumes;]

(vii) Job [job] fairs[;]

(viii) Life [life] skills[; or]

(ix) Guidance [guidance] and motivation for development of positive work behaviors necessary for the labor market; and

(B) limit the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services can spend as follows:

(i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, as described in §813.32(a)(4)(D) of this subchapter.

(ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services shall not be enrolled:

(I) for more than four weeks of consecutive activity under this paragraph;

(II) for more than six weeks of total activity in a federal fiscal year.

(iii) Job search, when offered as part of other SNAP E&T activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph if the job search activities comprise less than half of the required time spent in other activities.

(2) Vocational [vocational] training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) Nonvocational [nonvocational] education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

(i) a secondary school; or

(ii) a course of study leading to a high school diploma or a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, career school or college, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) Work [work] experience, as authorized by 7 USC [U.S.C.] §2015(d)(4)(B)(iv) and by [the Workforce Investment Act in] 20 CFR [C.F.R.] §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills[;] that shall:

(A) occur in the workplace for a limited period of time;

(B) be made in either the private for-profit, the non-profit, or the public sectors; and

(C) be paid or unpaid;

(5) Unsubsidized [unsubsidized] employment[; or]

(6) Other [other] activities approved in the current SNAP E&T state plan of operations[-]

§813.32. SNAP E&T Activities for ABAWDs.

(a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to participating in the following:

(1) Services [services] or activities under the Trade Act of 1974, as amended by the Trade Act of 2002[;]

(2) Activities [activities] under Workforce Innovation and Opportunity Act (29 USC §3111 et seq.) [the Workforce Investment Act (29 U.S.C. §2801, et seq.);]

(3) Education [education] and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) Workfare [workfare] activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP allotment divided by the number of ABAWDs in the SNAP household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period before [prior to] placement in a workfare activity.

(b) Boards shall ensure that ABAWDs who are referred to a [Texas] Workforce Solutions Office [Center] and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T services because they have fulfilled their work requirement, as described in 7 USC [U.S.C.] §2015(o)(2)(A). Additionally [In addition], Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

(c) An employment and training program for veterans operated by the US Department of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an allowable SNAP E&T activity for ABAWDs.

§813.33. Job Retention Activities.

(a) Boards shall offer [~~may provide~~] job retention activities:

(1) similar to the SNAP E&T activities described in §813.31(1) - (3) of this subchapter, and as specified in the annual SNAP E&T state plan of operations and any subsequent amendments approved by USDA;

(2) for a minimum of 30 days and not more than [~~up to~~] 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and

(3) in full-service or minimum-service counties as funding permits and as specified in paragraphs (1) and (2) of this subsection.

(b) Boards shall ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. *Job Retention Support Services.*

Boards shall offer [~~may provide~~] job retention support services for a minimum of 30 days and not more than [~~up to~~] 90 days to assist:

(1) mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and

(2) exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

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

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