

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 215, concerning Statewide Technology Centers. Sections 215.1 - 215.4, 215.10 - 215.12, and 215.30 - 215.32 in subchapters (A) - (C) are adopted without changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) and will not be republished. In addition, the department adopts two new subchapters, Subchapter D, §§215.40 - 215.43, and Subchapter E, §§215.50 - 215.53. Sections 215.41 - 215.43 and §§215.51 - 215.53 are adopted without changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) and will not be republished.

The amendments to 1 Texas Administrative Code §215.13 and §215.33, concerning Statewide Technology Centers, are adopted with nonsubstantive changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) in response to comments received from the public. Amendments to 1 Texas Administrative Code §215.40 and §215.50 are adopted with changes to conform the rules to Texas Administrative Code structure. These rules will be republished.

The adopted rules apply to both state agencies and institutions of higher education.

The department approves the correction of references to the Texas Administrative Code and Texas Government Code to be in compliance with legal grammatical standards in §§215.1 - 215.4, 215.10 - 215.13, and 215.30 - 215.33

The department approves the amendment of the title of Chapter 215 from "Statewide Technology Centers for Data and Disaster Recovery Services" to "Statewide Technology Centers." This change reflects the development of the Application Services Center in addition to the Data Center Services already provided for by 1 Texas Administrative Code Chapter 215.

In §215.2, the department approves the amendment of the rule title to "Applicable Terms and Technologies for Statewide Technology Centers" and removing the phrase "for Data and Disaster Recovery Services."

In §215.2, the department approves the addition of the following definitions because of new or revised content in Chapter 215: "Application Services Center;" "Application Services Customer;" and "Software-as-a-Service."

The department approves the following existing definition amendments. "Cloud Computing Services" is revised to incorporate by reference the National Institute of Standards and Technology definition or other widely accepted industry standard as determined by the department. The definition of "Data Center Services" is further refined and fully defined, eradicating an internal reference to another definition. "Technology Service Group" is amended to "Technology Solution Services Group" as the workgroup name has been changed. "Statewide Technology Centers" is amended to incorporate by reference the definition found in Texas Government Code Chapter 2054.

In §215.10, for state agencies and local governments, and §215.30, for institutions of higher education, the department approves the removal of outdated references to department job titles to which relevant information was reported at one time and directs customers to contact a designated department representative. The department also approves the removal of language authorizing the submission of project work or service changes by phone. In §215.30, the department approves the amendment of its reference to the Information Technology Council for Higher Education to ITCHE to align the reference with §215.2 and the clarification of when institutions of higher education must receive approval from ITCHE prior to obtaining services from the department.

In §215.11 and §215.12, for state agencies and local governments, and §215.31 and §215.32, for institutions of higher education, the department approves the amendment of the rule titles to extract "Statewide Technology Center" from the named title as these sections only apply to DCS Services. Pursuant to the adoption revision of the definition for Statewide Technology Center found in §215.2, Statewide Technology Center now encompasses all centers described by 1 Texas Administrative Code Chapter 215, rather than the DCS Services discussed by Subchapters B and C.

In §215.12, for state agencies and local governments, and §215.32, for institutions of higher education, the department approves the amendment of the types of required audit documentation reflecting current required audit standards. In §215.12, the department further approves the proposed language regarding processes for technology standards exceptions to direct customers to the appropriate service management manual where the comprehensive process for such exception may be found.

In §215.13, for state agencies and local governments, and §215.33, for institutions of higher education, the department approves amending the Data Center Services provided to clarify services offered and the support and management services related those services. In §215.13, due to the changes the department proposes to clarify the list of Data Center Services, the department also approves the removal of language autho-

ricing customers to not seek exceptions for certain services and proposal that designated Data Center Services customers who are requesting exemption from all or part of Data Center Services shall seek such exemption regardless of the services from which they are seeking to be exempt.

The department also approves the creation of two new subchapters, Subchapters D and E, concerning the new Application Services Center, created in furtherance of Texas Government Code Chapter 2054, Subchapter L, including §2054.378. These subchapters provide the necessary rules to address the short-term solution provided by the department's emergency rule amendments to 1 Texas Administrative Code §215.13 and §215.33, effective February 2, 2021 (46 TexReg 989) and renewed through July 31, 2021 (46 TexReg 3223).

As required by Texas Government Code Chapter 2054 when creating a new statewide technology center, the department has received the approval from state leadership necessary to create the Application Services Center.

The department adopts the new Subchapter D, Application Services Center for State Agencies and Local Governments, and approves the following new sections: §215.40, Receipt of Services, which provides that customers may participate in the Application Services Center, requires participating customers sign the appropriate contract with the department in accordance with state law, and establishes the appropriate processes for the provision of new or additional services under the Application Services Center as well as how the Center will provide cost estimates and notices for such services; §215.41, Application Services Center Billing, which provides details on billing and payment procedures; §215.42, Application Services Center User Responsibilities, requiring Application Services Center customers to provide proper contact information, ensure compliance with applicable laws and policies, support efforts for financial, operational, and technical planning, provide proper audit notification, participate in the governance process, and comply with statutory and program-specific security requirements; §215.43, Application Services Center Services, which highlights the services available through the Data Center for state agencies and local government, generally.

The department adopts the new Subchapter E, Application Services Center for Institutions of Higher Education, and approves the following new sections: §215.50, Receipt of Services, clarifying how institutions of higher education may establish services and how to request additional services; §215.51, Application Services Center Billing, providing details on billing and payment procedures for institutions of higher education; §215.52, Application Services Center User Responsibilities, requiring Application Services Center customers from institutions of higher education provide proper contact information, ensure compliance with applicable laws and policies, support efforts for financial, operational, and technical planning; provide proper audit notification; participate in the governance process, and comply with statutory and program-specific security requirements; and §215.53, Application Services Center Services, which highlights the services available through the Data Center for institutions of higher education, generally.

The department received two comments from a customer state agency regarding the proposed amendments. First, the customer state agency commented that, in §215.13 and §215.33, the word "all" used to clarify "support and management services related to" Data Center Services could be misinterpreted as a replacement of all support and management services performed

by a state agency or institution of higher education's internal information technology division. The department has incorporated this nonsubstantive change by removing the word "all" in 1 Texas Administrative Code §215.13(a)(11) and §215.33(11).

The second comment identified the potential need for a delayed effective date and requested the creation of rule language permitting such a holdover period. The department declined to incorporate this change.

The changes to the chapter apply to institutions of higher education. The assessment of the impact of the adopted changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). ITCHE determined that there was no impact upon institutions of higher education as a result of the amendment.

## SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

### 1 TAC §§215.1 - 215.4

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kate Fite

General Counsel

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**SUBCHAPTER B. DATA CENTER SERVICES  
FOR STATE AGENCIES AND LOCAL  
GOVERNMENT**

**1 TAC §§215.10 - 215.13**

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.13. *Data Center Services.*

(a) DCS services include the following services within the State's private and public cloud environment and approved remote locations:

- (1) Mainframe services
- (2) Server services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services
- (5) Bulk Print and mail services
- (6) Network services for DCS managed environments
- (7) Disaster Recovery services
- (8) Security Services for DCS managed environments
- (9) Application portfolio management
- (10) Cloud computing services, not including software-as-a-service products
- (11) Support and management services related to the above described services.

(b) Unless an exemption has been requested and approved by the department pursuant to 1 Texas Administrative Code

§215.10(a)(1)(B), designated DCS Customers shall not procure the services specified in this section outside the DCS program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER C. DATA CENTER SERVICES  
FOR INSTITUTIONS OF HIGHER EDUCATION**

**1 TAC §§215.30 - 215.33**

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.33. *Data Center Services.*

DCS services include the following services within the State's private and public cloud environment and approved remote locations:

- (1) Mainframe services
- (2) Server services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services
- (5) Bulk Print and mail services

- (6) Network services for DCS managed environments
- (7) Disaster Recovery services
- (8) Security Services for DCS managed environments
- (9) Application Portfolio Management
- (10) Cloud computing services, not including software-as-a-service products
- (11) Support and management services related to the above-described services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. APPLICATION SERVICES CENTER FOR STATE AGENCIES AND LOCAL GOVERNMENT

### 1 TAC §§215.40 - 215.44

These new rules are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.40. *Receipt of Services.*

- (a) Eligible Application Services Center Customers.

(1) State Agencies. In accordance with Texas Government Code Chapter 771, each participating state agency shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(2) Local Government Entity. In accordance with Chapter 791, each participating local government shall execute an Interlocal Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective Application Services Center Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the designated DIR representative.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the Application Services Center to the prospective DCS Customer.

(2) An existing Application Services Center Customer requesting additional services offered under this rule shall follow the policies and procedures established for all Application Services Center Customers documented in the applicable Service Management Manual.

(A) Upon receipt of any such request for additional services, the Application Services Center Program will provide a cost estimate to the Application Services Center Customer.

(B) Along with the cost estimate, a formal notice from the Application Services Center Program to the Application Services Center Customer shall include:

- (i) The scope of the services to be provided; and
- (ii) The implementation schedule.

(C) An Application Services Center Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. APPLICATION SERVICES CENTER FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§215.50 - 215.53

These new rules are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code

§2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.50. *Receipt of Services.*

(a) Eligible Application Services Center Customers.

(1) In accordance with Texas Government Code §2054.377, participation by an institution of higher education in the Application Services Center requires approval by ITCHE.

(2) In accordance with Texas Government Code Chapter 771, each participating institution of higher education shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective higher education Application Services Center Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the designated DIR representative. The written request shall, at a minimum, include the written approval from ITCHE, the estimated compute volume, and service requirements.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the Application Services Center to the prospective DCS Customer.

(2) After being established as an Application Services Center Customer, an institution of higher education requesting additional services offered under this rule shall follow the policies and procedures established for all Application Services Center Customers documented in the applicable Service Management Manual. Institutions of higher education shall also include approval from ITCHE with any request for additional services.

(A) Upon receipt of any such request for additional services, the Application Services Center Program will provide a cost estimate to the Application Services Center Customer.

(B) Along with the cost estimate, a formal notice from the Application Services Center Program to the Application Services Center Customer shall include:

(i) The scope of the services to be provided; and

(ii) The implementation schedule.

(C) An Application Services Center Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**TITLE 22. EXAMINING BOARDS**

**PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

**CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM**

**22 TAC §520.6**

The Texas State Board of Public Accountancy adopts an amendment to §520.6, concerning Allocations, without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3361). The rule will not be republished.

The amendment to §520.6 deleted the reference to the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature, the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

No comments were received regarding adoption of the amendment.

**Statutory Authority**

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

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Proposal publication date: May 28, 2021  
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## 22 TAC §520.9

The Texas State Board of Public Accountancy adopts the repeal of §520.9, concerning Advisory Committee, without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3362). The repeal will not be republished.

The repeal will delete the provision for the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature, the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §§228.1, 228.2, 228.31 - 228.45, 228.61 - 228.83, 228.101 - 228.125, 228.141 - 228.154, 228.171 - 228.186, 228.201 - 228.213, 228.221 - 228.225, 228.241 - 228.257, and 228.271 - 228.278, and new §§228.1, 228.2, 228.31, 228.32, 228.61 - 228.64, 228.141 - 228.143, 228.171, 228.172, 228.211, 228.221 - 228.225, and 228.241 - 228.246, concerning Retail Food Establishments.

New §§228.2 and §228.31 are adopted with changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2170). These rules will be republished. The repeal of §§228.1, 228.2, 228.31 - 228.45, 228.61 - 228.83, 228.101 - 228.125, 228.141 - 228.154, 228.171 - 228.186, 228.201 - 228.213, 228.221 - 228.225, 228.241 - 228.257, and 228.271 - 228.278, and new §§228.1, 228.32, 228.61 - 228.64, 228.141 - 228.143, 228.171, 228.172, 228.211, 228.221 - 228.225, and 228.241 - 228.246 are adopted without changes to the proposed text and will not be republished.

#### BACKGROUND AND JUSTIFICATION

The rules update the requirements for retail food establishments. Texas Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors, §437.0056 authorizes the Executive Commissioner of HHSC to adopt rules and minimum standards for food safety and the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors.

The rules address the requirements in Senate Bill (S.B.) 476, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 437, by adding §437.025, Requirements for Dogs in Outdoor Dining Areas; Municipal Pre-emption.

S.B. 476 allows, but does not require, a food service establishment to permit a customer to be accompanied by a dog in an outdoor dining area. S.B. 476 also establishes requirements for the food establishment to allow pet dogs in outdoor dining areas, such as the establishment posting a sign in a conspicuous location stating that dogs are permitted; the customer and dog access from the exterior of the establishment; and the dog not entering the interior of the establishment. S.B. 476 requires the customer to keep the dog on a leash and control the dog. It also requires that the dog not be allowed on a seat, table, countertop, or similar surface. S.B. 476 requires that in the area, the establishment does not prepare food or permit open food other than food that is being served to a customer.

The rules include adoption by reference of the current U.S. Food and Drug Administration (FDA) 2017 Food Code. The rules include requiring the person in charge to be a Certified Food Protection Manager, and the emergency operational plans for continued operation. The rules update cooking time/temperature parameters for intact and non-intact meat and poultry. Further, the rules add employee health signage and edit and correct rule language identified by DSHS staff and stakeholders.

#### COMMENTS

The 31-day comment period ended May 3, 2021.

During this period, DSHS received comments regarding the proposed rules from six commenters, including the International Association of Plumbing and Mechanical Officials, Harris County Environmental Public Health Division, City of Pearland Code Enforcement/Health Department, the Farm and Ranch Freedom Alliance, and an individual. A summary of comments relating to the rules and DSHS's responses follows:

Comment: A commenter questioned the reasoning for DSHS's adoption by reference of the FDA Food Code rather than the current transcription into the Texas Administrative Code.

Response: DSHS does not agree that transcription of the Food Code into the Texas Administrative Code should be continued

and believes that transcription would, instead, lead to inefficient rule adoptions in the future. DSHS declines to revise the rule.

Comment: A commenter expressed concern that the adoption by reference of the FDA Food Code, with a separate Texas food establishment rule for Texas-specific rules, requires a burdensome need to move between two rule sets and places a hardship on small regulated entities that have limited access to the internet. The commenter requested that DSHS provide a single, easy-to-read, and easy-to-access document for guidance on the rules.

Response: DSHS will provide additional guidance documents to aid regulatory and industry stakeholders in the understanding of the rules. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter asked how much notification will be given to the regulated industry to meet the new standards and who will notify them.

Response: In addition to posting the proposed rules in the *Texas Register*, DSHS posted the draft rules for informal comment, posted Question-and-Answer responses to informal comments and questions on the program website. DSHS held stakeholder meetings with industry and regulatory stakeholders for the presentation of the rules. DSHS will continue to provide training as requested to deliver the new rules to all stakeholders and residents of Texas. The rules will be in effect sometime in the late summer of 2021. Nevertheless, notification and enforcement of new rules and standards in any jurisdiction is at the discretion of the regulatory authority for that jurisdiction. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter suggested the inclusion of the Uniform Plumbing Code in the definition of "plumbing code" at §228.2(21).

Response: DSHS agrees with the commenter and has accordingly revised the rule.

Comment: Three commenters objected that the proposed language in §228.31(b) may conflict with the new requirement that the person in charge be a certified food protection manager and present during all hours of operation.

Response: DSHS agrees with the commenters and has accordingly revised §228.31(b). In addition, and in relation to a related verbal question to the program, DSHS has added §228.31(c) to clarify situations when the presence of a certified food protection manager would not be required.

Comment: A commenter objected to the proposed language at §228.62(b) requiring chicken eggs received by a retail food establishment to be graded eggs. The commenter stated that the grading requirement is a marketing issue that has no bearing on food safety or egg quality. The commenter further stated that grading requirements are burdensome to farmers, particularly since there is little regulatory oversight of grading.

Response: DSHS disagrees with the commenter and declines to change the rule. The Texas food establishment rule requirements for the receipt and use only of graded chicken eggs in a retail food establishment is in accordance with the requirements contained in the FDA Food Code §3-202.13 Eggs.

Comment: A commenter asked if DSHS will send information regarding how to meet U.S. Food and Drug Administration Vol-

untary National Retail Food Regulatory Program Standards, as required for the competence of field staff in §228.45.

Response: FDA and DSHS currently provide information on the Voluntary National Retail Food Regulatory Program Standards. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter suggested the addition of the words "permitting, or registering" after the word "licensing" at §228.223(a)(2).

Response: DSHS disagrees with the commenter and declines to revise the rule. The word "licensing" sufficiently conveys the desired meaning.

An editorial change adds the word "bison" to §228.2(18) to match the Texas Health and Safety Code, §433.003(11).

## SUBCHAPTER A. GENERAL PROVISIONS

### 25 TAC §228.1, §228.2

#### 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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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### 25 TAC §228.1, §228.2

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

#### §228.2. Definitions.

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

(1) Accredited program--Food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department in §229.172 of this title (relating to Accreditation of Certified Food Management Programs).

(2) Adulterated food--A food deemed to be adulterated as specified in the Texas Health and Safety Code, §431.081.

(3) Bed and breakfast extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(4) Bed and breakfast food establishment--A bed and breakfast that provides food service to customers in addition to its overnight guests.

(5) Bed and breakfast limited--An establishment that has seven or fewer rooms for rent, serves breakfast to overnight guests, and is not a retail food establishment.

(6) Central preparation facility--An approved and permitted facility or space where food is prepared, stored, and packaged.

(7) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(8) Common carrier--An individual or business that advertises to the public that it is available for hire to transport people or property, including food, in exchange for a fee.

(9) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in §229.661(b)(13) of this title (relating to Cottage Food Production Operations);

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried

beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried-herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a TCS food, as defined in §229.661(b)(13) of this title.

(B) has an annual gross income of \$50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(10) Department--The Texas Department of State Health Services.

(11) Drinking water--Traditionally known as "potable water" and that meets the standards set forth in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking water."

(12) Event--A unique public gathering at which food products are served and for which an appropriate regulatory authority grants permission, whether by permit, license, or another official written document.

(13) Exotic animal--Member of a species of game animals not indigenous to this state, including axis deer, nilgai antelope, red sheep, or other cloven-hoofed ruminant animals.

(14) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in this section; or

(vi) a private home that receives catered or home-delivered food.

(15) Game animals--Wild animals that are indigenous to this state and not amenable to the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(16) General use pesticide--A pesticide that is not classified by the United States Environmental Protection Agency for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(17) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons, such as a retirement home, correctional facility, or a long-term care facility.

(18) Livestock--Cattle, bison, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, or domesticated game birds.

(19) Mobile food unit (MFU)--A vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. An MFU must completely retain its mobility at all times. An MFU does not include a stand or a booth. A roadside food vendor is classified as an MFU.

(20) Outfitter operation--Any operation, such as trail rides, bus tours, harbor cruises, or river raft trips, in which food is offered to patrons and which operates out of a central preparation location or food establishment.

(21) Plumbing Code--The International Plumbing Code, as amended, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101 (relating to Amendments to Mandatory Building Code), the Uniform Plumbing Code, as amended, including appendices required by the regulatory authority, as published by the International Association of Plumbing and Mechanical Officials as referenced in Occupations Code, Title 8, Chapter 1301, §255 (relating to Adoption of Plumbing Codes), or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(22) Private water system--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(23) Public water system--A drinking water system that complies with 30 TAC §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(24) Pushcart--A non-self-propelled MFU limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and readily movable by one or two persons. A pushcart is classified as an MFU. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of MFU requires the support of a central preparation facility.

(25) Regulatory authority--The department, the local (municipality, county, or public health district), federal enforcement body, or authorized representative having jurisdiction over the food establishment.

(26) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as an MFU.

(27) Safe material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in the article becoming a component of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Texas Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the U.S. Food and Drug Administration.

(28) Self-service food market--A market that is unstaffed and offers prepackaged non-TCS food and prepackaged refrigerated or frozen TCS food that is stored in equipment that complies with §228.225 of this chapter (relating to Self-Service Food Market).

(29) Service animal--A canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability as specified in Texas Health and Safety Code, §437.023.

(30) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and that includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include self-service food markets.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. MANAGEMENT AND PERSONNEL

### 25 TAC §§228.31 - 228.45

#### 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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**25 TAC §§228.31, §228.32**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

*§228.31. Certified Food Protection Manager and Food Handler Requirements.*

(a) The original food manager certificate shall be posted in the food establishment in a location that is conspicuous to consumers.

(b) Except as specified in subsection (c) of this section, a certified food protection manager shall be present at the food establishment during all hours of operation as required in Food Code, §2-101.11 and §2-102.12.

(c) Food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation, such as but not limited to:

(1) establishments that handle only prepackaged food and do not package food;

(2) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS); or

(3) temporary food establishments are exempt from the requirements in subsection (b) of this section.

(d) All food employees, except for the certified food protection manager, shall successfully complete an accredited food handler training course, within 30 days of employment. This requirement does not apply to temporary food establishments.

(e) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.

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**SUBCHAPTER C. FOOD**

**25 TAC §§228.61 - 228.83**

**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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**25 TAC §§228.61 - 228.64**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**SUBCHAPTER D. EQUIPMENT, UTENSILS,  
AND LINENS**

**25 TAC §§228.101 - 228.125**

**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 efficient enforcement of Texas

Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER E. WATER, PLUMBING, AND WASTE

### 25 TAC §§228.141 - 228.154

#### 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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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### 25 TAC §§228.141 - 228.143

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER F. PHYSICAL FACILITIES

### 25 TAC §§228.171 - 228.186

#### 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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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### 25 TAC §§228.171, §228.172

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**SUBCHAPTER G. POISONOUS OR TOXIC MATERIALS**

**25 TAC §§228.201 - 228.213**

**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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**25 TAC §228.211**

**STATUTORY AUTHORITY**

The new section is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**SUBCHAPTER H. REQUIREMENTS APPLICABLE TO CERTAIN ESTABLISHMENTS**

**25 TAC §§228.221 - 228.225**

**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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**25 TAC §§228.221 - 228.225**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**SUBCHAPTER I. COMPLIANCE**

**25 TAC §§228.241 - 228.257**

**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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## 25 TAC §§228.241 - 228.246

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER J. PRIVATE WATER SYSTEMS

### 25 TAC §§228.271 - 228.278

#### 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 efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 556. NURSE AIDES

##### 26 TAC §§556.2, 556.3, 556.6, 556.9

The Texas Health and Human Services Commission (HHSC) adopts amendments to §556.2, concerning Definitions; §556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §556.6, concerning Competency Evaluation Requirements; and §556.9, concerning Nurse Aide Registry and Renewal; in Title 26, Part 1, Chapter 556, Nurse Aides.

The amendments to §§556.2, 556.3, 556.6, and 556.9 are adopted with changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1597). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

A NATCEP is a program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting. The purpose of the adopted rules is to allow a NATCEP provider to offer certain components of required training online.

The rules respond to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option is intended to increase the number of nurse aides qualified for employment in a nursing facility.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, the adopted rules increase the number of hours of infection control training a NATCEP must provide and require all nurse aides to complete a course in infection control each year.

The rules implement legislative amendments to Texas Administrative Code §556.3(e)(3) to provide that HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility has been assessed a civil money penalty of not less than \$5,000, as adjusted annually for inflation under 45 Code of Federal Regulations (CFR), Part 102, for deficiencies in nursing facility standards. This change was made to link

the dollar amount referenced in the rule to the amount specified by the Centers for Medicare and Medicaid Services, as adjusted annually for inflation.

#### COMMENTS

The 31-day comment period ended April 12, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC amended §556.2 to improve clarity and consistency; the definition for NATCEP was moved to define the term as spelled out, instead of by acronym, and the definitions were renumbered accordingly.

HHSC amended proposed §556.3 to improve clarity with minor editorial changes to improve punctuation and remove repeated words, change "trainees" to "the trainee," and specify Texas for the Department of State Health Services and Board of Nursing; and to clarify the requirement in §556.3(e)(3), that HHSC will not approve a NATCEP offered by or in a facility if, within the previous two years, the facility has been assessed a civil money penalty of not less than \$5,000 under 45 CFR Part 102 for deficiencies in nursing facility standards. The amendment ties the dollar amount referenced in this subsection to the dollar amount found in 45 CFR Part 102, which is adjusted annually for inflation.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §53.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that is a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

#### §556.2. Definitions.

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

- (1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.
- (2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.
- (3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.
- (4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.
- (5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.
- (6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(14) Facility-based NATCEP--A NATCEP offered by or in a facility.

(15) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
  - (B) a physician assistant;
  - (C) a physical, speech, or occupational therapist;
  - (D) a physical or occupational therapy assistant;
  - (E) a registered nurse;
  - (F) a licensed vocational nurse; or
  - (G) a licensed social worker.
- (20) Licensed nurse--A registered nurse or licensed vocational nurse.
- (21) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.
- (22) Military service member--A person who is on active duty.
- (23) Military spouse--A person who is married to a military service member.

(24) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(30) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(31) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(33) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(34) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(35) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(36) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(37) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(38) Resident--An individual accepted for care or residing in a facility.

(39) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(40) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(41) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

*§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.*

(a) To train nurse aides, a facility must apply for and obtain approval from HHSC to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location from which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as adjusted annually under 45 CFR part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

- (1) 60 hours of classroom training; and
- (2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(i) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

- (A) verify a trainee's identity;
- (B) ensure protection of a trainee's privacy and personal information; and
- (C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including the Heimlich maneuver;
- (4) promoting a resident's independence;
- (5) respecting a resident's rights;
- (6) basic nursing skills, including:
  - (A) taking and recording vital signs;
  - (B) measuring and recording height and weight;
  - (C) caring for a resident's environment;
  - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
  - (E) caring for a resident when death is imminent;
- (7) personal care skills, including:
  - (A) bathing;
  - (B) grooming, including mouth care;
  - (C) dressing;
  - (D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(m) A NATCEP must verify that a trainee:

- (1) is not listed on the NAR in revoked status;
- (2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(n) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(o) A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(p) A NATCEP must use an HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(q) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(r) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(s) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(t) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(u) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(v) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(w) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

#### §556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a facility within 12 months after taking the competency evaluation.

§556.9. *Nurse Aide Registry and Renewal.*

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 19, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

**CHAPTER 143. EXECUTIVE CLEMENCY  
SUBCHAPTER D. REPRIEVE FROM EXECUTION**

**37 TAC §143.43**

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter D, §143.43, concerning procedure in capital reprieve cases. The rule is adopted without changes to the proposed text as published in the April 30, 2021, issue of the *Texas Register* (46 TexReg 2888). The text of the rule will not be republished.

The amendments are adopted to delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bettie Wells

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Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5478

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**SUBCHAPTER E. COMMUTATION OF SENTENCE**

**37 TAC §143.57**

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter D, §143.57, concerning commutation of sentence. The rule is adopted without changes to the proposed text as published in the April 30, 2021, issue of the *Texas Register* (46 TexReg 2889). The text of the rule will not be republished.

The amendments are adopted to delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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