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THIRD COURT OF APPEALS
AUSTIN, TEXAS
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JEFFREY D. KYLE
CLERK

No. _____

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

Texas Department of State Health Services, and John Hellerstedt, in his official capacity as Commissioner of the Texas DSHS,

Appellants,

v.

Sky Marketing Corp., DBA Hometown Hero, Create a Cig Temple, LLC, Darrell Suriff, and David Walden,

Appellees.

APPEAL FROM THE 126TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS, CAUSE NO. D-1-GN-21-006174

APPELLEES' EMERGENCY MOTION FOR RULE 29.3 TEMPORARY ORDER

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellees Sky Marketing Corp., DBA Hometown Hero, Create a Cig Temple, LLC, Darrell Suriff, and David Walden file this Motion for Temporary Order under Rule 29.3 of the Texas Rules of Appellate Procedure, seeking a stay of the supersedeas effect of the Appellants'

notice of appeal, such that the trial court's temporary injunction can remain in place during the pendency of this appeal.

PROCEDURAL HISTORY

On October 15, 2021, Appellants Department of State Health Services (DSHS) and Commissioner John Hellerstedt (collectively, the State) published on the DSHS website information indicating that Delta-8 is illegal in Texas. Appellees Sky Marketing Corp., DBA Hometown Hero, Create a Cig Temple, LLC, Darrell Suriff, and David Walden subsequently sued the State, claiming that DSHS failed to follow the required procedure under the Administrative Procedure Act (APA) in publishing the rule that Delta-8 was considered a Schedule I controlled substance and that Commissioner Hellerstedt acted *ultra vires* in not following statutory requirements in amending the Schedule. *See* App'x. Tab A.

On November 8, 2021, the trial court granted Appellees' application for a temporary injunction and enjoined the effectiveness going forward of the amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services' Schedule of Controlled Substances and of the rule stated on

DSHS' website that Delta-8 THC in any concentration is considered a Schedule I controlled substance. *See* App'x. Tab B. The State filed a notice of interlocutory appeal of the trial court's temporary injunction. *See* App'x. Tab C. The State's notice of appeal superseded the trial court's temporary injunction. *See* Tex. Civ. Prac. & Rem. Code § 6.001; Tex. R. App. P. 29.1. Pursuant to Texas Rule of Appellate Procedure (TRAP) 29.3, Appellees request this Court to enter a temporary order that the trial court's temporary injunction remain in effect to preserve Appellees' rights until disposition of the State's interlocutory appeal.

BACKGROUND

With the passage of the 2018 Farm Bill, the agricultural product hemp was removed from the federal schedule of controlled substances. This de-regulation of hemp paved the way for the emergence of a robust market of hemp-based products across the country. Texas followed the federal government and similarly removed hemp from the State's Schedule of Controlled Substances. During the 2019 session, the Texas Legislature enacted legislation creating a state-wide hemp program.

In the years since the removal of hemp from the State's Schedule of Controlled Substances, a new industry of hemp-derived products

containing cannabidiol ("CBD") emerged in Texas. The innovation of hemp-related products included the development of certain products containing the hemp-derived cannabinoid known as Delta-8 THC. Delta-8 is naturally found in small amounts in the hemp plant, and Delta-8 can also be easily converted from hemp-derived CBD. Many hemp producers and retailers, including Appellees Sky Marketing and Create a Cig Temple, began manufacturing and distributing products containing Delta-8 as part of the hemp-derived agricultural boom that followed hemp's removal from the federal and state Schedules of Controlled Substances. Delta-8 products have become widely popular in Texas, serving as a natural remedy for many common ailments and an important alternative to opioids.

On October 15, 2021, to the surprise of industry leaders and the public, the State posted an update to the DSHS website indicating that Delta-8 THC is an illegal, Schedule I controlled substance in Texas. As a result of the DSHS website update, Appellees discovered that the State had amended the Texas Schedule of Controlled Substances without following the proper rule making requirements pursuant to the APA. Appellees subsequently filed the present lawsuit against the

State alleging *ultra vires* conduct by DSHS Commissioner Hellerstedt in his official capacity and the improper promulgation of an administrative rule in violation of Section 2001.038 of the Texas Government Code. *See* App'x. Tab A.

At the November 5, 2021 hearing on Appellees' application for a temporary injunction, Appellees presented evidence, including testimony from industry leaders and citizens who rely on Delta-8 as a therapeutic treatment, demonstrating that Appellees would suffer irreparable harm if the State's violative actions were not enjoined. The State did not call any witnesses to rebut Appellees' evidence.

After the hearing, the trial court granted Appellees' request for a temporary injunction. *See* App'x. Tab B. The trial court concluded that Appellees had asserted valid *ultra vires* and APA claims, demonstrated a probable right to declaratory and injunctive relief, and would suffer imminent and irreparable harm such as brand erosion, reputational damage, loss of customers, loss of market share and marketing techniques, employee force reduction, and revenue loss. *Id.* at 2. Similarly, the trial court concluded that Appellees Darrel Suriff and David Walden, along with other similarly situated individual

consumers throughout Texas, will have no effective treatment for their anxiety, depression, insomnia, migraines, loss of appetite, nausea, and chronic pain. *Id.* Accordingly, the trial court enjoined the effectiveness going forward of the amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services' Schedule of Controlled Substances and of the rule stated on DSHS' website that Delta-8 THC in any concentration is considered a Schedule I controlled substance. *Id.* at 3-4. The State filed a notice of interlocutory appeal challenging the trial court's order granting Appellees' application for a temporary injunction. *See* App'x. Tab C. The State's notice of appeal superseded the trial court's judgment. *See* Tex. Civ. Prac. & Rem. Code § 6.001; Tex. R. App. P. 29.1.

ARGUMENT

I. The Court should enter an order pursuant to Rule 29.3 that the trial court's temporary injunction remain in effect pending the outcome of the State's interlocutory appeal.

Appellees request that this Court enter a temporary order to preserve the Appellees' rights until the disposition of the State's interlocutory appeal. TRAP 29.3 gives this Court the authority to issue such an order. Specifically, TRAP 29.3 states that "[w]hen an appeal

from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3.

This Court addressed head-on the availability of a TRAP 29.3 temporary order in cases such as this in *Texas Education Agency v. Houston Independent School District*, 609 S.W.3d 569 (Tex. App.—Austin 2020), *mand. denied*, *In re Texas Education Agency*, 619 S.W.3d 679 (Tex. 2021). In *Texas Education Agency*, this Court explained that appellate courts have the power to exercise their inherent authority under TRAP 29.3 to issue temporary orders to protect parties' rights, notwithstanding the 2017 amendment to TRAP 24.2(a)(3) that required trial courts to permit the state to supersede a non-money judgment in cases that did not arise from an administrative enforcement action. 609 S.W.3d at 577-78. Specifically, this Court highlighted the importance of TRAP 29.3 orders because, "absent an appellate court's inherent power to make temporary orders to preserve the parties rights . . . . the application of [TRAP] 24.2(a)(3) would prevent a party from ever meaningfully challenging acts by the executive branch the party alleges

to be both unlawful and reviewable by courts and that it further alleges will cause irreparable harm." *Id.* at 587.

In sum, while TRAP 24.2(a)(3) gives trial courts no discretion to deny the State supersedeas relief in cases that do not arise from a contest case under the APA, TRAP 29.3 gives parties who have obtained a temporary injunction against the State an opportunity to preserve the status quo while the State pursues interlocutory review of the temporary injunction.

In *Texas Education Agency*, this Court issued a TRAP 29.3 temporary order because the trial court concluded the plaintiff made a "sufficient showing to establish a probable right to recovery on its *ultra vires* claim . . . [and] made a sufficient showing that the alleged *ultra* vires conduct would cause irreparable harm." *Id.* at 577. Importantly, this Court did not conduct its own assessment of the merits in that case, but instead issued the temporary order based on the district court's determination that a temporary injunction was warranted. *Id.*

Earlier this year, the Texas Supreme Court affirmed this Court's approach in a mandamus opinion in the same case. *See Texas Education Agency*, 619 S.W.3d at 679. The supreme court concluded

that the Legislature intended to treat the temporary orders process under TRAP 29.3 as a distinct process from the counter-supersedeas procedure described in TRAP 24.2. As a result, the court concluded that while TRAP 24.2 prohibits counter-supersedeas orders in a specific procedural context at the trial court, the rule does nothing to impair the appellate courts' ability to issue temporary orders under TRAP 29.3 to protect parties' rights during an interlocutory appeal. *Id.* at 689-90.

For the same reasons expressed in its opinion in *Texas Education Agency*, Appellees request that this Court enter a temporary order that the trial court's temporary injunction in this case remain in effect while the State pursues its interlocutory appeal. Like in *Texas Education Agency*, the trial court here concluded that Appellees carried their burden to assert a valid *ultra vires* claim, have shown a probable right to declaratory and injunctive relief, and would suffer imminent and irreparable harm absent the temporary injunction.

As the supreme court has explained, TRAP 29.3 grants the appellate courts "great flexibility in preserving the status quo based on the unique facts and circumstances presented." *In re Geomet Recycling, LLC*, 578 S.W.3d 82, 89 (Tex. 2019). This case presents compelling

facts and circumstances warranting a temporary order to limit the State's ability to supersede the trial court's temporary injunction. Most significantly, the State's amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" in the 2021 Schedule of Controlled Substances and the rule stated on DSHS' website that Delta-8 THC in any concentration is considered a Schedule I controlled substance places countless Texans' livelihoods and access to long-relied upon therapeutic remedies in jeopardy. Indeed, the trial court recognized such irreparable harm in granting Appellee's application for a temporary injunction. This Court's temporary order would merely preserve the status quo while the underlying merits of the trial court's temporary injunction are determined on appeal and would be consistent with this Court's approach in prior similar cases. *See, e.g.*, *Tex. Dep't of State Health Servs. v. Crown Distrib. LLC*, No. 03-20-00463-CV, 2021 WL 3413165 (Tex. App.—Austin Aug. 5, 2021, no pet.) (granting appellees' Rule 29.3 emergency motion to preserve the status quo following the State's interlocutory appeal of the trial court's temporary injunction in a case involving smokable hemp products).

PRAYER

For the foregoing reasons, Appellees respectfully pray that, pursuant to TRAP 29.3, this Court issue a temporary order that the trial court's temporary injunction remain in effect to preserve the parties' rights until the disposition of the State's interlocutory appeal on the merits of the temporary injunction.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on November 10, 2021, I conferred by email with Cynthia Akatugba, counsel for Appellants, who indicated that Appellants are opposed to Appellees' Motion for Rule 29.3 Temporary Order.

/s/ Scott K. Field
Scott K. Field

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2021 the forgoing Motion for Rule 29.3 Temporary Order was electronically served on all parties below by the Electronic Filing Service Provider, if registered; otherwise by email, as follows:

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NO. _____

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

Texas Department of State Health Services, and John Hellerstedt, in his official capacity as Commissioner of the Texas DSHS,

Appellants,

v.

Sky Marketing Corp., DBA Hometown Hero, Create a Cig Temple, LLC, Darrell Suriff, and David Walden,

Appellees.

APPEAL FROM THE 126TH JUDICIAL DISTRICT COURT OF
TRAVIS COUNTY, TEXAS, CAUSE NO. D-1-GN-21-006174

APPENDIX

TAB A – Plaintiffs' Second Amended Petition

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' SECOND AMENDED PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS

Plaintiffs, Sky Marketing Corp., doing business as Hometown Hero ("Hometown Hero" or "HTH"), Create a Cig Temple, LLC ("Create a Cig"), Darrell Suriff, and David Walden, file this Second Amended Petition against the Texas Department of State Health Services ("DSHS") and its Commissioner, John Hellerstedt, in his official capacity.

Based on actual knowledge regarding themselves and their own acts and on information and belief regarding other persons and matters, Plaintiffs respectfully allege as follows:

I. Introduction and Nature of the Action

1. This lawsuit seeks a declaration that the modified definitions of "*(31) Tetrahydrocannabinols" and "*(58) Marihuana extract" included in the 2021 Schedules of Controlled Substances (the "Schedules"), covertly published as a non-text image in the Texas Register on March 19, 2021, and any subsequent publications of the same (if any), are invalid. Commissioner Hellerstedt and DSHS failed to follow the specific procedures required to make such modifications set forth in the Texas Controlled Substances Act and the Texas

Administrative Procedures Act, including the use of improper grounds to initiate such changes in the first place. They failed to adhere to their own published objection and decision order rejecting modifications. They failed to properly notify the public of the secret modifications they actually made, and Commissioner Hellerstedt failed to follow the law with respect to the procedure required for modifying the Schedules in the manner in which they did, including failure to hold a proper public hearing.

2. The 2018 Farm Bill defined and de-scheduled hemp, clearing the way for a robust, new market to emerge based on this newly designated agricultural commodity and all that comes from it, including finished products, limiting only the delta-9 THC concentration levels. In other words, the 2018 Farm Bill excludes from the list of controlled substances ***all*** derivatives, extracts, and cannabinoids, including tetrahydrocannabinols, of the cannabis plant, so long as they do not contain more than 0.3% delta-9 THC on a dry weight basis. By legal definition, the concentration of delta-9 THC is the sole factor legally distinguishing hemp, which includes its extracts and derivatives, from marijuana.

3. Texas similarly defined and de-scheduled hemp shortly thereafter, using the same language. This was codified during the 86th Legislative Session in 2019, whereby lawmakers required Texas to proceed with developing its own state hemp program, granting Texas the authority to create a new hemp market able to compete with other agricultural powerhouses across the nation.

4. In the wake of these new federal and state laws, new products began to emerge and flourish, including products containing cannabidiol ("CBD") and other hemp-derived cannabinoids. However, national overproduction in 2019 led to a race-to-the-bottom on pricing for hemp and CBD, spurring innovation, including the development of products containing the

hemp-derived cannabinoid delta-8 THC. Delta-8 THC, which was de-scheduled when derived from hemp per the 2018 Farm Bill and thus no longer deemed a controlled substance, is a cannabinoid naturally found in small amounts in the hemp plant. It can also easily converted from hemp-derived CBD through a variety of processes, some of which have received patent protection from the U.S. Patent and Trademark Office (USPTO). The market for delta-8 THC since exploded across the nation, and the products are often used for wellness purposes.

5. This burgeoning market allowed many hemp businesses in Texas to thrive, even through a global pandemic, and able to make use of the glut of hemp that had built up in 2019, keeping farmers and other workers employed, and bringing in significant revenue, including tax revenue for the State. Plaintiffs and other similarly situated businesses operated openly and in accordance with the law as generally understood. In fact, Defendants issued licenses to these businesses, including the Plaintiffs.

6. Suddenly, on October 15, 2021, DSHS updated its website to state that Delta-8 THC is an illegal Schedule I controlled substance in Texas, putting lawful hemp businesses in peril and their workers at risk of arrest. Upon further investigation, Plaintiffs learned that Defendants covertly amended the Texas Schedule of Controlled Substances using improper grounds as a basis and never publicized the changes until after the fact. When the amendments were finally published, the unusual method of publication further prevented the public from knowing about them.

7. These actions deprived Plaintiffs and other similarly situated stakeholders and businesses from participating in the rulemaking process and now renders the entire Texas hemp industry illegal because the result of the never-publicized amendments which precluded public participation effectively outlaw the hemp plant itself, which naturally contains THCs other than

delta-9, including delta-8 THC, and which the State now claims are and have always been illegal. This suit follows.

8. This lawsuit seeks to enjoin Commissioner Hellerstedt by invalidating the adoption of the amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" within the 2021 Schedule of Controlled Substances due to his failure to abide by the explicit requirements set forth in the Texas Controlled Substances Act as further detailed below. Alternatively, it seeks to strike the amendments as improper rules in violation of § 2001.035 of the Texas Government Code and to enjoin the effectiveness of those amendments as a result.

II. Jurisdiction

9. The relief sought in this suit are within the jurisdictional limits of the Court. As required by Rule 47, Texas Rules of Civil Procedure, Plaintiffs state that they seek non-monetary equitable relief only.

III. Venue

10. Venue is proper in this County as the acts giving rise to this suit occurred in whole or in part in Travis County.

IV. Parties

11. Sky Marketing Corporation, doing business as Hometown Hero ("Hometown Hero"), Plaintiff, is a Texas Corporation whose address is 11190 Circle Drive, Suite 440, Austin, Texas 78736.

12. Create a Cig Temple, LLC ("Create a Cig"), Plaintiff, is a Texas limited liability company whose address is 13900 North IH-35, Suite D-1, Austin, Texas 78728.

13. Darrell Suriff, Plaintiff, is an owner and officer of Create a Cig Temple, LLC, who resides in Travis County, Texas.

14. David Walden, Plaintiff, is the Deputy State Inspector for the Veterans of Foreign Wars ("VFW"), Department of Texas, has been a VFW member since 2012, and is suing in his individual capacity as a previous consumer of hemp products containing delta-8 tetrahydrocannabinol. He resides in Lago Vista, Texas.

15. Texas Department of State Health Services ("DSHS"), Defendant, is the state agency charged with and responsible for administering, executing, and enforcing the Texas Health and Safety Code. Texas DSHS shall be served through its general counsel, Barbara Klein, at 1100 W 49th Street, Mail Code 1919, Austin, Texas 78756-3101.

16. Defendant John Hellerstedt is the Commissioner of Texas DSHS. He is being sued in his official capacity. He shall be served at 1100 W. 49th Street, Mail Code 1919, Austin, Texas 78756-3101.

17. The Attorney General of the State of Texas, Ken Paxton, shall be served at 209 W. 14th Street, Austin, Texas 78701. *See* Tex. Civ. Prac. & Rem. Code § 37.006.

V. Discovery Control Plan

18. Under Texas Rule of Civil Procedure 190.4, Plaintiff intends to conduct discovery under Level 3 and affirmatively pleads this suit is not governed by the expedited actions process under Rule 169 of the Texas Rules of Civil Procedure because Plaintiff seek non-monetary, injunctive relief.

VI. Plaintiff's Property Interest

19. Sky Marketing Corporation, doing business as Hometown Hero, is a Texas Corporation that is located in Travis County, Texas at 11190 Circle Drive, Suite 440, Austin, Texas 78736.

20. Plaintiffs also contend that a protected property interests exists in the form of their right to be free from prosecution for what was formerly considered an entirely legal business venture.

21. Lukas Gilkey as CEO of Plaintiff Hometown Hero applied through the DSHS for a Texas Hemp License in September 2020, which DSHS ultimately issued in September 2021. At the time of issuance, Hometown Hero openly sold delta-8 products and even garnered the attention of national and local news outlets. *See, e.g.,* Jessi Cape, *Local Cannabiz Hometown Hero Fought Delta-8 Ban and Won*, The Austin Chronicle (July 16, 2021), https://www.austinchronicle.com/food/2021-07-16/local-cannabiz-hometown-hero-fought-delta-8-ban-and-won/. At no time did DSHS address the production or sale of delta-8 products with Plaintiff prior to issuing its Texas Hemp License. Instead, DSHS issued these licenses to countless businesses selling delta-8 products like Plaintiff.

22. Since DSHS's recent announcement that all delta-8 products (even those derived from hemp and federally excluded from the schedule of controlled substances) are Schedule I controlled substances in Texas, Plaintiff Hometown Hero has removed all such products from his shelves. Based on these recent developments, Plaintiff Hometown Hero had no choice but to terminate several members of its valued workforce and may ultimately have to shut down business in Texas entirely. *See* Verification of Lukas Gilkey.[1]

VII. Introductory Facts

23. Hemp, or Cannabis sativa L., is a plant that has been used for thousands of years and is grown for both industrial and commercial purposes. The plant contains many cannabinoids (including various forms of THCs), terpenes and flavonoids, which are all naturally occurring chemicals in the plant, and several of which are found in a variety of other plants as well.

[1] Because the material facts alleged in Plaintiffs' Second Amended Petition mirror those contained in Plaintiffs' First Amended Petition, Plaintiffs rely on Lukas Gilkey's verification concerning their First Amended Petition here.

24. For more than 60 years, hemp was banned in the United States. In 2014 Congress passed the Agricultural Act of 2014 ("2014 Farm Bill") which authorized the research of hemp and provided protection when produced in accordance with a state's hemp research program. In 2018 Congress passed the Agriculture Improvement Act of 2018 ("2018 Farm Bill"). The 2018 Farm Bill expanded the definition of hemp and designated it to be an ordinary agricultural commodity. Importantly, it removed hemp and the tetrahydrocannabinols in hemp from control under the federal drug control laws, paving the way for the emergence of a new industry nationwide and providing farmers and businesses with vast opportunity to participate and access to countless new products for consumers.

25. To allow this market to flourish, Congress intentionally defined the term "hemp" broadly, allowing every part of the plant, including ***all*** of its derivatives, extracts and cannabinoids, growing or not, to be cultivated and processed into industrial and consumable products that would easily move through commerce, intrastate, interstate and even internationally.

26. The plant and every part of it, including products derived from it, are all deemed "hemp" under the law. The only limitation in the federal definition of hemp was that these plants and products may not contain delta-9 THC concentrations that exceed 0.3%, a particular form of THC found in abundance in some species of *Cannabis sativa L*. It is important to note that no other forms of THC are associated with the definition of hemp, as the only form Congress limited was delta-9 THC. All other forms of THCs in hemp, including those in hemp products (which are also "hemp") were simultaneously removed from being deemed controlled substances.

27. Under the 2018 Farm Bill, Congress legalized hemp federally and delegated primary authority over its production to each state that elected to participate, granting extensive

power to states to create and manage their local markets, create jobs, and generate revenue. The State of Texas quickly embraced this opportunity.

28. Months after the passage of the 2018 Farm Bill, DSHS accepted the removal of hemp and THCs in hemp from being controlled substances and modified the Schedules to mirror the federal action and removed hemp from the definitions of "marihuana" and "tetrahydrocannabinols."

29. Texas legislators took up more expansive action during the 86th Legislative Session, and on June 10, 2019, Governor Greg Abbott signed into law Texas House Bill 1325 ("H.B. 1325"). H.B. 1325 established a hemp program in Texas and delegated regulatory authority over consumable hemp products to DSHS. H.B. 1325 also formalized by law what DSHS did in the interim – it defined hemp in Texas the same as it was defined federally and removed hemp and THCs in hemp from the definition of "controlled substances" under the Texas Controlled Substances Act, Chapter 481 of the Texas Health & Safety Code.

30. H.B. 1325 directed the Texas Department of Agriculture ("TDA") to submit a hemp production plan (the "Texas Hemp Plan") to the United States Department of Agriculture ("USDA") for approval and required the Plan to comply with the 2018 Farm Bill as well as the hemp laws it created under Chapter 122 of the Agriculture Code and Chapter 443 of the Health & Safety Code. The Texas Hemp Plan received USDA approval in January 2020, and TDA adopted rules governing hemp production in March 2020 and began issuing producer licenses shortly thereafter. Newly licensed Texas farmers then immediately began planting their first hemp crops.

31. One provision of H.B. 1325, as codified under § 443.051 of the Texas Health & Safety Code, requires the executive commissioner of DSHS to adopt rules and procedures relating to

consumable hemp products ("CHPs") that must be consistent with the USDA-approved Texas Hemp Plan and the 2018 Farm Bill. These rules were adopted by DSHS in August 2020.

32. As a result of the 2018 Farm Bill and the Texas Legislature's adoption of the new Congressional definitions pursuant to H.B. 1325, an entirely new market for these products emerged, and was able to quickly grow without issue, in Texas. Several thousand Texans have started hemp businesses all across the supply chain, from cultivation to sale, and all areas in between and ancillary, including processing, manufacturing, distribution, lab testing, packaging, transportation, advertising, consulting, and other professional services, to name just a few. CHPs make up a large portion of the industry in Texas, and DSHS has issued licenses for hundreds of CHP processors and manufacturers, and has registered thousands of CHP retailers since they began a little over a year ago.

33. The definition of hemp and the concept that hemp and THCs in hemp have been removed from the Controlled Substances Act and the Schedule of Controlled Substances at both the federal and state level is well settled. All fifty states have since legalized hemp since the passage of the 2018 Farm Bill and the vast majority use the same language in defining hemp as is used under federal law.

34. Hometown Hero is a Texas corporation established in 2015 in Austin, Texas for the purpose of selling and distributing vape products. It expanded into the newly legalized hemp market in 2019.

35. Hometown Hero is operated by CEO Lukas Gilkey and was established with the idea of helping veterans at the forefront of its mission. Gilkey, himself a Veteran, sees this as his primary motivation in owning and operating Hometown Hero. The veteran community has

embraced hemp products, including CBD and delta-8 THC, because of their usefulness in promoting health and wellness, which many veterans struggle to maintain.

36. After operating legally and consistent with Texas law for several years, Plaintiffs and other similarly situated businesses and individuals now find themselves in potential legal jeopardy, and their businesses and livelihood with an uncertain future.

37. On Friday, October 15, 2021, DSHS updated its Consumable Hemp Program webpage to state that H.B. 1325 allows for CHPs that do not exceed 0.3% Delta-9 THC, which is accurate, but then goes on to state that "[a]ll other forms of THC, including Delta-8 in any concentration and Delta-9 exceeding 0.3%, are considered Schedule I controlled substances." *See* Plaintiffs' Exhibit 1. It then points to a Schedule of Controlled Substances on its website that included modifications to the definition of "tetrahydrocannabinols" and "marihuana extract" that effectively flip the federal and state definition of "hemp" on its head, reversing the impact of the carefully drafted and specific language. *See* Plaintiffs' Exhibit 2, DSHS's 2021 Schedule of Controlled Substances.

38. Until this website update, businesses and consumers operated under the assumption that hemp and THCs in hemp were not controlled substances, with the common understanding based on the law that only concentrations of delta-9 THC in excess of 0.3% were illegal. No other forms of THC in hemp were illegal in any concentration, so long as the delta-9 THC levels were compliant. This is clear and unambiguous under the language of federal law, as confirmed by the DEA[2] and which language is mirrored by Texas, and the hemp industry in Texas has blossomed fruitfully based on this clear language of the law.

[2] *See, e.g.,* Fla. Dep't of Agric. and Consumer Services, *Town Hall with USDA and DEA*, YOUTUBE (June 29, 2021), https://www.youtube.com/watch?v=yt8oWWsoLD4.

39. After extensive investigation into how DSHS could make overnight potential felons out of several thousand businesses and consumers, it was uncovered that Commissioner Hellerstedt modified the Schedule of Controlled Substances in blatant violation of state law through multiple errors and in a manner that failed to properly notify the public of DSHS's significant positional change.

40. Under the Texas Controlled Substances Act, there are only two methods for modifying the Schedule: (1) under Tex. Health & Safety Code § 481.034(a) & (g), if federal law adds, deletes, or reschedules a substance, the commissioner must either do the same or promptly object; or (2) if additions, deletions, rescheduling *or other modifications* to the Schedule are desired by the commissioner, certain procedures must be followed, including the consideration of multiple factors and certain notice and public hearing requirements.

41. DSHS's actions ignored all procedural and notice requirements as outlined in Section 481.034(b) of the Texas Health & Safety Code, and modified the definitions of "tetrahydrocannabinols" and "marihuana extract" in a manner that reschedules certain consumable hemp products as Schedule I controlled substances, despite state (and federal) law to the contrary. *See* Plaintiffs' Exhibits 1-2.

42. The practical effect of the actions of DSHS, through Commissioner Hellerstedt, and its failure to comply with the procedural requirements imposed upon it under the Texas Health & Safety Code, is to deprive individuals and businesses of a property interest without due course of law, and to turn lawful business owners and consumers into potential criminals.

43. In addition to failing to abide by the amendment process as outlined in Sections 481.034, 481.035, and 481.036 of the Texas Health & Safety Code, specifically those concerning hearing and time for objection, the "new definitions" for tetrahydrocannabinols and

marihuana extract were buried in the Texas Register in a non-searchable image, thereby failing to provide all concerned parties with the requisite notice, yet again. *See* Plaintiffs' Exhibit 3.

44. As a result of the impermissible actions of DSHS, Plaintiffs seek a declaration that the modifications to the definitions of "*(31) Tetrahydrocannabinols" and "*(58) Marihuana extract" included in the 2021 Schedules of Controlled Substances (the "Schedules"), and any subsequent publications of the same (if any), are invalid pursuant to the Commissioner and DSHS's failure to follow the specific procedures required to make such modifications set forth in Sections 481.034, 481.035, and 481.036 of the Texas Health & Safety Code, including its use of improper grounds to initiate such changes in the first place, its failure to adhere to its own published objection and decision order rejecting modifications, its failure to properly notify the public of the secret modifications it actually made, and its failure to follow the law with respect to the procedure required for modifying the Schedules in the manner in which it did, including failure to hold a proper public hearing.

45. Additionally, Plaintiffs ask that the Court enjoin the effectiveness going forward of the amendments to the definitions for the terms "tetrahydrocannabinols" and "Marihuana extract" from its Schedule of Controlled Substances.

VIII. Background

46. On December 20, 2018, the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 (the "2018 Farm Bill") was signed into law. The new federal law established hemp as an agricultural commodity regulated by the United States Department of Agriculture and empowered states to have primary regulatory authority over their own hemp product programs through USDA-approved state hemp plans, among other things. The 2018 Farm

Bill defined hemp as "the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." It also specifically excluded hemp from the definitions of "marihuana" and "tetrahydrocannabinols" under the Federal Controlled Substances. Act. *See* Sec. 12619 of the 2018 Farm Bill.

47. On March 15, 2019, following more than thirty days since the passage of the 2018 Farm Bill, and in accordance with Texas Health & Safety Code § 481.034(g), the DSHS ordered the listings for "marihuana" and "tetrahydrocannabinols" be amended to align with the 2018 Farm Bill, such order being published in the Texas Register, "Order Removing Hemp, as Defined by [the 2018 Farm Bill], From Schedule I," and which included the full text of the changes to Schedule 1.

48. On June 10, 2019, H.B. 1325 was passed by the Texas Legislature and signed by Governor Abbott, effective immediately. This law defines hemp using the same definition as contained in the 2018 Farm Bill. *See* Tex. Agric. Code § 121.001 (defining hemp as "the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."). The law also expressly removed hemp and THCs in hemp from being defined as "controlled substances" under the Texas Controlled Substances Act. As a result, hemp and THCs in hemp were removed from the list of controlled substances via state legislative action in alignment with federal law.

49. On August 21, 2020, the Drug Enforcement Agency ("DEA") published its Interim Final Rule ("IFR") making conforming changes to the definitions of THC and Marihuana Extract, similarly removing hemp (as defined under the 2018 Farm Bill) from the definitions of those substances as reflected in the federal Schedule of Controlled Substances. *See* Plaintiffs' Exhibit 4. The IFR did not designate, reschedule, or delete any substances. The publication reemphasizes that these changes are merely conforming and already in effect pursuant to the 2018 Farm Bill, and thus they were effective immediately without the requirement for a notice and comment period (though one was granted, it was not mandated). Indeed, the IFR's summary reads as follows:

> The purpose of this interim final rule is to codify in the Drug Enforcement Administration (DEA) regulations the statutory amendments to the Controlled Substances Act (CSA) made by the Agriculture Improvement Act of 2018 (AIA), regarding the scope of regulatory controls over marihuana, tetrahydrocannabinols, and other marihuana-related constituents. ***This interim final rule merely conforms DEA's regulations to the statutory amendments to the CSA that have already taken effect, and it does not add additional requirements to the regulations.*** (emphasis added).

50. The IFR's regulatory analysis bolsters this point by emphasizing a notice and comment period is not required and is unnecessary because the conforming changes are not discretionary pursuant to the 2018 Farm Bill:

> DEA finds there is good cause within the meaning of the APA to issue these amendments as an interim final rule and to delay comment procedures to the post-publication period, because these amendments merely conform the implementing regulations to recent amendments to the CSA that have already taken effect. ***DEA has no discretion with respect to these amendments.*** This rule does no more than incorporate the statutory amendments into DEA's regulations, and publishing a notice of proposed rulemaking or soliciting public comment prior to publication is unnecessary. (emphasis added)
>
> In addition, because the statutory changes at issue have already been in effect since December 20, 2018, DEA finds good cause exists to make this rule effective immediately upon publication. See 5 U.S.C. 553(d). Therefore, DEA is issuing

these amendments as an interim final rule, effective upon publication in the Federal Register.

51. Because Texas made the same changes to the Texas Controlled Substances Act as the 2018 Farm Bill did to the Federal Controlled Substances Act, these now conforming changes to the Federal Schedule not only do not provide a proper basis for objection, but it would follow that the same changes to the Texas Schedule of Controlled Substances are also not discretionary and the same conforming changes must therefore be made.

52. Despite this, on September 18, 2020, Texas DSHS filed a Notice of Objection in the Texas Register objecting to the DEA's modifications, purportedly pursuant to Tex. Health & Safety Code § 481.034(g), and stated its reasoning and that a public hearing would be scheduled to address this topic. *See* Plaintiffs' Exhibit 5. However, under Tex. Health & Safety Code § 481.034(g), the only time this subsection (g) is triggered is when federal law ***designates, reschedules, or deletes*** a substance from being controlled. In those instances, the commissioner has 30 days to object to such modification or otherwise must make similar conforming changes to the Texas Schedule. The Notice of Objection improperly objected to the conforming modifications as the DEA stated it was merely conforming definitions across regulations that had fallen into conflict with one another due to the 2018 Farm Bill changes mandated by Congress and which were already in effect. Further, no stakeholders in the Texas hemp industry, including those licensed by DSHS, were made aware this objection was filed, and none knew about it. Moreover, nothing within the Commissioner's stated objection would notify the public that Texas intended to make substantive revisions or amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" in its later published annual schedule of controlled substances. Indeed, no such inference could be drawn because the Commissioner's power under Subsection (g) is confined to the adoption

or rejection of a new federal designation, rescheduling, or deletion of a controlled substance in the federal schedules. *See* Tex. Health & Safety Code § 481.034(g).

53. On October 6, 2020, DSHS allegedly held that public hearing over Zoom on its above-referenced objection. This hearing concluded minutes after it began as there were no commenters. The hearing was less than six (6) minutes long and provided no indication of any alternative DSHS-proposed modifications, stating only that DSHS objects to the DEA's modifications. No Texas hemp industry stakeholders were aware of this public hearing prior to, during, or afterwards, until May 18, 2021. In contrast, hemp industry stakeholders have been keenly interested in public hearings about hemp.[3]

54. On November 17, 2020, Commissioner Hellerstedt signed a "Decision" stating that the two DEA definition modifications were not adopted. *See* Plaintiffs' Exhibit 6. At this point, there still had not been any publication of any alternative modifications proposed by DSHS, stating only that DSHS objected to the conforming changes made by the DEA to the definitions of "tetrahydrocannabinol" and "marihuana extract" without offering any substantive or scientifically-backed reasoning.[4] Still, no Texas hemp industry stakeholders were aware of this "Decision" though this memo was allegedly in existence, and it was not shared with any of the hemp license-holders or hemp retail registrants, both of which go through DSHS to obtain such licenses and registrations.

[3] For example, during the 31-day formal comment period concerning the DSHS Consumable Hemp Program Rules, "DSHS received comments regarding the proposed rules from 1,726 commenters, some with multiple comments."

[4] Instead, and without citation to any medical literature addressing the subject, Commissioner Hellerstedt objected "to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-tetrahydrocannabinol[]" as "[m]ultiple tetraydrocannabinol isomers and variants may have pharmacological or psychoactive properties."

55. On January 29, 2021, a "Decision Order Regarding the Modification of the Definition of Tetrahydrocannabinols in Schedule I of the Schedules of Controlled Substances" was published in the Texas Register. *See* Plaintiffs' Exhibit 7. This order was filed under non-rule miscellaneous action and merely reiterates the November 17, 2020 decision of the Commissioner, stating "the modifications of the two definitions above are not adopted." Again, there were no further details of any alternatively proposed modifications that would apply to any of the definitions subject to these objections, nor does § 481.034(g) of the Texas Health & Safety Code provide the Commissioner an opportunity to otherwise amend the State's schedule of controlled substances outside of any new federal designation, rescheduling, or deletion. The Commissioner's authority under Subsection (g) is confined solely to the adoption or rejection of the federal government's new designation, rescheduling, or deletion. *See* Tex. Health & Safety Code § 481.034(g).

56. Under § 481.036 of the Tex. Health & Safety Code, within five business days of taking any action under Chapter 481, the commissioner is required to publish such changes in the Texas Register, including any changes made since the last publication of the Schedule. On March 19, 2021, almost two months after the above-referenced Decision issued, an image of the Schedule of Controlled Substances was published in the Texas Register for the first time reflecting significant changes to the definitions of "tetrahydrocannabinol" and "marihuana extract." *See* Plaintiffs' Exhibits 2-3. While most of these documents are published in text-searchable format (e.g., a searchable .pdf), this particular document was only publicized as an image and not searchable via keywords, thus disabling the public's ability to search for specific text or language within it. As of the date of this filing, one can still not locate this Schedule when searching either the .pdf version or the html version of the Texas Register

online under the terms "tetrahydrocannabinol," "marihuana," "hemp," or any other relevant search terms people would typically use. It is buried 2/3 of the way through the more than 90-page document. Further, the required annual publication of the complete Schedule of Controlled Substances has never before been published as a non-searchable image, ever.

57. Between the publication of the DEA IFR and May 18, 2021, no stakeholders in the Texas hemp industry were aware of the above-referenced actions taking place.

58. On May 18, 2021, during a hearing of the Water, Agriculture & Rural Affairs Committee, 87th Legislative Session, on a bill that included language that would have prohibited certain consumable hemp products that contained forms of THC other than delta-9 THC, a representative from DSHS (Stephen Pahl) spoke as a resource witness and discussed the above-referenced Commissioner's objection on the record indicating that DSHS considers Delta-8 to be a marihuana extract. This caught industry stakeholders and some members of the public off guard and prompted further investigation, which ultimately uncovered the Decision Memo from DSHS, which again stated only that the DEA's modifications would not be adopted and did not reveal any other proposed modifications being considered.

59. On May 30, 2021, the 87th Legislative Session came to an end after multiple failed attempts to ban hemp that contained other forms of THC outside of 0.3% delta-9 THC. To be clear, the 87th Legislative Session did not ultimately vote on or pass any legislation that would have banned these consumable hemp products in Texas. Hemp businesses and consumers were under the impression that because attempted legislation had not passed, these products would remain legal. *See, e.g.,* Lisa Dreher, *Advocates celebrate as bill outlawing Delta-8 cannabis product dies in Texas Legislature*, New Braunfels Herald-Zeitung (June 4, 2021), https://www.herald-zeitung.com/community_alert/article_ad9e2466-c594-11eb-ae1f-

8b3c4b7e35fc.html; Eran Hami, *Texas legislature avoids outlawing Delta 8 and other THC products*, KRIS 6 News Corpus Christi (June 7, 2021), https://www.kristv.com/news/local-news/texas-legislature-avoids-outlawing-delta-8-and-other-thc-products.

60. Pursuant to § 481.034(a) of the Tex. Health & Safety Code, the State's annual schedule merely serves to reflect "the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g)." Importantly, the DEA's IFR made explicit that its "interim final rule merely conforms DEA's regulations to the statutory amendments to the CSA that have already taken effect, and it does not add additional requirements to the regulations[,]" and therefore did not constitute a new designation, rescheduling, or deletion under federal law that would trigger the Commissioner's authority to object under § 481.034(g) of the Tex. Health & Safety Code. *See* Plaintiffs' Exhibit 4. Texas previously adopted changes to its schedule of controlled substances to conform with the 2018 Farm Bill and State legislature's subsequent adoption of the same pursuant to H.B. 1325. *See* Plaintiffs' Exhibit 8, DSHS 2020 Schedule of Controlled Substances. Because (1) the DEA's IFR was not a proper basis for an objection in the first place and (2) because the legislature removed THCs in hemp from being controlled, the DEA's IFR could not now be used as the basis to support additional modifications to the Schedule of Controlled Substances as presently published by the DSHS, especially not in a manner which would reverse the effect of the carefully chosen definition of hemp as passed by the legislature. *See* Tex. Health & Safety Code § 481.034(c)(1) ("the commissioner may not add a substance to the schedules if the substance has been deleted from the schedules by the legislature.").

61. Instead, if additions, deletions, rescheduling or *other modifications* to the Schedule outside of federal law changes are desired by the commissioner, certain procedures as set forth under § 481.034(a)-(f), and (h), of the Tex. Health & Safety Code must be followed, which never occurred.

62. Over the last two weeks, a state industry association began publicizing that hemp with other forms of THC aside from delta-9 THC in concentrations exceeding 0.3% were illegal in Texas after news outlets reported that a woman was arrested for possession in Bryan, Texas. After prodding DSHS and making multiple social media posts, on October 15, 2021, DSHS subsequently posted information on their website indicating that Delta-8 is illegal in Texas. Although the supporting document DSHS references purports to be effective 21 days post-publication, there is no indication if or when it was ever actually published. This was only further complicated by the fact that DSHS only published a non-searchable image addressing this subject back in March, which no one knew about due to the failure to provide proper notice.[5] *See* Plaintiffs' Exhibit 3.

63. These recent developments have caught companies that sell hemp-derived products as well as their consumers off guard, immediately turning them into potential felons subject to arrest despite years of engaging in this same business without issue or law enforcement interference, and without having any knowledge of or intention to violate the law.

IX. Causes of Action

A. Ultra Vires Action(s) by Commissioner Hellerstedt

64. The material facts alleged above are incorporated by reference.

[5] *See* ¶ 56 supra.

65. Because "an action to determine or protect a private party's rights against a state officer who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars[,]" the government's plea to the jurisdiction will not dismantle a private party's suit alleging the actions of certain government officials were made without authority (ultra vires). *See Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 405 (Tex. 1997).

66. Commissioner Hellerstedt, in his official capacity as Commissioner of the Texas Department of State Health Services, is responsible for "establish[ing] and modify[ing] the . . . [State's] schedules of controlled substances" in accordance with the requirements underlying Chapter 481 of the Texas Health and Safety Code. Tex. Health & Safety Code § 481.032(a). Commissioner Hellerstedt's ability to modify the State's Schedules of Controlled Substances, however, is not absolute and his discretion is constrained by the requirements imposed under the Texas Health and Safety Code.

67. Pursuant to § 481.034(b) of the Texas Health and Safety Code, "[e]xcept for alterations in schedules required by Subsection (g), the commissioner ***may not*** make an alteration in a schedule ***unless*** the commissioner holds a public hearing on the matter in Austin and obtains approval from the executive commissioner." Tex. Health & Safety Code § 481.034(b) (emphasis added). The Commissioner's authority to alter the schedule under Subsection (g) only arises "if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner[.]" Tex. Health & Safety Code § 481.034(g).

68. In the present case, the DEA IFR did not "designate[], reschedule[], or delete[]" a substance from the federal schedules of controlled substances. Tex. Health & Safety Code § 481.034(g). The DEA IFR merely contained conforming modifications based on

preexisting federal law. A modification is not a designation, reschedule, or deletion of a controlled substance that would trigger the Commissioner's ability to object pursuant to § 481.034(g) of the Texas Health and Safety Code. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (quoting *United States v. Vonn*, 535 U.S. 55, 65 (2002)) (While the "cannon of *expression unius est exclusion alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."). As a result, Commissioner Hellerstedt had no ability to object under § 481.034(g) and was instead required to abide by the requirements underlying §§ 481.034 and 481.035 prior to modifying the State's schedule in its annual publication. Therefore, the Commissioner's reliance on § 481.034(g) was *ultra vires*.

69. Even ignoring the Commissioner's improper objection to the DEA IFR under § 481.034(g), the Commissioner's objection to adopting any perceived designations, reschedulings, and/or deletions to the federal schedules would not thereby require any amendment to the State's schedule. Indeed, the only changes to the State's schedule referenced under Subsection (g) would occur in the event the Commissioner did not object and was thus required to amend the State's schedule to mirror the federal schedules. *See* Tex. Health & Safety Code 481.034(g) ("After the expiration of a 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. . . . On publication of an objection by the commissioner, control as to that particular

substance under this chapter is stayed until the commissioner publishes the commissioner's decision.").

70. The Commissioner's objection to the DEA IFR merely reflected the State's opposition to the DEA's conforming changes to the terms "tetrahydrocannabinols" and "Marihuana extract" in the schedules of controlled substances "to the extent that the definitions allow for the presence of additional of tetrahydrocannabinols aside from the presence of delta-9-tetrahydrocannabinol." The only result of the Commissioner's objection in this regard was that the "modifications of the two definitions above [were] not adopted[.]" *See* Plaintiffs' Exhibit 6.

71. Because § 481.034(g) of the Texas Health & Safety Code does not allow the Commissioner to amend the State's schedules of controlled substances except to the extent required to mirror new federal law, any amendments made to the State's schedules concerning "tetrahydrocannabinols" and/or "Marihuana extract" would require the Commissioner to first "hold[] a public hearing on the matter in Austin and obtain[] approval from the executive commissioner." Tex. Health & Safety Code § 481.034(b). The Commissioner did not schedule such a hearing, nor did he obtain approval from the executive commissioner prior to amending "tetrahydrocannabinols" and "Marihuana extract" as reflected in the State's 2021 schedule of controlled substances. Therefore, the Commissioner acted outside his authority in adopting any amendments to "tetrahydrocannabinols" and "Marihuana extract" in the 2021 annual schedules without first complying with §§ 481.034(b), (d), (e), and (h) as well as 481.035(a).

72. Based on the above-described *ultra vires* acts of the Commissioner, Plaintiffs respectfully request this Court invalidate and order the removal of the amendments to

"tetrahydrocannabinols" and "Marihuana extract" as reflected in the State's 2021 annual schedule of controlled substances.

B. Violations of the Administrative Procedures Act

73. The material facts alleged above are incorporated by reference.

74. The Administrative Procedures Act ("APA") defines a rule as "a state agency statement of general applicability" that "implements, interprets, or prescribes law or policy" or "describes the procedure or practice requirements of a state agency." Tex. Gov't Code § 2001.003(6)(A).

75. The amendments to "tetrahydrocannabinols" and "Marihuana extract" as reflected in the 2021 annual schedule of controlled substances constitute a rule under the APA as they have general applicability and impact the public at large. *See Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 905 (Tex. App. – Austin 2009, no pet.). The amendments therefore constitute a rule under Texas law.

76. The Texas Supreme Court has held that under § 2001.035 of the Texas Government Code, "[w]hen an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid." *El Paso Hosp. Dist. v. Tex. Health & Human Services Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008).

77. Prior to amending "tetrahydrocannabinols" and "Marihuana extract" in the 2021 annual schedules of controlled substances, Commissioner Hellerstedt was required to first schedule a public hearing in Austin and obtain approval from the executive commissioner to modify the State's schedule in accordance with § 481.034(b) of the Texas Health and Safety Code. Commissioner Hellerstedt failed to so act and therefore acted outside his statutorily

constrained authority as Commissioner when amending "tetrahydrocannabinols" and "Marihuana extract" in the 2021 annual schedule of controlled substances.

78. The APA further requires that, among other things, "the notice of a proposed rule must include . . . the text of the proposed rule . . . prepared in a manner to indicate any words to be added or deleted from the current text." Tex. Gov't Code § 2001.024(a)(2). "In the notice of a proposed rule that is new or that adds a complete section to an existing rule, the new rule or section must be set out and underlined." Tex. Gov't Code § 2001.024(c). The notice of objection posted in the Texas Register on September 18, 2020 failed to adhere to these notice requirements, as did the Decision Memo and the Decision Order. The text of the proposed changes were also not mentioned during the public hearing addressing the Commissioner's objections to the DEA IFR. The first time the text of the amendments to the definitions was made public was months after the Decision Order, at a time when the opportunity for comments had long passed, and in an obscure manner that made discovery of it virtually impossible by ordinary means, depriving the public of any meaningful participation in the process, in violation of the APA. In this particular case, the State improperly incorporated changes to its annual schedule in violation of the Commissioner's constrained authority under § 481.034 of the Texas Health & Safety Code. Therefore, any notice of the 2021 annual schedule of controlled substances was insufficient under Tex. Gov't Code § 2001.024(a)(2) to advise the public of substantive amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" because the annual schedule of controlled substances "shall [only] include the complete list of controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g)." Tex. Health & Safety Code § 481.034(a). "Any further additions to and

deletions from these schedules[,]" such as the amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" included in the 2021 annual schedule, would necessarily require notice separate and apart from that provided for DSHS's annual publication. Tex. Health & Safety Code § 481.034(a).

79. Alternatively, the October 15, 2021 changes to the DSHS webpage, noting that "[a]ll other forms of THC [outside of consumable hemp products that do not have a concentration in excess of 0.3% delta-9 THC], ***including Delta-8 in any concentration*** and Delta-9 exceeding 0.3%, are considered Schedule I controlled substances[,]" constitute an agency rule unto itself that triggers the notice requirements underlying Tex. Gov't Code § 2001.024(a)(2). *See* Plaintiffs' Exhibit 1 (emphasis added). Because DSHS failed to provide the requisite notice prior to designating consumable hemp products containing "Delta-8 in any concentration" as Schedule I controlled substances, the rule is invalid. *See El Paso Hosp. Dist. v. Tex. Health & Human Services Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008).

80. Therefore, and based on the Commissioner's failure to abide by the rules underlying Chapter 481 of the Texas Health and Safety Code, Plaintiffs respectfully request this Court hold that the amendments to "tetrahydrocannabinols" and "Marihuana extract" as reflected in the 2021 annual schedule are invalid pursuant to Tex. Gov't Code § 2001.035. As such, Plaintiffs also respectfully request that the Court enjoin the effectiveness of these amendments going forward.

C. Declaratory Judgment

81. The material facts alleged above are incorporated by reference.

82. Plaintiffs, as sellers of hemp products, including delta-8 products, are threatened and directly impacted by the DSHS's newly modified Schedule of Controlled Substances, which

interferes, impairs, threatens to interfere with or threatens to impair, the legal rights and privileges of Plaintiffs, in addition to other similarly situated businesses and consumers in Texas.

83. An administrative agency is a creature of the legislature and only has power expressly provided by statute or necessarily implied to carry out the express powers the Legislature has given it. *See Pub. Util. Comm'n of Tex. v. GTE-Sw., Inc.*, 901 S.W.2d 401, 406 (Tex. 1995).

84. The above-described modification to the State's Schedule of Controlled Substances exceeds DSHS's (and the Commissioner's) authority under H.B. 1325 and the Texas Health & Safety Code. The Legislature expressed no intent to ban the retail sale or distribution of delta-8 products. Indeed, multiple bills were presented before the Texas Legislature proposing to do so presumably because of legislators' knowledge that the industry underlying delta-8 products was continuing to grow in Texas, but all attempts failed. "Ordinarily, the truest manifestation of what legislators intended is what lawmakers enacted, the literal text they voted on." *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651 (Tex. 2006). *See also Russell v. Wendy's Int'l, Inc.*, 219 S.W.3d 629, 636 (Tex. App. – Dallas 2007, no pet.) ("We read every word as if it were deliberately chosen and presume that omitted words were excluded purposefully.").

85. Moreover, the Commissioner and DSHS's reference to § 481.034(g) of the Tex. Health & Safety Code is misplaced because the DEA's IFR did not constitute a designation, rescheduling or deletion of any substance on the federal Schedule of Controlled Substances. *See* Plaintiffs' Exhibit 4. Texas's incorrect reliance on the DEA IFR and § 481.034(g) of the Tex. Health & Safety Code cannot justify its modification to the DSHS Schedule of Controlled Substances as recently published.

86. There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Plaintiffs therefore request that declaratory judgment be entered as follows:

a. The Commissioner's ability to change the State's annual schedule of controlled substances under § 481.034(g) of the Tex. Health & Safety Code are confined to amending the State's schedule to mirror additions, deletions, or reschedulings in the federal schedules and/or to object to any such additions, deletions, or reschedulings. Section 481.034(g) does not allow the Commissioner to adopt new language in the State's annual schedule based on the Commissioner's objection to any additions, deletions, or reschedulings contained within the federal schedules. The Commissioner's authority under Subsection (g) are instead confined to either adopting or refusing to adopt any such additions, deletions, or reschedulings contained within the federal schedule of controlled substances.

b. Because the DEA's August 20, 2020 IFR "merely conforms DEA's regulations to the statutory amendments to the CSA that have already taken effect, and it does not add additional requirements to the regulations[,]" the Texas rule providing the Commissioner an opportunity to object under § 481.034(g) of the Tex. Health & Safety Code does not apply to the DSHS's actions modifying the terms "tetrahydrocannabinols" and "Marihuana extract" within the Schedule of Controlled Substances as reflected in its March 19, 2021 annual publication of the same.

c. Prior to adopting any substantive amendments to "tetrahydrocannabinols" and "Marihuana extract" in the State's annual schedules of controlled substances, Commissioner Hellerstedt was statutorily required to "hold[] a public hearing on the matter in Austin and obtain[] approval from the executive commissioner" in accordance with § 481.034(b) of the Tex. Health & Safety Code.

d. Prior to modifying the DSHS Schedule of Controlled Substances as outlined above, Commissioner Hellerstedt was statutorily obligated to comply with the rules underlying § 481.034(d)[6] of the Tex. Health & Safety Code.

e. Commissioner Hellerstedt's "Decision Order Regarding the Modification of the Definition of Tetrahydrocannabinols in Schedule I of the Schedules of Controlled

[6] "In making a determination regarding a substance, the commissioner shall consider: (1) the actual or relative potential for its abuse; (2) the scientific evidence of its pharmacological effect, if known; (3) the state of current scientific knowledge regarding the substance; (4) the history and current pattern of its abuse; (5) the scope, duration, and significance of its abuse; (6) the risk to the public health; (7) the potential of the substance to produce psychological or physiological dependence liability; and (8) whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter." Tex. Health & Safety Code § 481.034(d).

Substances" failed to comply with the requirements underlying §§ 481.034(d) and (e) of the Tex. Health & Safety Code and is thus insufficient to enact the recent modifications to the terms tetrahydrocannabinols and marihuana extract as recently published by the DSHS in its annual Schedule of Controlled Substances.[7]

f. Prior to rendering the modifications related to "tetrahydrocannabinols" and "Marihuana extract" of the DSHS Schedule of Controlled Substances, Commissioner Hellerstedt failed to provide "written notice of that action to the director and to each state licensing agency having jurisdiction over practitioners[]" in conformity with § 481.034(h) of the Tex. Health & Safety Code.

g. Prior to modifying the DSHS Schedule of Controlled Substances, the DSHS and/or Commissioner Hellerstedt failed to issue determinations in accordance with § 481.034(a)(1)-(2) of the Tex. Health & Safety Code.[8]

h. Commissioner Hellerstedt's failure to comply with § 481.034(b) prior to modifying the terms "tetrahydrocannabinols" and "Marihuana extract" in the DSHS Schedule of Controlled Substances was *ultra vires*.

i. Commissioner Hellerstedt's failure to comply with § 481.034(b) prior to modifying the terms "tetrahydrocannabinols" and "Marihuana extract" in the DSHS Schedule of Controlled Substances constitutes a violation of the APA. *See* Tex. Gov't Code § 2001.035.

j. Commissioner Hellerstedt's modifications to the DSHS Schedule of Controlled Substances without prior proper notification constitutes a violation of the APA. *See* Tex. Gov't Code § 2001.024.

k. The Commissioner and DSHS's failure to abide by the express written provisions contained within Chapter 481 of the Texas Health & Safety Code as outlined above render the DSHS's recent modifications of the terms, tetrahydrocannabinols and marihuana extract, in its annual Schedule of Controlled Substances null, void, and unenforceable as a matter of law.

X. Request for Temporary Injunction

87. In light of the above-described facts, Plaintiffs seek injunctive relief against the effectiveness going forward of the DSHS Modified Schedule of Controlled Substances, specifically and

[7] The March 19, 2021 Schedule of Controlled Substances published by DSHS purports to serve as the State's annual publication pursuant to § 481.034(a) of the Tex. Health & Safety Code.
[8] "The commissioner shall place a substance in Schedule I ***if*** the commissioner finds that the substance: (1) has a high potential for abuse; and (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." Tex. Health & Safety Code §§ 481.0345(a)(1)-(2) (emphasis added).

exclusively as it pertains to its revisions to (31) tetrahydrocannabinols and (58) marihuana extract, because they are the result of *ultra vires* actions and improper rulemaking. To be entitled to a temporary injunction, a plaintiff must plead a cause of action, show a probable right to relief, and prove immediate, irreparable harm if temporary relief is not granted. "The only question before the trial court at the hearing for a temporary injunction is whether the applicant is entitled to the preservation of the status quo pending a trial on the merits. The applicant must plead a cause of action, prove a probable right and that a probable injury will be sustained during the pendency of the trial if the temporary injunction is not issued." *City of Arlington v. City of Fort Worth*, 873 S.W.2d 765, 767 (Tex. App. – Fort Worth 1994, orig. proc.).

88. Plaintiffs are likely to recover from Defendants after a trial on the merits because Defendants failed to provide proper notice to affected businesses, like Plaintiffs, as well as the State agencies involved in violation of § 481.034(h) of the Texas Health & Safety Code and Tex. Gov't Code § 2001.024. Moreover, the plain language contained in Texas Health & Safety Code § 481.034(g) makes clear that the modifications contained within the DEA IFR were insufficient to trigger the Commissioner's authority to object under Subsection (g). Additionally, in making the amendments to the DSHS Modified Schedule of Controlled Substances, the Commissioner failed to follow the requirements for passage of a rule under the APA.

89. To establish a probable right of recovery, a party need not prove conclusively that it will prevail on the merits; instead, it need only show that a bona fide issue exists as to its right to ultimate relief. *Camp v. Shannon,* 162 Tex. 515, 348 S.W.2d 517, 519 (1961); *Gatlin v. GXG, Inc.*, 1994 Tex. App. LEXIS 4047 (Tex. App. – Dallas April 19, 1994, no pet.);

183/620 Group Joint Venture v. SPF Joint Venture, 765 S.W.2d 901, 904 (Tex. App. – Austin 1989, writ dism'd). To show a probable right of recovery or success, a party need not establish that it will prevail in the litigation; rather, it must only present some evidence that, under the applicable rules of law, tends to support its cause of action and shows a bona fide issue exists as to that party's right to relief. *Camp v. Shannon*, 162 Tex. 515, 348 S.W.2d 517, 519 (1961). Under this standard, it is sufficient for an applicant merely to adduce evidence that tends to support its right to recover on the merits. *183/620 Group*, 765 S.W.2d at 904. It is probable Plaintiffs will prevail after a trial on the merits because, for the reasons stated above, the modifications made to the 2021 Schedules of Controlled Substances are invalid.

90. If this Court does not grant this request to enjoin the effectiveness going forward of Defendants' amendments, the Plaintiffs will suffer imminent and irreparable harm in that law enforcement may continue to arrest and charge persons with felonies in accordance with the improper modifications to the terms "tetrahydrocannabinols" and "marihuana extract" in the DSHS Schedule of Controlled Substances as more recently (and explicitly) reflected on the DSHS's webpage addressing its Consumable Hemp Program. Furthermore, such enforcement will effectively ban Plaintiffs from conducting further business related to their sale of certain legal hemp products. Plaintiff Hometown Hero has had to fire significant portions of his workforce and is losing out on revenue previously earned prior to having to cease the sale and distribution of products previously understood to be legal. Business (and the business's good will) is being lost to companies in Louisiana and Florida, which have explicitly authorized a regulated market for delta-8 products, and the Plaintiff's reputation as a credible source has been harmed. Businesses similarly situated are scrambling to pull

products from the shelves, abruptly halt sales, destroy significant amounts of inventory, and are at imminent risk of having to shut down operations. The emotional toll and reputational damages are too difficult to calculate, and even if monetary damages were available, they would come to late to save the Plaintiff's business. Businesses across Texas are already receiving notices from law endorsement to destroy their inventory or face criminal prosecution. A legal remedy may be inadequate when the damages are difficult to calculate, *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 597 (Tex. App.—Amarillo 1995, no writ), when their award may come too late to save the applicant's business, *TCA Bldg. Co., Inc. v. Northwestern Resources Co*., 890 S.W.2d 175, 179 (Tex. App.—Waco 1994, no writ), or when there is danger that the respondent may become insolvent before judgment can be rendered and collected. *Id*.

91. Furthermore, Plaintiffs cannot adequately be compensated in damages because there is no monetary relief that can be obtained from Defendants to compensate Plaintiffs for the disruption to their businesses, costs incurred, and being subject to potential criminal liability. *See Combs v. Entm't Publications, Inc.*, 292 S.W.3d 712, 724 (Tex. App. – Austin 2009, no pet.). *See also Tex. Dep't of State Health Services v. Holmes*, 294 S.W.3d 328, 334 (Tex. App. – Austin 2009, pet. denied) (quoting *Graham v. Mary Kay, Inc.*, 25 S.W.3d 749, 753 (Tex. App. – Houston [14th Dist.] 2000, pet. denied) (holding that "irreparable harm for purposes of a temporary injunction may include noncompensable injuries such as a 'company's loss of goodwill, clientele, marketing techniques, office stability and the like.'").

92. Plaintiffs have no adequate remedy at law because Defendants' failure to comply with the express terms underlying §§ 481.034, 481.035, and 481.036 of the Texas Health & Safety Code, in addition to the State's failure to issue findings in accordance with § 481.034(d) of

the Texas Health & Safety Code, effectively deprived Plaintiffs from receiving proper notice and an opportunity to be heard on the subject and further failed to adequately consider whether certain hemp-derived products truly warrant placement on the Schedule I list of controlled substances. The harm that will result if injunctive relief is not issued is imminent and irreparable, and in fact is already taking place since the denial of the temporary restraining order issued on October 22, 2021. The effects cannot be reversed.

93. Defendants are state entities or state officers with no pecuniary interest in this suit and no monetary damages that would result from a temporary injunction. *See Chambers-Liberty Ctys. Navigation Dist. v. State*, 575 S.W.3d 339, 347 (Tex. 2019) (internal citations omitted) ("In the complex realm of sovereign-immunity law, one simple and ancient default rule has stood the test of time: No money damages against the government.").

94. The threat of immediate and irreparable injury to Plaintiffs substantially outweighs the harm, if any, that the DSHS or Texas would suffer from having to forestall criminal enforcement derived from its modification of the Schedule of Controlled Substances, pending disposition of this action. "In balancing the equities, the trial court must weigh the harm or injury to the applicant if the injunctive relief is withheld against the harm or injury to the respondent if the relief is granted." *Seaborg Jackson Partners v. Beverly Hills Sav*., 753 S.W.2d 242, 245 (Tex. App.—Dallas 1988, writ dism'd); *Texoma Med. Ctr., Inc., d/b/ Texoma Med. Ctr., Arthur L. Hohenberger, as Adm'r/Chief Executive Officer of Texoma Med. Ctr. v. Steven Gary Brannan*, CRNA, 05-94-00465-CV, 1995 WL 81301, at *2 (Tex. App. – Dallas Feb. 28, 1995, no writ).

95. Plaintiffs have no adequate remedy at law. DSHS would suffer no harm from having the modified language to the definitions of "tetrahydrocannabinol" and "marihuana extract"

enjoined, but complying with the DSHS's new interpretation of federal and state rules will not only cause a significant loss of revenue and incur unrecoverable costs, but defying the rule subjects Plaintiffs – and all other Texas manufacturers, processors, distributors, retailers, and consumers of certain hemp or hemp-derived products – to fines, felony charges, and possible shut down by the DSHS or state or local law enforcement. Defying such rules further risks Plaintiffs being denied the manufacturing, distribution, or retail licenses and/or registrations from DSHS that are required in Texas.

96. Therefore, Plaintiffs request the Court enjoin the effectiveness going forward of the amendments to the DSHS modified schedule of controlled substances, specifically and exclusively as to its modifications of the terms "tetrahydrocannabinols" and "marihuana extract" until final hearing.

XI. Request for Permanent Injunction

97. Plaintiffs further ask the Court to grant a permanent injunction against Defendants after a trial on the merits.

XII. Bond

98. Given the facts of this case, Plaintiffs ask the Court to order that no bond is necessary. However, if the Court orders a bond is necessary, Plaintiffs are willing to post a reasonable bond for the temporary restraining order and request the Court to set the reasonable bond.

XIII. Conditions Precedent/Administrative Remedies Exhausted

99. Plaintiffs confirm that all conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

XIV. Attorney's Fees

100. Pursuant to § 37.009 of the Texas Civil Practice and Remedies Code and Section 245.006 of the Texas Local Government Code, request is made for all costs and reasonable and necessary attorney's fees incurred by Plaintiffs herein, as the Court deems equitable and just.

XV. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that:

a. The Court cite Defendants to appear and answer herein;

b. The Court grant declaratory judgment, and Plaintiffs be awarded costs and reasonable and necessary attorney's fees, as outlined above;

c. After notice and hearing, a temporary injunction issue enjoining the effectiveness going forward of amendments to the terms "tetrahydrocannabinols" and "Marihuana extract" in the 2021 annual schedule of controlled substances based on the Commissioner's failure to abide by the rules underlying Chapter 481 of the Texas Health & Safety Code prior to amending the schedule of controlled substances and failure to follow the requirements for passage of a rule under the APA;

d. After a trial on the merits, a permanent injunction issue invalidating the DSHS modifications of the terms tetrahydrocannabinols and marihuana extract to its 2021 Schedule of Controlled Substances;

e. The Court order no bond is required, or in the alternative set a reasonable bond for the temporary injunction;

f. The Court award Plaintiffs' costs and reasonable and necessary attorney's fees; and

g. For such other and further relief, in law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

DAVID K. SERGI AND ASSOCIATES, P.C.

/s/ David Sergi
David Sergi – Attorney in Charge
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San Marcos, TX 78666
Tel. (512) 392-5010
Fax. (512) 392-5042
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on November 4, 2021 a true and correct copy of Plaintiffs' Second Amended Petition was served on Cynthia Akatugba, counsel for Defendants, via email.

/s/ *David K. Sergi*
David K. Sergi

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFF'S VERIFICATION

STATE OF Oklahoma §
§
COUNTY OF Tulsa §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared the person known by me to be Lukas Gilkey, who, after being by me duly sworn, testified as follows:

"My name is Lukas Gilkey, I am over 18 years of age, and I am the Chief Executive Officer of Sky Marketing Corporation doing business as Hometown Hero. I am competent to testify to these matters. I have personal knowledge of all facts stated in the foregoing First Amended Petition and all such facts are true and correct."

Lukas Gilkey

Lukas Gilkey Chief Executive Officer
Sky Marketing Corporation, Affiant

SUBSCRIBED AND SWORN TO before me on November 3rd, 2021.

Diane G Williamson

Notary Public

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 1

TEXAS Health and Human Services | Texas Department of State Health Services

Consumable Hemp Program

Texas Health and Safety Code Chapter 443 (HSC 443), established by **House Bill 1325** (86th Legislature), allows Consumable Hemp Products in Texas that do not exceed 0.3% Delta-9 tetrahydrocannabinol (THC). All other forms of THC, including Delta-8 in any concentration and Delta-9 exceeding 0.3%, are considered Schedule I controlled substances. A list of Schedule I controlled substances can be found at the following link: **Schedule I Controlled Substances**.

Complaints regarding controlled substances should be referred to law enforcement. DSHS has no regulatory authority over controlled substances.

The Texas Department of Agriculture (TDA) oversees the growing, harvesting, handling and transporting of hemp. To learn more, visit the **TDA's hemp regulations webpage**.

Licensing and Registration

DSHS uses an online process to license consumable hemp manufacturers and distributors and register retail sellers of CHPs. Please see criteria below to determine whether you need to obtain a DSHS Retail Hemp Registration or a Consumable Hemp Product License.

The **DSHS Retail Hemp Registration** is required if a seller:

- Retail sells CHPs and doesn't make any changes, which includes adding a company name, to the hemp product or its packaging.
- Retail sells CHPs online (not through a storefront location) and doesn't make any changes, which includes adding a company name, to the hemp product or its packaging.

Registration applicants are **not required** to undergo a Federal Bureau of Investigation fingerprint criminal background check.

To view requirements and instructions on this process, view the **DSHS Retail Hemp Registration Guide (PDF)**. Please view this document before starting the registration process.
To complete the **DSHS Retail Hemp Registration process**, visit the **DSHS Business and Professional Licenses webpage**.

A **DSHS Consumable Hemp Product License** is required if:

- CHPs are manufactured. Manufacturing includes the following activities: preparing, compounding, processing, packaging, repackaging, labeling and relabeling.
- The retailer white labels or private labels the CHPs, which is when a business places its own label (name and address) on a product physically manufactured by another business.
- The retailer repackages CHPs, labels a container of CHPs, or relabels a container of CHPs.
- CHPs are sold in wholesale.

For a list of requirements and guidance on this process, view the **DSHS Consumable Hemp Product License Process webpage**. Please view this information before starting the licensing process.
To complete the DSHS Consumable Hemp Product License process, visit the **DSHS Business and Professional Licenses webpage**.

Consumable Hemp Products

A CHP is defined as any product processed or manufactured for consumption that contains hemp, including food, a drug, a device and a cosmetic. It does not include any consumable hemp product containing a hemp seed, or hemp seed-derived ingredient used in a manner generally recognized as safe by the U.S. Food and Drug Administration. CHPs cannot contain more than 0.3 percent concentration of Delta-9 tetrahydrocannabinol (THC).

Some examples of CHPs are:

- Cannabidiol (CBD) oil.
- CBD gummy bears.
- Food and drinks infused with CBD.
- Over-the-counter drugs containing CBD.
- Topical lotions and cosmetics that contain CBD.

To learn more, visit the **Texas Administrative Code CHP Definitions webpage**.

Rules and Regulations

To view the law, visit the **Texas Health and Safety Code webpage**.

To view the rules, visit the **Texas Administrative Code webpage**.

FAQs

Contact

To learn more and for questions, email the **DSHS Hemp Program**.

For questions about the CHP licensing or retail hemp registration processes, email the **Hemp Licensing and Registration Program**.

▲ Top

Last updated October 15, 2021

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 2

SCHEDULES OF CONTROLLED SUBSTANCES

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by John Hellerstedt, M.D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Unit, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.texas.gov/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

-Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts are possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
(2) Acetylmethadol;
(3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Other name: acryloylfentanyl);
(5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino) cyclohexymethyl]benzamide);
(6) Allylprodine;
(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);
(8) α-Methylfentanyl or any other derivative of fentanyl;

(9) α-Methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] *N*-phenylpropanamide);
(10) Benzethidine;
(11) β-Hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
(12) β-Hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
(13) β-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide; *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide);
(14) Betaprodine;
(15) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(16) Clonitazene;
*(17) Crotonyl fentanyl (Other name: (6-2-5) (E)-N-(1-Phenethylpiperidin-4-yl)-N-phenylbut-2-enamide);
(18) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide);
(19) Diampromide;
(20) Diethylthiambutene;
(21) Difenoxin;
(22) Dimenoxadol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *p*-fluoroisobutyryl fentanyl);
(30) Furanyl fentanyl (*N*-(1-phenethylpiperdin-4-yl)-*N*-phenylfuran-2-carboxamide);
(31) Furethidine;
(32) Hydroxypethidine;
(33) Ketobemidone;
(34) Levophenacylmorphan;
(35) Meprodine;
(36) Methadol;
(37) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(38) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
(39) 3-Methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(40) Moramide;
(41) Morpheridine;
(42) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(43) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
(44) Noracymethadol;
(45) Norlevorphanol;

(46) Normethadone;
(47) Norpipanone;
(48) Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-phenethylpiperidin-4-yl)acetamide);
(49) *o*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl);
(50) *p*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
(51) *p*-Fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4 piperidinyl] propanamide);
(52) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(53) Phenadoxone;
(54) Phenampromide;
(55) Phencyclidine;
(56) Phenomorphan;
(57) Phenoperidine;
(58) Piritramide;
(59) Proheptazine;
(60) Properidine;
(61) Propiram;
(62)Tetrahydrofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide);
(63) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(64) Tilidine;
(65) Trimeperidine; and
(66) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide.

-Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;

(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-*N*-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine; and
(24) Thebacon.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) α-Ethyltryptamine (Other names: etryptamine; Monase; α-ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; AET);
(2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5- dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA);
(3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α-desmethyl DOB);
(4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA);
(5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);
(6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);
(7) 4-Methoxyamphetamine (Other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine; PMA);
(8) 5-Methoxy-3,4-methylenedioxyamphetamine (Other names: MMDA);
(9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy-α-methyl-phenethylamine; "DOM";"STP");
(10) 3,4-Methylenedioxyamphetamine (Other names: MDA; Love Drug);
(11) 3,4-Methylenedioxymethamphetamine (Other names: MDMA; MDM; Ecstasy; XTC);
(12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl-α-methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);
(13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other names: *N*-hydroxy MDA);
(14) 3,4,5-Trimethoxyamphetamine (Other names: TMA);

(15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole, 5-MeO-DMT);

(16) α-Methyltryptamine (Other name: AMT), its isomers, salts, and salts of isomers;

(17) Bufotenine (Other names: 3-β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6-β-7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga);

(22) Lysergic acid diethylamide;

(23) Marihuana.

The term marihuana does not include hemp, as defined in Title 5, Agriculture Code, Chapter 121.

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) *N*-ethyl-3-piperidyl benzilate;

(28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

*(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), except for up to 0.3 percent delta-9-tetrahydrocannabinols in hemp (as defined under Texas Agriculture Code 121), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenyl-cyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);

(37) 3,4-methylenedioxypyrovalerone (MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name:2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);

(47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);

(48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48);

(51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

(54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

(56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

*(58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, except for extracts derived from hemp (as defined under Texas Agriculture Code 121) containing up to 0.3% delta-9-tetrahydrocannabinol on a dry weight basis, other than separated resin (whether crude or purified) obtained from the plant;

(59) 4-Methyl-*N*-ethylcathinone (4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (4-MePPP);

(61) α-Pyrrolidinopentiophenone ([α]-PVP);

(62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);

(63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);

(64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);

(65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);

(66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);

(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);

(68) α-Pyrrolidinobutiophenone (Other name: [α]-PBP);

(69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);

(70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);

(71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);

(72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (Other name: MPTP);

(73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexyl-methyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA, ABD-CHMINACA);

*(74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB, 5F-MDMB-PINACA);

*(75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-caboxamido)-3-methylbutanoate (Other name: 5F-AMB);

*(76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);

*(77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);

*(78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);

*(79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA); and

*(80) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA).

-Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
(2) Mecloqualone; and
(3) Methaqualone.

-Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);
(2) *N*-Benzylpiperazine (Other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;
(3) Cathinone (Other names: 2-amino-1-phenyl-1-propanone; α-aminopropiophenone; 2-aminopropiophenone; norephedrone);
(4) Fenethylline;
(5) Methcathinone (Other names: 2-(methylamino)-propiophenone; α-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; α-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; UR1432);
(6) 4-Methylaminorex (Other names: U4Euh; McN-422);
(7) *N*-Ethylamphetamine; and
(8) *N,N*-Dimethylamphetamine (Other names: *N,N*-α-trimethylbenzene-ethaneamine; *N,N*-α-trimethylphenethylamine).

-Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of

isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-Hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

(1-2) 3-(1-Naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

(1-3) 3-(1-Naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

(1-4) 1-(1-Naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent; and,

(1-5) 3-Phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-Dimethylheptyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other name: CP-47,497);

(3) 5-(1,1-Dimethyloctyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol, CP-47,497 C8 homolog);

(4) 1-Pentyl-3-(1-naphthoyl)indole (Other names: JWH-018; AM678);

(5) 1-Butyl-3-(1-naphthoyl)indole (Other name: JWH-073);

(6) 1-Hexyl-3-(1-naphthoyl)indole (Other name: JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other name: JWH-200);

(8) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (Other name: JWH-250);

(9) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other name: JWH-081);

(10)1-Pentyl-3-(4-methyl-1-naphthoyl)indole (Other name: JWH-122);

(11)1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other name: JWH-398);

(12) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (Other name: AM2201);

(13) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (Other name: AM694);

(14) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19, RCS-4);

(15) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18;RCS-8); and

(16) 1-Pentyl-3-(2-chlorophenylacetyl)indole (Other name: JWH-203).

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

*(1) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);
*(2) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);
*(3) *N*-(4-Chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);
*(4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);
*(5) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);
(6) Fentanyl-related substances.

(6-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(6-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(6-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(6-1-5) Replacement of the *N*-propionyl group by another acyl group.

(6-2) This definition includes, but is not limited to, the following substances:

(6-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

(6-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name:*o*-methyl acetylfentanyl);

(6-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl); and,

(6-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl).

*(7) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

*(8) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

*(9) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

*(10) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

*(11) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

*(12) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

(13) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

(14) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

(15) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));

(16) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(17) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

(18) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(19) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(20) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(21) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(22) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

(23) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one); and,

*(24) *N*,*N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: isotonitazene; *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine)

SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:
(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemedine, naloxegol, naloxone and its salts, *6β-naltrexol, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine (Other names: Morphine methyl ester; methyl morphine);
(1-2) Dihydroetorphine (Other name: DHE);
(1-3) Ethylmorphine (Other name: Dionin);
(1-4) Etorphine hydrochloride (Other names: Etorphine HCl; M99);
(1-5) Granulated opium;
(1-6) Hydrocodone (Other name: dihydrocodeinone);
(1-7) Hydromorphone (Other names: Dilaudid; dihydromophinone);
(1-8) Metopon;
(1-9) Morphine (Other names: MS Contin; Roxanol; Oramorph; RMS; MSIR);
(1-10) Noroxymorphone;
(1-11) Opium extracts;
(1-12) Opium fluid extracts;
(1-13) Oripavine;
(1-14) Oxycodone (Other names: OxyContin; Percocet; Endocet; Roxicodone; Roxicet);
(1-15) Oxymorphone (Other name: Numorphan);
(1-16) Powdered opium;
(1-17) Raw opium (Other name: gum opium);
(1-18) Thebaine; and
(1-19) Tincture of opium (Other name: Laudanum).
(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw;
(4) Cocaine, including:
(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;
(4-2) Coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:
(4-2-1) Decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or
(4-2-2) Ioflupane.
(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Schedule II opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil (Other name: Alfenta);
(2) Alphaprodine (Other name: Nisentil);
(3) Anileridine (Other name: Leritine);
(4) Bezitramide (Other name: Burgodin);
(5) Carfentanil (Other name: Wildnil);
(6) Dextropropoxyphene, bulk (nondosage form) (Other name: Propoxyphene);
(7) Dihydrocodeine (Other names: Didrate; Parzone);
(8) Diphenoxylate;
(9) Fentanyl (Other names: Duragesic; Oralet; Actiq; Sublimaze; Innovar);
(10) Isomethadone (Other name: Isoamidone);
(11) Levo-alphacetylmethadol (Other names: levo-α-acetylmethadol; levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone (Other names: Dolophine; Methadose; Amidone);
(16) Methadone Intermediate (Other name: 4-cyano-2-dimethylamino-4,4-diphenyl butane);
(17) Moramide Intermediate (Other name: 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid);
*(18) Oliceridine (Other name: N-[(3-methoxythiophen-2-yl)methyl] ({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl})amine fumarate)
(19) Pethidine (meperidine);
(20) Pethidine Intermediate-A (Other name: 4-cyano-1-methyl-4-phenylpiperidine);
(21) Pethidine Intermediate-B (Other name: ethyl-4-phenylpiperidine-4-carboxylate);
(22) Pethidine Intermediate-C (Other name: 1-methyl-4-phenylpiperidine-4-carboxylic acid);
(23) Phenazocine (Other names: Narphen; Prinadol);
(24) Piminodine;
(25) Racemethorphan;
(26) Racemorphan (Other name: Dromoran);
(27) Remifentanil (Other name: Ultiva);
(28) Sufentanil (Other name: Sufenta;
(29) Tapentadol; and
(30) Thiafentanil (Other name: methyl 4-(2-methoxy-*N*-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

- **Schedule II stimulants**

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;
(3) Methylphenidate and its salts;
(4) Phenmetrazine and its salts; and
(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

-Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;
(2) Glutethimide;
(3) Pentobarbital; and
(4) Secobarbital.

-Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-t*rans*-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9*H*-dibenzo[b,d]pyran-9-one); and

(2) Dronabinol in oral solution in drug products approved for marketing by the U.S. Food and Drug Administration.

-Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:
(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;
(2) Immediate precursor to amphetamine and methamphetamine:
(2-1) Phenylacetone (Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);
(3) Immediate precursors to phencyclidine (PCP):
(3-1) 1-phenylcyclohexylamine;
(3-2) 1-piperidinocyclohexanecarbonitrile (PCC); and

(4) Immediate precursor to fentanyl:
(4-1) 4-anilino-N-phenethylpiperidine (ANPP).

SCHEDULE III

Schedule III consists of:

-Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) A compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;
(2) A suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the U.S. Food and Drug Administration for marketing only as a suppository;
(3) A substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;
(4) Chlorhexadol;
(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food Drug and Cosmetic Act.
(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
(7) Lysergic acid;
(8) Lysergic acid amide;
(9) Methyprylon;
(10) Perampanel, and its salts, isomers, and salts of isomers;
(11) Sulfondiethylmethane;
(12) Sulfonethylmethane;
(13) Sulfonmethane; and,
(14) Tiletamine and zolazepam or any salt thereof. (Some trade or other names for a tiletamine zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8 trimethyl-pyrazolo[3,4-e][1,4] diazepin-7(1H)-one, flupyrazapon.)

-Schedule III

(1) Nalorphine.

-Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) A material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-4) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-6) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

-Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine.

-Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) Androstanediol--

(1-1) 3β,17β-dihydroxy-5α-androstane;

(1-2) 3α,17β-dihydroxy-5α-androstane;

(2) Androstanedione (5α-androstan-3,17-dione);

(3) Androstenediol--

(3-1) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

(3-2) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

(3-3) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(4) Androstenedione--

(4-1) 1-androstenedione (5α-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) Bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(6) Boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

(7) Boldione (androsta-1,4-diene-3,17-dione);

(8) Calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(9) Clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

(10) Dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one);

(11) Δ-1-Dihydrotestosterone (17β-hydroxy-5α-androst-1-en-3-one) (Other Name: 1-testosterone);

(12) Desoxymethyltestosterone (17α-methyl-5α-androst-2-en-17β-ol; madol);

(13) 4-Dihydrotestosterone (17β-hydroxy-androstan-3-one);

(14) Drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

(15) Ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

(16) Fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

(17) Formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

(18) Furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(19) 13β-Ethyl-17β-hydroxygon-4-en-3-one;

(20) 4-Hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

(21) 4-Hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

(22) Mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

(23) Mesterolone (1α-methyl-17β-hydroxy-5α-androstan-3-one);

(24) Methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

(25) Methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

(26) Methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

(27) 17α-Methyl-3β, 17β-dihydroxy-5α-androstane;
(28) Methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one);
(29) 17α-Methyl-3α,17β-dihydroxy-5α-androstane;
(30) 17α-Methyl-3β,17β-dihydroxyandrost-4-ene;
(31) 17α-Methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);
(32) Methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);
(33) 17α-Methyl-17β-hydroxyestra-4,9-11-trien-3-one;
(34) Methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);
(35) Mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);
(36) 17α-Methyl-delta-1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (Other name: 17α -methyl-1-testosterone);
(37) Nandrolone (17β-hydroxyestr-4-en-3-one);
(38) Norandrostenediol--
(38-1) 19-Nor-4-androstenediol (3β,17β-dihydroxyestr-4-ene);
(38-2) 19-Nor-4-androstenediol (3α,17β-dihydroxyestr-4-ene);
(38-3) 19-Nor-5-androstenediol (3β,17β-dihydroxyestr-5-ene);
(38-4) 19-Nor-5-androstenediol (3α,17β-dihydroxyestr-5-ene);
(39) Norandrostenedione--
(39-1) 19-Nor-4-androstenedione (estr-4-en-3,17-dione);
(39-2) 19-Nor-5-androstenedione (estr-5-en-3,17-dione;
(40) 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
(41) Norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);
(42) Norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);
(43) Norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);
(44) Normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);
(45) Oxandrolone (17α-methyl-17β-hydroxy-2-oxa-5α-androstan-3-one);
(46) Oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);
(47) Oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-5α-androstan-3-one);
(48) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole);
(49) Stanozolol (17α-methyl-17β-hydroxy-5α-androst-2-eno[3,2-c]-pyrazole);
(50) Stenbolone (17β-hydroxy-2-methyl-5α-androst-1-en-3-one);
(51) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
(52) Testosterone (17β-hydroxyandrost-4-en-3-one);
(53) Tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one);
(54) Trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and
(55) any salt, ester, or ether of a drug or substance.

-Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6*H*-dibenzo[b,d]pyran-1-ol; (-)-Δ-9-(*trans*)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances or any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alfaxalone (5α-pregnan-3α-ol-11,20-dione);
(2) Alprazolam;
(3) Barbital;
(4) Brexanolone (3α-hydroxy-5α-pregnan-20-one) (Other name: allopregnanolone);
(5) Bromazepam;
(6) Camazepam;
(7) Chloral betaine;
(8) Chloral hydrate;
(9) Chlordiazepoxide;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Dichloralphenazone;
(18) Estazolam;
(19) Ethchlorvynol;
(20) Ethinamate;
(21) Ethyl loflazepate;
(22) Fludiazepam;
(23) Flunitrazepam;
(24) Flurazepam;
(25) Fospropofol;

(26) Halazepam;
(27) Haloxazolam;
(28) Ketazolam;
*(29) Lemborexant;
(30) Loprazolam;
(31) Lorazepam;
(32) Lormetazepam;
(33) Mebutamate;
(34) Medazepam;
(35) Meprobamate;
(36) Methohexital;
(37) Methylphenobarbital (mephobarbital);
(38) Midazolam;
(39) Nimetazepam;
(40) Nitrazepam;
(41) Nordiazepam;
(42) Oxazepam;
(43) Oxazolam;
(44) Paraldehyde;
(45) Petrichloral;
(46) Phenobarbital;
(47) Pinazepam;
(48) Prazepam;
(49) Quazepam;
*(50) Remimazolam;
(51) Suvorexant;
(52) Temazepam;
(53) Tetrazepam;
(54) Triazolam;
(55) Zaleplon;
(56) Zolpidem; and
(57) Zopiclone.

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);
(10) Phentermine;
(11) Pipradrol;
(12) Sibutramine;
(13) Solriamfetol ((*R*)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β-amino-carbamate (ester));
and
(14) SPA [1-dimethylamino-1,2-diphenylethane].

-Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
(2) Dextropropoxyphene (α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane); and
(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (other name: tramadol).

-Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;
(2) Carisoprodol;
(3) Eluxadoline (other name: 5-[[[(2*S*-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1*S*)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;
(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and
(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

-Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;
(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and
(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

-Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names; BRV; UCB-34714; Briviact);
*(2) Cenobamate [(1R-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate;
(3) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;
(4) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-proprionamide];
*(5) Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl-benzamide]; and
(6) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid].

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 3

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Texas Register

AGENCY Department of State Health Services
ISSUE 03/19/2021
ACTION Miscellaneous

Schedules of Controlled Substances

Attached Graphic

TRD-202100928

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: March 9, 2021

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TEXAS REGISTER

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In This Issue

THE GOVERNOR

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

Appointments

Appointments for March 2, 2021

Appointed to the State Board for Educator Certification, for a term to expire February 1, 2023, Robert "Bob" Brescia, Ed.D. of Odessa, Texas (Mr. Brescia is replacing Jose M. Rodriguez of Cedar Park, who resigned).

Appointed to the State Board for Educator Certification, for a term to expire February 1, 2027, Kyrsten M. Arbuckle of Austin, Texas (Ms. Arbuckle is replacing Sandra A. "Sandie" Mullins Moger of Houston, whose term expired).

Appointed to the State Board for Educator Certification, for a term to expire February 1, 2027, Rohanna Brooks-Sykes of Spring, Texas (Ms. Brooks-Sykes is being reappointed).

Appointed to the State Board for Educator Certification, for a term to expire February 1, 2027, Melissa A. Isaacs of Jewett, Texas (replacing Laurie J. Turner, Ed.D. of Corpus Christi, whose term expired).

Appointed to the State Board for Educator Certification as a non-voting member, for a term to expire February 1, 2027, Emily N. Garcia of Dallas, Texas (Ms. Garcia is being reappointed).

Appointed as Independent Ombudsman for the Texas Juvenile Justice Department, for a term to expire February 1, 2023, Jeffery D. "JD" Robertson of Wimberley, Texas (Major Robertson is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2027, David G. Gutierrez of Salado, Texas (Chairman Gutierrez is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2027, Linda G. Molina of San Antonio, Texas (Ms. Molina is replacing Lionel F. "Fred" Solis of San Antonio, whose term expired).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2027, Edward R. "Ed" Robertson of Pflugerville, Texas (Mr. Robertson is being reappointed).

Appointments for March 3, 2021

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2027, Rodney D. Burrow, M.D. of Pittsburg, Texas (Mr. Burrow is being reappointed).

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2027, Eric J.R. Nichols of Austin, Texas (Mr. Nichols is being reappointed).

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2027, Derrelynn W. Perryman of Fort Worth, Texas (Ms. Perryman is being reappointed).

Appointed as director of the Regulatory Compliance Division, for a term to expire February 1, 2023, Erin E. Bennett of Austin, Texas (Ms. Bennett is being reappointed).

Designated as presiding officer of the Public Utility Commission of Texas, for a term to expire at the pleasure of the Governor, Arthur C. D'Andrea of Austin (Commissioner D' Andrea is replacing DeAnn T. Walker of Austin).

Appointed as the Public Counsel for the Office of Public Insurance Counsel, for a term to expire February 1, 2023, Melissa R. Hamilton of Austin, Texas (Ms. Hamilton is being reappointed).

Appointments for March 4, 2021

Designated as presiding officer of the Upper Colorado River Authority, for a term to expire at the pleasure of the Governor, Nancy C. Blackwell of Ballinger, Texas (Ms. Blackwell is replacing Eva W. Horton of San Angelo).

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2027, Blake R. "Reese" Braswell of Bronte, Texas (Mr. Braswell is being reappointed).

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2027, Erica E. Hall of Tuscola, Texas (Ms. Hall is being reappointed).

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2027, Leslie R. Lasater of San Angelo, Texas, (replacing Eva W. Horton of San Angelo, whose term expired).

Appointed to the Upper Neches River Municipal Water Authority Board of Directors, for a term to expire February 1, 2027, Jay S. Herrington, Sr., D.D.S. of Palestine, Texas (Dr. Herrington is being reappointed).

Appointed to the Sulphur River Basin Authority Board of Directors, for a term to expire February 1, 2027, Emily E. Glass of Sulphur Springs, Texas, (replacing Bret A. McCoy of Naples, whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors, for a term to expire February 1, 2027, Kirby Hollingsworth of Mount Vernon, Texas (Mr. Hollingsworth is being reappointed).

Appointments for March 8, 2021

Appointed to the Dental Review Committee, for a term to expire February 1, 2027, Jessica R. Bell, D.D.S. of Highland Village, Texas (Dr. Bell is being reappointed).

Appointed to the Dental Review Committee, for a term to expire February 1, 2027, Reena Kuba Shiralkar, D.D.S. of The Colony, Texas (Dr. Shiralkar is being reappointed).

Appointed to the Dental Review Committee, for a term to expire February 1, 2027, Brenda M. Olivarez of Aransas Pass, Texas (Ms. Olivarez is being reappointed).

Appointed to the Evergreen Underground Conservation District, for a term to expire February 1, 2025, Weldon G. Riggs of Floresville, Texas (Mr. Riggs is being reappointed).

Appointed to the Texas Historical Records Advisory Board, for a term to expire February 1, 2023, Tara Turk-Zaafran of Houston, Texas (replacing Bobby R. "Bob" Glenn of Weatherford, whose term expired).

Appointed to the Texas Historical Records Advisory Board, for a term to expire February 1, 2024, Malinda L. Cowen of Beeville, Texas (Ms. Cowen is being reappointed).

Appointed to the Texas Historical Records Advisory Board, for a term to expire February 1, 2025, Diane J. "Jelain" Chubb of Austin, Texas (Ms. Chubb is being reappointed).

Greg Abbott, Governor

TRD-202100936

♦ ♦ ♦

Proclamation 41-3807

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of March, 2021.

Greg Abbott, Governor

TRD-202100915

♦ ♦ ♦

Proclamation 41-3808

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of March, 2021.

Greg Abbott, Governor

TRD-202100916

♦ ♦ ♦

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0398-KP

Requestor:

The Honorable Ryan Sinclair

Hood County District Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Maximum allowable period of deferred adjudication community supervision for a third degree felony under either Title 7 of the Penal Code or Chapter 481 of the Health and Safety Code (RQ-0398-KP)

Briefs requested by April 1, 2021

RQ-0399-KP

Requestor:

The Honorable Wesley Hoyt

San Augustine County Attorney

108 South Broadway Street

San Augustine, Texas 75972

Re: Enforceability of ordinance transitioning to staggered elections for city officials

Briefs requested by April 5, 2021

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

TRD-202100921
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: March 9, 2021

♦ ♦ ♦

Opinions

Opinion No. KP-0358

Ms. Becky Weston

Gonzales County Auditor

427 Saint George Street, Suite 302

Gonzales, Texas 78629

Re: Applicability of the County Purchasing Act in specific circumstances (RQ-0377-KP)

S U M M A R Y

Subsection 262.023(c) of the Local Government Code requires "separate, sequential, or component purchases of items ordered or purchased" to be treated as a single purchase only when the purchases or orders would in normal purchasing practices be purchased in one purchase from the same supplier by the same county officer, department, or institution, and the purchases were made with the intent of avoiding the requirements of the County Purchasing Act. Whether a purchase was made in violation of the Act presents questions of fact that cannot be determined in an attorney general opinion.

Opinion No. KP-0359

The Honorable James White

Chair, House Committee on Homeland Security & Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether subsection 38.001(f) of the Education Code and title 25, section 97.62 of the Administrative Code allow school districts, during an epidemic, to exclude students who decline vaccinations for reasons of conscience even when such vaccinations are unrelated to the epidemic (RQ-0364-KP)

S U M M A R Y

Pursuant to subsection 38.001(f) of the Education Code, the Legislature provided that a student who has not received the immunizations required by law "for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health." Read in context, a court likely would conclude that this exception does not permit exclusion of students who lack vaccinations unrelated to an existing "epidemic" contemplated by subsection 38.001(f).

Depending on the particular facts at issue, a court could find exclusion from school for refusal to obtain a vaccine unrelated to the existing epidemic to be arbitrary and unreasonable and overturn the exclusion for this purpose.

Further, to the extent a school was to exclude a student who had declined required immunizations unrelated to an existing epidemic due

to a sincere religious belief, a court could find this to be a substantial burden on the student's religious freedom and potentially a violation of the U.S. and Texas constitutions. Accordingly, subsection 110.003(a) of the Civil Practice and Remedies Code requires that only the least restrictive means of furthering a compelling government interest may be utilized in placing such a substantial burden. If less restrictive means exist to accomplish that objective, a court could find that a specific student's exclusion in such circumstances from school under Education Code subsection 38.001(f) violates the Texas Religious Freedom Restoration Act.

Opinion No. KP-0360

The Honorable Gary D. Trammel

Stephens County Attorney

100 East Walker

Breckenridge, Texas 76424

Re: Application of Government Code chapter 573, regarding nepotism, to the candidacy for sheriff of a person who is a brother of the current county judge, and associated questions regarding the county judge's role as a member of the county commissioners court with respect to budget and election matters involving the sheriff (RQ-0378-KP)

S U M M A R Y

Neither the nepotism statute in chapter 573 of the Government Code nor the conflict-of-interest statute in chapter 171 of the Local Government Code prohibit the county judge's brother from running for sheriff in the described circumstances.

Opinion No. KP-0361

Ms. Jennifer D. Robison, CPA

Brown County Auditor

200 South Broadway

Brownwood, Texas 76801

Re: Whether article III, section 53 of the Texas Constitution prohibits a one-time bonus for the administrative staff of the county's justices of the peace (RQ 0380 KP)

S U M M A R Y

To the extent one-time bonuses constitute extra compensation for certain work performed by justice court clerks, article III, section 53 of the Texas Constitution prohibits the payment of the bonuses retroactively. A prospective bonus approved prior to the rendering of services would not run afoul of article III, section 53.

Opinion No. KP-0362

The Honorable James White

Chair, House Committee on Homeland Security & Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Government restrictions on an individual's right of access to clergy due to the COVID-19 pandemic (RQ-0383-KP)

S U M M A R Y

Both state and federal law provide broad constitutional protections for religious freedom. The First Amendment of the U.S. Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." Article I, section 6 of the Texas Constitution provides: "No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion . . . ." Furthermore, under the Texas Religious Freedom Restoration Act, a government agency is prohibited from placing a substantial burden on a person's free exercise of religion unless the agency shows that the application of the burden is the least restrictive means of furthering a compelling governmental interest.

If an individual desires to see a member of the clergy as part of his or her religious exercise, prohibiting access to that member except when death is imminent places a substantial burden on the individual's religious exercise.

Stemming the spread of COVID-19 is unquestionably a compelling government interest. However, to the extent that other less restrictive safety protocols further the government's interest in stemming the spread of COVID-19, a court would likely conclude that prohibiting an individual's access to clergy only when facing death violates the state and federal constitutions and the Texas Religious Freedom Restoration Act because it is not the least restrictive means of achieving such compelling interest.

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

TRD-202100923
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: March 9, 2021

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EMERGENCY RULES

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER C. LICENSE APPLICATIONS

16 TAC §60.351

The Texas Department of Licensing and Regulation is renewing the effectiveness of emergency new §60.351 for a 60-day period. The text of the emergency rule was originally published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8813).

Filed with the Office of the Secretary of State on March 4, 2021.

TRD-202100889
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Original effective date: November 23, 2020
Expiration date: May 21, 2021
For further information, please call: (512) 463-3671

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

SUBCHAPTER I. TREATMENT PROGRAM SERVICES

25 TAC §448.911

The Department of State Health Services is renewing the effectiveness of emergency amended §448.911 for a 60-day period. The text of the emergency rule was originally published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8221).

Filed with the Office of the Secretary of State on March 4, 2021.

TRD-202100891
Nycia Deal
Attorney
Department of State Health Services
Original effective date: November 8, 2020
Expiration date: May 6, 2021
For further information, please call: (512) 834-4591

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8215

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8215, concerning Public Health Provider - Charity Care Program (PHP-CCP).

BACKGROUND AND PURPOSE

The purpose of the proposed new rule is to authorize HHSC to implement the PHP-CCP under the 1115 waiver to reimburse certain costs for qualifying providers associated with providing care, including behavioral health, immunizations, chronic disease prevention and other preventative services for the uninsured. This program was created as part of the 1115 waiver extension and will provide an opportunity for reimbursement of charity care costs (or Medicaid shortfall in the first year of the program).

The proposed rule describes the requirements for participation in the PHP-CCP.

In accordance with the Special Terms and Conditions of the 1115 waiver, to participate in the program, providers must be funded by a unit of government to be able to certify public expenditures. Publicly-owned and operated Community Mental Health Clinics (CMHCs), community centers, Local Behavioral Health Authorities (LBHAs) and Local Mental Health Authorities (LMHAs) that are established under the Texas Health and Safety Code Chapters 533 or 534 and are primarily providing behavioral health services, and Local Health Departments (LHDs) that are established under the Texas Health and Safety Code Chapter 121 are eligible to participate.

SECTION-BY-SECTION SUMMARY

Proposed new §355.8215(a) establishes the PHP-CCP and describes the goals of the program.

Subsection (b) defines key terms used in the section.

Subsection (c) describes the participation requirements of the qualifying providers that wish to participate in the program, including the application and cost report process. To participate, a provider must: 1) indicate it is a qualifying provider, 2) attend annual training, 3) submit an annual uncompensated care tool for uncompensated care costs by the due date and must certify costs in a manner specified by HHSC, and 4) certify that no part of the PHP-CCP payment will be used to pay a contingency fee.

Subsection (d) describes the source of funding of the program. The non-federal share of funding for payments under this section is limited to public expenditures certified by a government entity.

Subsection (e) describes the payment frequency of the program on a schedule to be determined by HHSC and posted on HHSC's website.

Subsection (f) describes the calculation of the payment and funding limitations if the payments for uncompensated care for the provider pool are expected to exceed the amount of funds allocated to that pool by HHSC.

Subsection (g) describes the recoupment procedures in the event of an overpayment, whether directly recouped from the provider or through HHSC withholding from future Medicaid payments.

Subsection (h) describes the notice requirements if there are changes in operation of the provider, such as closing voluntarily or ceasing to provide Medicaid services.

Subsection (i) provides general information as to how the cost reporting guidelines will be governed using other sections of 1 TAC Chapter 355, Subchapter A.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the proposed rule is in effect, there will be an additional cost and increase in revenue to state and local governments as a result of enforcing and administering the rule as proposed.

The effect on state and local governments for each year of the first five years the proposed rule is in effect cannot be determined because HHSC lacks sufficient data to know how many providers will choose to apply for the program and at what level.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will create a government program;

(2) implementation of the proposed rule will create new HHSC employee positions;

(3) implementation of the proposed rule will not result in assumed change in future legislative appropriations;

(4) the proposed rule does not require an increase or decrease in fees paid to HHSC;

(5) the proposed rule will create a new rule;

(6) the proposed rule will not expand, limit, or repeal existing rules;

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

(8) the proposed rule will positively affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rule because participation in the program is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rule may affect a local economy as the units of local government that receive reimbursement through this program may choose to invest those funds in additional employment opportunities or other local needs.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved health outcomes as a result of flowing increased funding for certain units of local government.

Trey Woods has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because participation in the program is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for March 26, 2021, at 11:30 a.m. (Central Standard Time) to receive public comments on the proposal. Persons requiring further information, special assistance, or accommodations should email PHP-CCP@hhs.texas.gov.

Due to the declared state of disaster stemming from COVID-19, the hearing will be conducted online only. No physical entry to the hearing will be permitted.

Persons interested in attending may register for the public hearing at:

https://attendee.gotowebinar.com/register/5503389684410194 08

After registering, a confirmation email will be sent with information about joining the webinar.

HHSC will broadcast the public hearing. The broadcast will be archived for access on demand and can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code H400, P.O. Box 13247, Austin, Texas 78711-3247, or by email to RAD_1115_Waiver_Finance@hhsc.state.tx.us.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency during normal business operations. Therefore, please submit comments by email if possible.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R070" in the subject line.

STATUTORY AUTHORITY

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

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

§355.8215. Public Health Provider - Charity Care Program (PHP-CCP).

(a) Introduction. This section establishes the Public Health Provider - Charity Care Program (PHP-CCP). PHP-CCP is designed to allow qualified providers to receive reimbursement for the cost of delivering healthcare services, including behavioral health services, vaccine services, and other preventative services, when those costs are not reimbursed by another source. The program is authorized under the 1115 waiver.

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Medicaid shortfall--The unreimbursed cost to a qualifying provider of providing Medicaid services to Medicaid clients.

(3) Program period--A period of time for which eligible and enrolled providers may receive the PHP-CCP amounts described in this section. Each PHP-CCP period is equal to a Federal Fiscal Year

(FFY) beginning October 1 and ending September 30 of the following year.

(4) Qualifying Providers--Publicly-owned and operated Community Mental Health Clinics (CMHCs), community centers, Local Behavioral Health Authorities (LBHAs) and Local Mental Health Authorities (LMHAs) that are established under the Texas Health & Safety Code Chapter 533 or 534 and are primarily providing behavioral health services, and publicly-owned and operated Local Health Departments (LHDs) and Public Health Districts (PHDs) that are established under the Texas Health and Safety Code Chapter 121

(5) Total program value--The maximum amount available under PHP-CCP for a program period, as determined by the Texas Health and Human Services Commission (HHSC) and CMS.

(6) Uncompensated care costs--The sum of the Medicaid shortfall and the uninsured costs.

(7) Uncompensated care payments--Payments intended to defray the uncompensated costs of providing services.

(8) Uncompensated care tool--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers and used to enroll in the program.

(9) Uninsured costs--The unreimbursed cost to a qualifying provider of providing services that meet the definition of "medical assistance" in Social Security Act §1905(a) to uninsured patients as defined by CMS.

(10) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of "medical assistance" in the Social Security Act §1905(a).

(11) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under Social Security Act §1115.

(c) Participation requirements.

(1) Qualifying provider. A provider must indicate it is a qualifying provider as defined in subsection (b) of this section to be considered for reimbursement in the application process.

(2) PHP-CCP financial training. HHSC provides annual training to participating qualifying providers.

(A) Each primary PHP-CCP financial contact must attend and receive credit for training for each program period in which the provider chooses to participate.

(B) Training is provided for each program period and is not retroactive.

(C) A provider that does not have a trained PHP-CCP financial contact who is an employee of the provider is prohibited from submitting a PHP-CCP application. Provider-contracted vendors are not permitted to enter a provider's data into the cost report for any provider that does not have a trained PHP-CCP financial contact who is an employee of the provider.

(3) Cost reports. Qualifying providers must submit an annual uncompensated care tool for uncompensated care costs. Uncompensated care tools must be completed for a full year based on the federal fiscal year.

(A) The uncompensated care tool format will be specified by HHSC. Qualifying providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the program period. Costs must be reported in a manner that is consistent with the PHP-CCP protocol that is approved under the 1115 Waiver.

(B) The cost report is due on or before November 14 of the year of the program period ending date and must be certified in a manner specified by HHSC.

(i) If November 14 falls on a federal or state holiday or weekend, the due date is the first working day after November 14.

(ii) A provider whose cost report is not received by the due date is ineligible for PHP-CCP payment for the federal fiscal year.

(C) HHSC reserves the right to request a corrective action plan (CAP) from providers who submit incorrect cost reports or bill incorrectly. PHP-CCP payments will be withheld until the CAP is accepted by the HHSC.

(D) Costs for care delivered to persons who are incarcerated at the time of the care must be excluded from the cost report.

(E) Costs for care delivered as part of an Institution of Mental Disease (IMD) must be excluded from the cost report. If a provider includes costs for Crisis Stabilization Units on their cost report, and the unit is later determined by CMS to be an IMD, associated PHP-CCP payments are subject to recoupment.

(4) Certification. The provider must certify, on a form prescribed by HHSC, that no part of any PHP-CCP payment will be used to pay a contingent fee and that the entity's agreement with a billing entity or cost report preparer does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the provider's PHP-CCP funds. The certification must be received by HHSC with the enrollment application described in paragraph (3) of this subsection.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to certified public expenditures from governmental entities.

(e) Payment frequency. HHSC will distribute uncompensated care payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Calculation of supplemental payment.

(1) Supplemental payment. A qualifying provider may be eligible to receive a supplemental payment equal to a percentage of its Medicaid shortfall and uncompensated care costs for the cost reporting period.

(2) Funding limitations. Payments made under this section are limited by the amount of funds allocated to the total program value for the demonstration year. If payments for uncompensated care for the provider pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool by the same percentage as required to remain within the pool allocation amount.

(g) Recoupment.

(1) Overpayment or disallowance. In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance.

(2) Adjustments. Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Texas Government Code Chapter 403. HHSC may recoup an amount equivalent to any such adjustment.

(3) Recoupment method. HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made, or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed. Electronic notice and electronic agreement may be used as alternative options at HHSC's discretion.

(h) Changes in operation. If an enrolled provider closes voluntarily or ceases to provide Medicaid services, the provider must notify the HHSC Provider Finance Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(i) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

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

Filed with the Office of the Secretary of State on March 8, 2021.

TRD-202100913
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 18, 2021
For further information, please call: (512) 424-6637

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.809

The Credit Union Commission (the Commission) proposes new §91.809, concerning purchase of assets and assumption of liabilities. The proposed new rule will formally recognize authority available to state chartered credit unions because of the availability of those powers to federal credit unions, as granted through parity found under Texas Finance Code, Title 2, §123.003(a).

The proposed new rule will outline the authority of credit unions to initiate programs of purchasing loans or assuming an assignment of deposits, shares, or liabilities from any credit union, another financial-type institution, or any successor in interest to such an entity. The rule further outlines the requirement to seek Commissioner approval on certain transactions of this type and clarifies the approval application process.

In general, new §91.809 results from the recognition of the disparity between the authority granted to state-chartered credit unions under current Department rules and the authority granted to federally chartered credit unions, as largely described in the regulations adopted by the National Credit Union Administration (NCUA) in 12 C.F.R. Part 741. The Commission considered the factors outlined in Texas Finance Code §15.402(b-1), including the specific need to preserve and promote competitive parity of credit unions with regard to other depository institutions consistent with safety and soundness implications to credit unions, and the authority granted to federal credit unions under NCUA regulations 12 C.F.R. §741.8, regarding purchase of assets and assumption of liabilities.

Overall, the proposed new rule will serve as a guide to state charters in utilizing this authority and in seeking Commissioner approval for conducting the purchase of assets and assumption of liabilities. The purpose for and description of each new subsection is provided in the following paragraphs.

Subsection (a) provides the general authority to initiate, with Commissioner approval, programs of purchasing loans or assuming assignment of deposits, shares, or liabilities from any credit union, any other financial type institution, or any successor in interests of those entities.

Subsection (b) outlines limited circumstances when Commissioner approval of such activities is not necessary including when such purchases are used to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market; assumptions of liabilities through perfection of a security interest in connection with an extension of credit to a member; purchases or assumptions from any other deposit insured credit union except in circumstances of a merger; or purchases of loan participations authorized under 7 TAC §91.805.

Subsection (c) outlines requirements of the application-for-approval process, including appropriate due diligence by the credit union, proposed policies under which the program would operate, demonstrated internal expertise to manage such a program, and evidence of requested approval by NCUA under NCUA regulations 12 C.F.R. §741.8.

Subsection (d) references the federal requirements to seek NCUA approval of such a program if the institution seeking authority is federally insured.

Subsection (e) outlines the Department's responsibility to process such an application as soon as possible while recognizing that credit unions requesting such authority should submit an application no later than 60 days prior to the planned implementation of such a program.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule because the rules concern activities solely of private entities.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity as to what is expected of a credit union that elects to initiate such a program. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule as proposed. The application processes the proposed rule calls for is not unlike the processes credit unions already follow to carry out certain other programs. The process does not require the hiring of additional staff, purchase of equipment, or payment of a additional fees. Further, the choice to engage in the types of transactions the proposed rule covers rests solely with each credit union, and it is only those credit unions that choose to engage in this new authorized activity that must complete the application process.

ECONOMIC IMPACT ON CERTAIN BUSINESSES, COMMUNITIES, AND LOCAL ECONOMY AND EMPLOYMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the proposed rule for the same reasons as mentioned above in the public benefit/cost note. There also will be no impact on local employment or local economy for each year of the first five years the proposed new rule is in effect as the proposed rule relates solely to investment authority of state-chartered credit unions. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because the department is a self-directed semi-independent agency and is exempt from that statute, but also because, as described above in the public benefit and cost note, the proposed rule does not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- increase fees paid to the department;

- expand existing regulations;

- increase or decrease the number of individuals subject to the rule's applicability;

- positively or adversely affect this state's economy.

The first year it is in effect, the rule will create a new regulation that authorizes a credit union to purchase assets and to assume the liabilities of another financial-type institution. This authority will continue into future years unless it is repealed.

TAKINGS IMPACT ASSESSMENT: No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, this proposed rule does not constitute a taking under Texas Government Code § 2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Written comments on the proposed new rule may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The new rule is proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code; and under Texas Finance Code §123.003, which enlarges the powers of state chartered credit unions to achieve parity of authority with federally chartered credit unions, and §124.351, which sets out permitted investments.

The specific section affected by the proposed new rule is Texas Finance Code, §124.351.

§91.809. Purchase of Assets and Assumption of Liabilities.

(a) With approval of the Commissioner, a credit union may initiate a program of purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in subsection (a)(1) or (a)(2) of this section.

(b) Commissioner approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under NCUA regulations 12 C.F.R. §701.23(b)(1)(iii) or (iv), or purchases of member loans under §91.711 of this title (relating to Purchase and Sale of Member Loans);

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an insured credit union perfects a security interest in connection with an extension of credit to any member;

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities from any deposit insured credit union,

except a purchase or assumption as a part of a merger under §91.1003 of this title (relating to Mergers/Consolidations); or

(4) Purchases of loan participations as defined in and meeting the requirements of §91.805 of this title (related to Loan Participation Investments).

(c) A credit union seeking approval under subsection (a) of this section must submit a letter application to the commissioner stating the nature of the transaction and describing the proposed program. The application must include:

(1) Copies of relevant transaction documents;

(2) The credit union board's resolution approving the credit union to submit the application and engage in the proposed activity;

(3) Evidence that the credit union board has reviewed and approved the credit union's due diligence efforts;

(4) Proposed policies under which the program will operate, and which must comply with the requirements outlined in §§91.802(b), 91.803 and 91.808 (relating to Other Investments; Investment Limits and Prohibitions; and Loan Participation Investments);

(5) Demonstrated internal expertise to understand and mitigate the risks associated with the activity proposed;

(6) Evidence of requested approval by NCUA under NCUA regulations 12 C.F.R. §741.8, if federally insured, or bond covenants from American Share Insurance if necessary;

(7) Any other information relevant to the transaction and the program; and

(8) Information requested by the Commissioner or the Department.

(d) A federally insured credit union purchasing assets or assuming liabilities of another entity must also comply with applicable requirements contained within the NCUA regulations 12 C.F.R. Part 741.

(e) A credit union shall submit the letter of application as defined in subsection (c) of this section no later than 60 days prior to the planned closing date of any program-related transaction(s). Late applications may be considered when there are extenuating circumstances deemed acceptable to the Commissioner. Final approval/disapproval shall be given in writing by the Commissioner and shall include the basis for the decision.

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

Filed with the Office of the Secretary of State on March 8, 2021.

TRD-202100897
John J. Kolhoff
Commissioner
Credit Union Department
Earliest possible date of adoption: April 18, 2021
For further information, please call: (512) 837-9236

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

19 TAC §§89.1501, 89.1503, 89.1504, 89.1507, 89.1511

The Texas Education Agency (TEA) proposes amendments to §§89.1501, 89.1503, 89.1504, 89.1507, and 89.1511, concerning the Communities In Schools (CIS) program. The proposed amendments would modify the rules to reflect updates in program management and align with current practice.

BACKGROUND INFORMATION AND JUSTIFICATION: The CIS program is a statewide youth dropout prevention program that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis.

The commissioner has adopted Chapter 89, Subchapter EE, to establish provisions related to the CIS program, as required by Texas Education Code (TEC), §33.154 and §33.156.

The rules in the subchapter define terms related to the program and outline the equitable funding formula for local CIS programs.

The rules also establish policies concerning TEA's responsibility in requiring demonstration of communication participation by local CIS affiliates and TEA's responsibility to obtain information from participating CIS affiliates.

Finally, the rules set standards for state performance goals, objectives, and measures for the program that include improvement in student behavior and academic achievement as well as promotion, graduation, retention, and dropout rates. As authorized under TEC, §33.154, the commissioner may withhold funding from programs that consistently fail to achieve the performance goals, objectives, and measures.

The proposed amendments to 19 TAC Chapter 89, Subchapter EE, would update the rules as follows.

Section 89.1501, Definitions, would be amended to correct the definition for *case-managed student* to align with how needs are categorized in the field.

Section 89.1503, Funding, would be amended to establish that the data used for the funding calculation will be from the most recent school year for which final data are available rather than from the first year of the preceding biennium. This change would ensure the data used is the most current data available. New subsection (e) would also be added to account for the possibility of a CIS program merger by describing the allotment for the merged program.

Section 89.1504, Demonstration of Community Participation, would be amended to remove in-kind contributions and the use of federal funds by a CIS program as methods to show community participation through the 25% TEA grant match. This change would align the rule with the current requirements in the CIS grant application and emphasize the importance of adequate funding to support quality programming. The amendment would also specify that TEA may not award funding to a local CIS program if the program's allocation by TEA and matching contributions would not allow the program to adequately serve case-managed students within the required ratio of case-man-

aged students per site staff member. This change would ensure that a program has adequate resources to effectively meet the needs of the case-managed students it serves.

Section 89.1507, Case-Managed Students, would be amended to remove language from subsection (c) addressing actions that may occur if a program does not stay within the required maximum number of case-managed students per site. The language is proposed to be added in §89.1504(b) and §89.1511(a)(2).

Section 89.1511, Performance Standards and Revocation of Grant Award, would be amended to include exceeding the ratio of case-managed students per site staff member as a reason for completion of a Program Improvement Plan (PIP) regarding case-managed students. This proposed update would ensure that CIS programs create strategies to lower the ratio of case-managed students per site staff member and that they are held accountable to meeting the ratio. The proposed new language would also require the PIP to include monitoring information to ensure that programs consider how they will evaluate the proposed strategies and initiatives within the PIP.

Other proposed changes to §89.1511 would align with current practice. Subsection (a)(4) would be amended to specify that funding for CIS programs that do not reach their case-managed student target or the ratio of case-managed students per site staff member may be reduced rather than non-renewed or revoked to add flexibility in accountability. Subsection (b)(3) would be added to codify the reporting of student growth performance standards in rule. Subsection (b)(5)(C) would be added and subsection (b)(5)(E) would be amended to require the PIP to include further explanation and monitoring for performance standards in academic achievement, behavior, dropout rates, graduation, and promotion/retention. Subsection (e)(1)(C) would be added to specify an additional reason the commissioner can deny a program's renewal or future eligibility to further increase accountability.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by increasing the requirements of a PIP, including monitoring within a PIP, and adding funding provisions for merged CIS programs.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be reflecting current practice and clarifying expectations for local CIS programs. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact. Local CIS affiliates that require PIPs must submit certain information to TEA. The proposal would modify the information to be reported but would not add a new reporting requirement.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 19, 2021, and ends April 19, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 19, 2021. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §33.154, which authorizes the commissioner to adopt rules that implement policies regarding the setting of performance standards for the Communities In Schools (CIS) program, the collection of information to determine accomplishment of those standards, and withholding funding from any program that consistently fails to meet the standards; and TEC, §33.156, which directs the Texas Education Agency to develop an equitable funding formula to fund local CIS programs and authorizes local CIS programs to accept other funding from federal, state, school, or other sources.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §33.154 and §33.156.

§89.1501. Definitions.

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

(1) Case-managed student--A student who is assessed to be in need of and receives Communities In Schools (CIS) services to address academic, attendance, behavior, [~~retention,~~ ~~graduation,~~] and/or

social service needs related to improving student achievement according to the requirements in the grant application.

(2) Developing program--An entity funded through the replication process for the purposes of establishing and implementing a local CIS program within a five-year period following the requirements in the grant application.

(3) Local CIS program--A Communities In Schools 501(c)(3) non-profit organization established in accordance with the program model and state guidelines authorized by state law and meeting all the requirements in the grant application for establishing and maintaining a local CIS program.

§89.1503. Funding.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. State and federal funds remaining after allocations described in subsection (c)(1) of this section shall be allocated to local CIS programs.

(b) Developing programs.

(1) A developing program may receive a funding amount each year for a minimum of five years, including the first-year start-up funding for planning purposes. Priority will be given to developing programs as funds are allocated.

(2) A developing program that has met all the requirements for establishing a local CIS program before the fifth year may request to be considered as a local CIS program for funding determined under subsection (c)(2) of this section if approved by the TEA.

(c) Allocation.

(1) Annually, after federal and state funds for the CIS program have been set aside for administration, no more than 10% in total may be allocated for the following:

(A) CIS database development and maintenance;

(B) grant opportunities, as applicable, in accordance with subsection (f) [~~(e)~~] of this section; and

(C) state leadership activities benefitting local CIS programs in accordance with the TEC, §33.154.

(2) Local CIS programs shall receive a funding amount each year to be allocated based on the following criteria:

(A) an equal base amount of funds, as determined by the TEA;

(B) no less than 50% nor more than 80% of the specified funding amount based on the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs;

(C) no less than 5.0% nor more than 15% of the specified funding amount based on the weighted financial resources of the individual communities and school districts, if less than the average financial resources of all school districts participating in the program.

(i) Data elements used for calculation of the financial resources allocation. Weighted financial resources will be determined using the following data elements from the most recent school year for which final data are available [~~for the first year of the preceding biennium~~]:

(I) taxable property values determined in accordance with Texas Government Code, Chapter 403, Subchapter M, for school districts listed in each program's current grant application;

(II) weighted average daily attendance (WADA), as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application; and

(III) the number of eligible students at the campus level, as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application.

(ii) Method used for calculation of the weighted financial resources. Weighted financial resources of a local CIS program are calculated in the following way.

(I) The weighted average taxable property value per WADA (wealth per WADA) for all local CIS programs is determined by first multiplying the wealth per WADA for each district within the CIS program by the district's WADA, summing the results for all districts, and then dividing the resulting sum by the total WADA in the CIS program.

(II) The average wealth per WADA for all CIS programs is then calculated.

(III) A local CIS program with a below-average wealth per WADA receives weighted financial resources. The weighted financial resources for a local CIS program with a below-average wealth per WADA are calculated as follows.

(-a-) The weighted eligible students number is derived by dividing the eligible students number by the ratio of the local CIS program's wealth per WADA to the average program wealth per WADA.

(-b-) The weighted eligible students numbers for all programs with a below-average wealth per WADA are summed.

(-c-) The ratio of each individual program's weighted eligible students to the total weighted eligible students is applied to the total amount allocated for the financial resources allocation. This amount forms the program's financial resources allocation.

(3) If a local CIS program declines to accept allocated grant funds, the TEA may redistribute grant funding competitively, equally, or based on a formula among participating local CIS programs.

(d) CIS program replication and expansion. Should the legislature authorize an increase in the funds appropriated for the state CIS program or should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

(1) Replication. The TEA may determine and retain a funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive request for application process or through any other process the TEA deems necessary. First-year replication funding may be a one-time planning grant for the development of a business plan.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program.

(e) CIS program merger. If two or more local CIS programs merge into one CIS program, the equal base allotment as determined in subsection (c)(2)(A) of this section may be allocated to the merged CIS program for a maximum of two years after the merger takes place. After two years, the merged CIS program will be considered a single CIS program within the funding formula and receive one equal base allotment.

(f) [~~(e)~~] Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative.

§89.1504. Demonstration of Community Participation.

(a) Each local Communities In Schools (CIS) program must provide cash [~~or in-kind~~] contributions to operate the CIS program in an amount equal to at least 25% of the total funding allocated to the local CIS program by the Texas Education Agency (TEA). The contribution may be met using private, local, or state[~~, or federal~~] sources. Developing programs must comply with this provision beginning in the second year of operation.

~~[(b) In-kind contributions may include the use of facilities, office space, and equipment and the provision of administrative services, program services, and supplies.]~~

(b) [~~(c)~~] The TEA may choose not to award funding to a local CIS program if the TEA determines that the total estimated allocation by the TEA and the local CIS program's matching contribution of 25% is insufficient to adequately serve the required number of case-managed students as determined in §89.1507 of this title (relating to Case-Managed Students) or serve them within the required maximum number of case-managed students per site staff member as determined in the grant application.

§89.1507. Case-Managed Students.

(a) Each local Communities In Schools (CIS) program is required to serve a specific number of case-managed students each year. The specific number of case-managed students to be served will be identified in the annual grant application.

(b) To determine the number of case-managed students to be served by each local CIS program, the Texas Education Agency (TEA) will apply one of the following calculations:

(1) the relative proportion of the number of eligible students attending the campuses served or to be served by the respective local CIS program to the number of eligible students in all campuses served or to be served by all CIS programs;

(2) the relative proportion of the number of campuses served or to be served according to the most recent data by the respective local CIS program to the number of campuses served or to be served by all CIS programs; or

(3) the relative proportion of the specified number of case-managed students for the respective local CIS program as identified in the current year's grant application to the total number of case-managed students for all CIS programs.

~~[(c) The TEA may reduce the number of case-managed students for programs that cannot stay within the required maximum number of case-managed students per site as determined in the grant application. Grant funding will be reduced accordingly.]~~

§89.1511. Performance Standards and Revocation of Grant Award.

(a) Performance standards for a local Communities In Schools (CIS) program regarding the number of case-managed students served.

(1) A local CIS program that fails to serve the number of case-managed students indicated in its grant application by the end of the school year of any given year may [~~will~~] receive a reduced case-managed student target the following grant year and a proportional reduction in funding.

(2) A local CIS program that exceeds the required maximum number of case-managed students per site staff member as determined in the grant application may receive a reduced case-managed target and a proportional reduction in funding.

(3) [~~(2)~~] Following the end of a given school year, a local CIS program that fails to serve the number of case-managed students identified in its grant application or fails to meet the ratio of students per site staff member on at least one campus as established in the grant application must submit to the Texas Education Agency (TEA) a Program Improvement Plan (PIP) detailing how the CIS program will reach the case-managed student target or reduce the ratio as required. The PIP must include the following:

(A) local program contact information;

(B) the number of case-managed students listed in the grant application;

(C) the actual number of case-managed students served;

(D) an explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application or exceeded the maximum ratio of students per site staff member on at least one campus;

(E) a list of the proposed strategies and initiatives that will be implemented to meet the case-managed student target or reduce the ratio of students per site staff member;

(F) timelines for each proposed strategy and initiative, including how the effectiveness of each strategy will be monitored, who will monitor each strategy, and when monitoring will occur; and

(G) a list of fiscal, logistical, and human resources necessary [~~to be used~~] to meet the case-managed student target or maximum ratio of students per site staff member.

(4) [~~(3)~~] A local CIS program may have its grant award non-renewed, reduced, or revoked if it fails to meet its case-managed student target or the ratio of students per site staff member as identified in the grant application for three years out of a four-year period.

(b) Performance standards for a local CIS program regarding state targets in academic achievement, behavior, dropout rates, graduation, and promotion/retention.

(1) In accordance with the Texas Education Code (TEC), §33.154(a)(2), performance standards that consider student academic achievement, behavior, dropout rates, graduation, and promotion/retention shall be established for local CIS programs within the annual grant application.

(2) Each local CIS program shall report data to the TEA that indicates performance on the established standards. Pursuant to the TEC, §33.154(a)(7)(B), each school district that participates in a CIS program shall provide to the local CIS or developing program necessary student information and data for each student whose parent or legal guardian has authorized in writing that educational records be shared with the CIS program and the TEA. Such information and data may include records on a student's academic achievement, promotion, attendance, disciplinary referrals, free/reduced-price lunch status, at-risk status, or health-related information in accordance with the written authorization obtained by the local CIS program from the student's parent or legal guardian. A local CIS program or developing program may provide this information and data to the TEA in accordance with the grant application.

(3) Local CIS programs shall report student growth performance standards using the indicators outlined in the grant application.

(4) [~~(3)~~] The TEA shall notify local CIS programs that did not meet performance standards in any area, within a 5.0% variance, following the end of each school year.

(5) [~~(4)~~] A local CIS program that fails to meet performance standard(s) in any area within a 5.0% variance must submit to the TEA a PIP detailing how the CIS program will improve in the performance standard by the end of the next grant year period. The PIP shall include the following:

(A) local program contact information;

(B) a list of the performance standard(s) as listed in the grant application with the program's associated performance percentages;

(C) an explanation detailing the reason(s) the local CIS program did not meet the performance standard(s);

(D) [~~(C)~~] a list of the proposed strategies and initiatives that will be implemented to meet the performance standard(s) that were not met;

(E) [~~(D)~~] timelines for each proposed strategy and initiative, including how the effectiveness of each strategy will be monitored, who will monitor each strategy, specific data to be reviewed, and when monitoring will occur; and

(F) [~~(E)~~] a list of fiscal, logistical, and human resources necessary [~~to be used~~] to reach the performance standard(s).

(6) [~~(5)~~] The TEA will review and provide feedback on PIPs.

(d) [~~(c)~~] Performance standards for a developing program. A developing program that does not meet the requirements for establishing a local CIS program as specified in the request for application may have its grant funding non-renewed or revoked in accordance with subsection (e)(2) [~~(d)(2)~~] of this section.

(e) [~~(d)~~] Revocation of grant award.

(1) The commissioner may deny renewal of or future eligibility for the grant award of a local CIS program based on any of the following:

(A) non-compliance with the grant application assurances and/or requirements; [~~or~~]

(B) failure to improve after being placed on a PIP for three consecutive years; or [~~.~~]

(C) failure to comply with a TEA Action Plan.

(2) The commissioner may deny renewal of or revoke the grant award of a developing program based on any of the following:

(A) non-compliance with the grant application assurances and/or requirements;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the developing program.

(3) A decision by the commissioner to deny renewal or revoke authorization of a grant award is final and may not be appealed.

(4) Revoked funds may be used for CIS program replication and/or expansion in accordance with §89.1503(d) of this title (relating to Funding).

(5) A program whose grant has been non-renewed or revoked is eligible to apply for replication funding in accordance with §89.1503(d) of this title after one year from the fiscal year the grant was non-renewed or revoked.

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

Filed with the Office of the Secretary of State on March 8, 2021.

TRD-202100906
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 18, 2021
For further information, please call: (512) 475-1497

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.200

The Comptroller of Public Accounts proposes the repeal of 34 TAC §5.200 concerning state property accounting system.

New §5.200 and §5.205 will be proposed in a separate proposal. New §5.200 reorganizes §5.200 to make it easier to understand; removes language that is already set forth in statute; and updates the language to better reflect current practices and procedures. New §5.205 updates the requirements for the disposal of certain computer equipment by a charitable organization, which are currently found in §5.200(r).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the repeal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed repeal would benefit the public by improving the clarity, organization, and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed repeal would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.cole-

man@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system; Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system of which the state property accounting system constitutes the fixed asset component as provided by Government Code, §403.271(c); and Government Code, §2175.907(f), which requires the comptroller to adopt rules to implement Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

The repeal implements Government Code, Chapter 403, Subchapter L, concerning property accounting; Government Code, Chapter 2101, concerning accounting procedures; and Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

§5.200. State Property Accounting System.

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

Filed with the Office of the Secretary of State on March 2, 2021.

TRD-202100854
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: April 18, 2021
For further information, please call: (512) 475-0387

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34 TAC §5.200, §5.205

The Comptroller of Public Accounts proposes new §5.200, concerning state property accounting system and new §5.205, concerning disposal of computer equipment by charitable organization.

New §5.200 reorganizes current §5.200, which is being proposed for repeal in a separate submission, to make it easier to understand; removes language that is already set forth in statute; and updates the language to better reflect current practices and procedures. This new section provides definitions in subsection (a); sets forth exemptions to this section in subsection (b); describes the general responsibilities of state agencies, agency heads, and property managers concerning state property in subsection (c); provides the requirements and process for the certification of internal and reporting state agencies in subsection (d); sets forth records and reporting requirements in subsection (e); describes the process of valuing state property in subsection (f); provides accounting practices in subsection (g); describes the requirements for inventory control in subsection (h); sets forth the requirements and processes for annual physical inventories in subsection (i); presents the requirements for entrusting personal property to other agency officials or employees in subsection (j); describes the requirements for loaning personal property to another state agency in subsection (k); sets forth the requirements for transferring state property in subsection (l); establishes the requirements for accounting for lost, destroyed, or damaged personal property in subsection (m); provides the requirements for accounting for stolen personal property in subsection (n); describes the requirements for accounting for surplus and salvage personal property in subsection (o); requires state agencies to submit information about real property to the General Land Office in subsection (p); sets forth the responsibilities of the head of an abolished state agency in subsection (q); and addresses conflict with federal laws or regulations in subsection (r).

New §5.205 updates the requirements for the disposal of certain computer equipment by a charitable organization, which are currently found in §5.200(r) and are proposed for repeal in a separate submission. This new section describes, in subsection (a), the types of computer equipment to which the new section applies; provides definitions in subsection (b); sets forth the requirements for the disposal or donation of certain computer equipment in subsection (c); and sets forth the retention period for records of the disposal or donation of computer equipment in subsection (d).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal creates new rules.

Mr. Currah also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by clarifying and making the rules under the previously repealed §5.200 more understandable. There would be no anticipated significant economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

New §5.200 is proposed under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system, and Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system of which the state property accounting system constitutes the fixed asset component as provided by Government Code, §403.271(c).

New §5.205 is proposed under Government Code, §2175.907(f), which requires the comptroller to adopt rules to implement Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

New §5.200 implements Government Code, Chapter 403, Subchapter L, concerning property accounting, and Government Code, Chapter 2101, concerning accounting procedures.

New §5.205 implements Government Code, §2175.907.

§5.200. State Property Accounting System.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual physical inventory--The annual capitalized and controlled personal property physical inventory count that a state agency must conduct once each fiscal year in accordance with this section.

(2) Betterment of state property--An improvement of state property that materially increases its serviceability or useful life, or both.

(3) Capital asset--A possession of the state that has an estimated useful life of more than one year.

(4) Capital lease--A lease of personal property under which the lessee substantially assumes the risks and benefits of ownership as specified under pronouncements of the Governmental Accounting Standards Board.

(5) Capitalized asset--A capital asset that has a value equal to or greater than the capitalization threshold established by the comptroller for that asset type.

(6) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(7) Controlled asset--An agency asset that the state has determined to be at a high risk for loss; that must be secured and tracked; and that has a value equal to or greater than the cost established by the comptroller. The term does not include a capitalized asset, real property, an improvement to real property, or infrastructure.

(8) Fiduciary fund--A fund held by a state agency as trustee of the fund. The term includes pension funds and non-expendable trust funds.

(9) Fiscal year--The accounting period for state government, which begins on September 1 and ends on August 31.

(10) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(11) Institution of higher education--Has the meaning assigned by Education Code, §61.003(8).

(12) Internal state agency--A state agency that uses the SPA system exclusively as its own property accounting system.

(13) May not--A prohibition. The term does not mean "might not" or its equivalents.

(14) Personal property--A capitalized or controlled asset not classified as real property. The term includes trust property.

(15) Proprietary fund--A self-supporting fund whose resources are generated through user charges. The term includes enterprise and internal service funds.

(16) Real property--Land including structures or other improvements that are embedded into or permanently affixed to the land.

(17) Replacement of state property--A replacement of an internal or external part of state property that allows it to complete its normal useful life.

(18) Reporting state agency--A state agency that reports information from its own property accounting system to the SPA system.

(19) Salvage personal property--Personal property that no longer serves its original purpose because it is depleted, worn out, damaged, consumed, outdated, or obsolete. The term does not include personal property that has a remaining useful life.

(20) SPA system--The state property accounting system, which is the fixed asset component of the uniform statewide accounting system.

(21) State agency--A state governmental entity that manages, administers, or controls state property.

(22) State property--Property possessed by the state. The term includes real property and personal property.

(23) Surplus personal property--Personal property in the possession of a state agency that is not currently needed by the agency and is not required for the agency's foreseeable needs. The term does not include salvage personal property.

(24) Trust property--Property not owned by the state that a state agency temporarily holds on behalf of the owner and is not used in agency operations.

(25) University system--Has the meaning assigned by Education Code, §61.003(10).

(26) USAS--The Uniform Statewide Accounting System, which is the integrated financial system of record for the State of Texas financial records.

(b) Exemptions.

(1) Equipment and supplies purchased through programs, contracts, or grants with the Department of State Health Services.

(A) An item of equipment or a supply is exempt from the requirements of this section if it is:

(i) used to promote and maintain public health;

(ii) purchased by or for a qualified entity; and

(iii) purchased through a program, contract, or grant with the Department of State Health Services.

(B) The exemption ends if the item of equipment or supply is returned to the Department of State Health Services upon the termination of the applicable program, contract, or grant. When the exemption ends, the formerly exempt item of equipment or supply must be reported to the SPA system in accordance with the comptroller's requirements.

(C) A state agency that purchases an exempt item of equipment or a supply shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items of equipment or supplies exempt under subparagraph (A) of this paragraph.

(D) In this paragraph, "qualified entity" includes an individual, a corporation, a local unit of government, and a state agency.

(2) Items provided to an individual with a disability.

(A) A material, tool, book, or other necessary apparatus provided to an individual with a disability by the Health and Human Services Commission or the Texas Workforce Commission for use in providing rehabilitation services to the individual is exempt from the requirements of this section.

(B) The Health and Human Services Commission and the Texas Workforce Commission shall each develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be reported to the SPA system in accordance with the comptroller's requirements.

(3) Items provided to clients of state agencies.

(A) The comptroller may exempt from the reporting requirements of this section a material, tool, book, or other necessary apparatus if the item is provided to a client by a qualifying state agency.

(B) The appropriate state agency shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be reported to the SPA system in accordance with the comptroller's requirements.

(4) University system or institution of higher education.

(A) Except as provided in this subsection and subsection (l) of this section, a university system or institution of higher education is exempt from the requirements of this section.

(B) A university system or institution of higher education shall account for all personal property possessed by the system or institution. At all times, the property records of a university system or institution of higher education must accurately reflect the personal property possessed by the system or institution.

(5) Items of state property otherwise exempt by law. An item of state property is exempt from the requirements of this section if it is otherwise exempt by law from the requirements of the SPA system.

(c) General responsibilities.

(1) Designation, supervision and training of property manager.

(A) The head of a state agency shall:

(i) designate a property manager for the agency;

(ii) inform the comptroller of the designation not later than the 15th day after making the designation by properly completing and submitting the form required by the comptroller;

(iii) ensure that the property manager receives training about this section and the SPA system; and

(iv) ensure that the property manager properly carries out the property manager's duties as required by this section and applicable law.

(B) The property manager may be the head of the state agency, or another official or employee of the state agency.

(C) The head of a state agency may designate more than one property manager for the agency only if the comptroller approves.

(2) Responsibility for custody and care. The head of a state agency is responsible for the custody and care of state property in the agency's possession. This responsibility does not end when a property manager is designated.

(3) Change of head of a state agency or property manager. If the head of a state agency or property manager changes, the outgoing head of the state agency or outgoing property manager shall inform the comptroller of the change not later than 15 days after the change occurs by properly completing and submitting the form required by the comptroller.

(4) Perpetual inventory. A state agency shall maintain a perpetual inventory.

(5) Inventory controls. The head of a state agency shall ensure that the agency maintains adequate inventory controls on state property.

(6) Maintaining records. The property manager of a state agency shall maintain the records required by the comptroller, this section, and applicable law.

(7) Forms. A state agency shall use the forms prescribed by the comptroller when taking any action authorized or required by this section. The comptroller may adopt and modify forms as the comptroller deems necessary.

(8) Use of state property. State property may only be used for state purposes.

(d) Certification of internal state agencies and reporting state agencies.

(1) General requirement. A state agency must be certified by the comptroller as an internal state agency or a reporting state agency.

(2) Request for certification or change of certification initiated by state agency.

(A) A state agency that has not been certified or that is requesting a change of certification must properly complete and submit to the comptroller the form required by the comptroller, and obtain the comptroller's approval.

(B) The agency must specify on the form whether the agency requests certification as an internal state agency or a reporting state agency.

(C) The comptroller shall review the form and consider the agency's ability to comply with this section before determining whether to certify the agency or change the agency's certification.

(3) Certification changes initiated by the comptroller. The comptroller may change a state agency's certification any time the comptroller determines the change is needed.

(4) Effective date of certification. If the comptroller approves a request for certification or a change of certification under paragraph (2) of this subsection or changes an agency's certification under paragraph (3) of this subsection, the change is effective on the date specified by the comptroller.

(e) Records and reporting.

(1) Internal state agencies.

(A) An internal state agency shall report state property to the SPA system at the time of acquisition. The information must be reported in accordance with the comptroller's requirements.

(B) An internal state agency shall maintain its property records on the SPA system in accordance with the comptroller's requirements.

(2) Reporting state agencies.

(A) A reporting state agency shall report information to the SPA system in accordance with the comptroller's schedules, procedures, and classification system. The comptroller may require a reporting state agency to submit information at any time.

(B) A reporting state agency shall maintain its property records in the manner and format required by this section and the comptroller. The agency shall ensure that its property accounting system is always capable of providing the information required by the SPA sys-

tem and shall modify its property accounting system to comply with the comptroller's reporting requirements, as periodically amended.

(C) A reporting state agency shall ensure that it has disaster recovery capability.

(3) Tracking of state property.

(A) Except as provided in subparagraph (B) of this paragraph, a state agency shall track and report state property on a unit basis.

(B) A state agency may track and report library books, library reference materials, e-books, and software on a group basis.

(4) Access to the SPA system. An individual may have access to the SPA system only in accordance with the procedures and security limitations prescribed by the comptroller.

(f) Valuation of state property.

(1) General provision. This subsection governs the valuation of state property as reported to the SPA system.

(2) Newly acquired state property. The value of newly acquired state property must be equal to the sum of:

(A) the cost of the property; and

(B) the costs required to place the property into service.

(3) Donated state property.

(A) The value of state property acquired through donation must be equal to its fair market value on the date of donation.

(B) The fair market value of donated state property must be determined through a reasonable market study.

(C) A state agency that conducts a market study shall fully document the methods used to conduct the study. The agency shall maintain the documentation concerning the market study in accordance with the comptroller's requirements.

(4) State property constructed by the state. The value of state property constructed by the state must be equal to the total cost of labor and materials in accordance with the comptroller's requirements.

(5) Betterments and replacements of state property.

(A) A state agency shall determine the value of a betterment or replacement of state property:

(i) immediately following the completion of the betterment or replacement; or

(ii) at the agency's earliest opportunity as deemed appropriate by the agency and the comptroller.

(B) The value of a betterment of state property must be expensed unless the betterment increases the value or useful life of the property by a material amount. If a betterment is not expensed, the value of the property must be increased on the SPA system in accordance with the comptroller's requirements.

(C) The value of a replacement of state property is equal to the cost of the replacement less the original cost of the part being replaced. The value of the replacement must be expensed unless the replacement materially increases the value or estimated useful life of the property. If a replacement is not expensed, the value of the property must be increased on the SPA system in accordance with the comptroller's requirements.

(D) If a state agency is required to increase the value of state property on the SPA system because of a betterment or replacement, the agency shall maintain documentation that supports the amount of the increase in accordance with the comptroller's requirements.

(6) Debt-financed state property.

(A) In this paragraph, the total principal of debt-financed state property is equal to the purchase price of the property plus the applicable service charge imposed by the Texas Public Finance Authority.

(B) The acquisition cost of debt-financed state property other than constructed items must reflect the total principal of the property and the costs required to place the property into service.

(C) The acquisition cost of debt-financed state property that has been constructed should be equal to the total cost of acquiring the property plus the cost of placing the property into service, which includes the principal, interest, finance charges, costs of issuance, and administrative fees.

(7) Leased state property.

(A) State property that a state agency has leased under a capital lease must be valued in accordance with this paragraph.

(B) Subject to subparagraph (C) of this paragraph, the cost of leased state property is equal to the present value of the minimum lease payments plus the cost of placing the property into service. The cost of the property does not include any costs not paid by the agency.

(C) The cost of leased state property may not exceed the property's fair market value.

(8) Trade-ins. If a state agency is authorized to trade state property for other personal property, the agency must report the trade to the SPA system in accordance with the comptroller's requirements.

(g) Accounting practices.

(1) Depreciation of state property.

(A) The depreciable state property of proprietary and fiduciary funds must be depreciated in accordance with generally accepted accounting principles.

(B) Depreciation is calculated and reported on the SPA system. Agencies that calculate depreciation locally must report the depreciation expense at the end of the fiscal year in accordance with the comptroller's schedules and procedures.

(C) The amount that state property depreciates over a fiscal year is determined using the straight-line method, which is the historical cost of the property less the residual value of the property, divided by the useful life of the property expressed in months.

(D) A state agency shall use the SPA system's default value for the estimated useful life of state property unless the agency documents a different value based on the agency's experience.

(2) Transfer of state property between funds. If a state agency transfers state property to another fund, the acquisition cost of the property plus the associated accumulated depreciation as recorded in the new fund must be the same as the cost and the associated accumulated depreciation recorded in the old fund.

(3) Reporting and reconciliation of state property inventory balances.

(A) A state agency shall report additions, deletions, and adjustments in state property throughout the fiscal year in accordance with the comptroller's requirements.

(B) An internal state agency must reconcile the accounting balances in USAS to the supporting financial detail on the SPA system. All adjustments made during the reconciliation must be documented and maintained in accordance with the comptroller's requirements.

(C) A reporting state agency must reconcile the accounting balances in USAS and the agency's local property accounting system to the supporting financial detail on the SPA system. All adjustments made during the reconciliation must be documented and maintained in accordance with the comptroller's requirements.

(h) Inventory control.

(1) Marking of personal property. A state agency shall permanently mark each item of personal property in the agency's possession as property of the State of Texas. The marking is permanent for the purpose of this paragraph if the marking can be removed only through considerable or intentional means. The marking shall be highly visible so that conducting a physical inventory is facilitated.

(2) Property inventory numbers.

(A) A state agency shall assign a unique property inventory number to each item of state property possessed by the agency. For personal property, the number shall be printed on a label, which shall be attached to the item in a highly visible location.

(B) A property inventory number may not be reused, even if the appropriate disposal code for the property has been entered into the SPA system.

(3) Responsibility for securing and tracking personal property. A state agency is responsible for ensuring that its personal property is tracked and secured in the manner that is most likely to prevent damage to, and the theft, loss, or misuse of, the property.

(4) Locating state property.

(A) A state agency must know where all of its state property is located at all times.

(B) An internal state agency must maintain current location information on the SPA system.

(C) A reporting state agency must maintain current location information on the agency's local property accounting system.

(i) Annual physical inventory.

(1) Timing of annual physical inventory. Except as provided in paragraph (2) of this subsection, a state agency shall conduct an annual physical inventory of the capitalized and controlled personal property in the agency's possession each fiscal year in accordance with the comptroller's schedules and procedures. The agency may choose the date of the inventory.

(2) Exemptions.

(A) Except as provided in subparagraph (B) of this paragraph, an agency's annual physical inventory is not required to contain an inventory of library books, library reference materials, e-books, software, antiques, artifacts, rare publications, historical books, historical treasures, or historical manuscripts, in the agency's possession.

(B) Every fifth fiscal year, beginning in fiscal year 2025, an agency's annual physical inventory must contain an inventory of antiques, artifacts, rare publications, historical books, historical treasures, and historical manuscripts, in the agency's possession, in accordance with the comptroller's schedules and procedures.

(3) Certification. The head of a state agency must certify completion of the agency's annual physical inventory in accordance with the comptroller's schedules and procedures.

(4) Updating information. If the results of a state agency's annual physical inventory vary from the information on the SPA system, the agency shall immediately update the information on the SPA system. An agency must maintain documentation in accordance with the comptroller's requirements.

(j) Entrusting personal property to other agency officials or employees.

(1) Required receipt. A state agency may not entrust personal property in its possession to an agency official or employee, other than the agency's property manager, unless the official or employee provides to the agency's property manager a signed, written, and dated receipt, which includes the statement described in paragraph (2) of this subsection.

(2) Statement. The receipts required under paragraph (1) of this subsection and subsection (k)(1) of this section must contain a statement similar to the following: "I understand that I am financially liable to the state for the disappearance of the personal property if I fail to exercise reasonable care for its safekeeping; the deterioration of the property if I fail to exercise reasonable care to maintain and service it; and the damage or destruction of the property if it occurs because of my negligent or intentional wrongful act."

(3) Use for other than state purposes. A head of a state agency or property manager may not entrust personal property to a person if the head of the state agency or property manager knows or reasonably should know that the person will use the property for other than state purposes.

(k) Loaning personal property to another state agency.

(1) Written authorization. A state agency may not loan personal property to another state agency unless the head of the agency lending the property provides written authorization for lending the property and the head of the agency to which the property is lent executes a written receipt, which includes the statement described in subsection (j)(2) of this section.

(2) Document the loan. A state agency that loans personal property to another state agency shall document the loan as required by the comptroller.

(3) Agency responsibility. A state agency that loans personal property to another state agency does not suspend or eliminate its responsibilities toward the property under this section and applicable law.

(l) Transferring state property.

(1) Comptroller requirements. A state agency that transfers state property to another state agency or receives state property from another state agency shall comply with the comptroller's requirements.

(2) Agency responsibility. State property that is in pending transfer status to another state agency is the responsibility of the transferring state agency until the transfer has been completed in accordance with the comptroller's requirements.

(3) Master lease financing program. A state agency may not transfer property purchased through the master lease financing program administered by the Texas Public Finance Authority unless the authority provides advance approval of the transfer in accordance with the authority's requirements.

(4) University system or institution of higher education. A university system or institution of higher education is subject to the requirements of this subsection.

(m) Lost, destroyed, or damaged personal property.

(1) Comptroller requirements. A state agency must enter the appropriate disposal code for lost, destroyed, or damaged personal property into the SPA system in accordance with the comptroller's requirements.

(2) Physical inventory. A state agency must include in the agency's annual physical inventory the agency's lost, destroyed, or damaged personal property until the appropriate disposal code for the property has been entered into the SPA system in accordance with the comptroller's requirements.

(3) Reporting. If the head of a state agency or property manager has reasonable cause to believe that any property in the agency's possession has been lost, destroyed, or damaged through the negligence of any state official or employee, the head of the agency or property manager shall report the loss, destruction, or damage to:

(A) the comptroller immediately by entering the appropriate disposal code into the SPA system; and

(B) the attorney general in the manner prescribed by the comptroller not later than the fifth working day after reasonable cause for the belief arises.

(n) Stolen personal property.

(1) Comptroller requirements. A state agency must enter the appropriate disposal code for stolen personal property into the SPA system in accordance with the comptroller's requirements.

(2) Physical inventory. A state agency must include in the agency's annual physical inventory the agency's stolen personal property until the appropriate disposal code for the property has been entered into the SPA system in accordance with the comptroller's requirements.

(3) Reporting. If the head of a state agency or property manager has reasonable cause to believe that any property in the agency's possession has been stolen, the head of the agency or property manager shall report the theft to:

(A) the comptroller immediately by entering the appropriate disposal code into the SPA system;

(B) the attorney general in the manner prescribed by the comptroller not later than the fifth working day after reasonable cause for the belief arises; and

(C) the appropriate law enforcement agency not later than the 48th hour after reasonable cause for the belief arises.

(o) Surplus and salvage personal property.

(1) Compliance with applicable law and rules. A state agency shall comply with Government Code, Chapter 2175, and the rules promulgated by the Texas Facilities Commission when transferring, selling, or disposing of its surplus or salvage personal property.

(2) Disposal of surplus or salvage personal property. A state agency shall enter the appropriate disposal code for surplus or salvage personal property into the SPA system in accordance with the comptroller's requirements.

(3) Physical inventory. A state agency must include in the agency's annual physical inventory the agency's salvage or surplus personal property until the appropriate disposal code for the property has been entered into the SPA system in accordance with the comptroller's requirements.

(p) Real property. In addition to other requirements set forth in this section, a state agency must submit information about real property to the General Land Office.

(q) Abolished state agencies.

(1) Application of this subsection. This subsection applies to an abolished state agency only to the extent this section is consistent with the law that abolishes the agency.

(2) Responsibilities of the head of an abolished state agency.

(A) The head of an abolished state agency shall:

(i) conduct a complete and accurate physical inventory of the agency's state property in accordance with the comptroller's requirements;

(ii) furnish a copy of the inventory to the appropriate governmental entity designated to take custody of the agency's state property not later than the date prescribed by the legislature or, if the legislature did not prescribe a date, the effective date of the abolition of the state agency; and

(iii) transfer all state property of the agency to the appropriate governmental entity designated to take custody of the agency's state property.

(B) The physical inventory required by subparagraph (A)(i) of this paragraph is in addition to the annual physical inventory required by subsection (i) of this section.

(r) Conflict with federal laws or regulations. If a federal law or regulation conflicts with this section, the federal law or regulation prevails over this section to the extent necessary to avoid the conflict.

§5.205. Disposal of Computer Equipment by Charitable Organization.

(a) Applicability. This section applies only to computer equipment that a charitable organization:

(1) purchased for a price of at least $500 using funds received from the state, whether by appropriation, grant, or otherwise; and

(2) disposes of under Government Code, §2175.907.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Charitable organization--Has the meaning assigned by Government Code, §2175.907(2).

(2) Computer equipment--Has the meaning assigned by Government Code, §2175.907(1).

(c) Requirements. A charitable organization that disposes of computer equipment purchased with state funds within the four-year period after the date of purchase by selling or trading of the computer equipment, disposing of the computer equipment that is not operational, or donating the computer equipment to another charitable organization, under Government Code, §2175.907:

(1) must comply with any requirements regarding the disposition or donation of items purchased with state funds that are prescribed by the governmental entity that provided the state funds to the charitable organization, except to the extent the requirements are in conflict with the provisions of Government Code, §2175.907; and

(2) must keep a record of the manner in which the computer equipment was disposed or donated, including:

(A) a written description of the computer equipment;

(B) a written description of the method used to dispose of or donate the computer equipment; and

(C) any receipts or transfer documents.

(d) Retention period. The record described in subsection (c)(2) of this section must be maintained by the charitable organization until the later of:

(1) the fourth anniversary of the date the organization purchased the computer equipment; or

(2) the expiration of the retention period prescribed by the governmental entity that provided the state funds to the charitable organization.

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

Filed with the Office of the Secretary of State on March 2, 2021.

TRD-202100855
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: April 18, 2021
For further information, please call: (512) 475-0387

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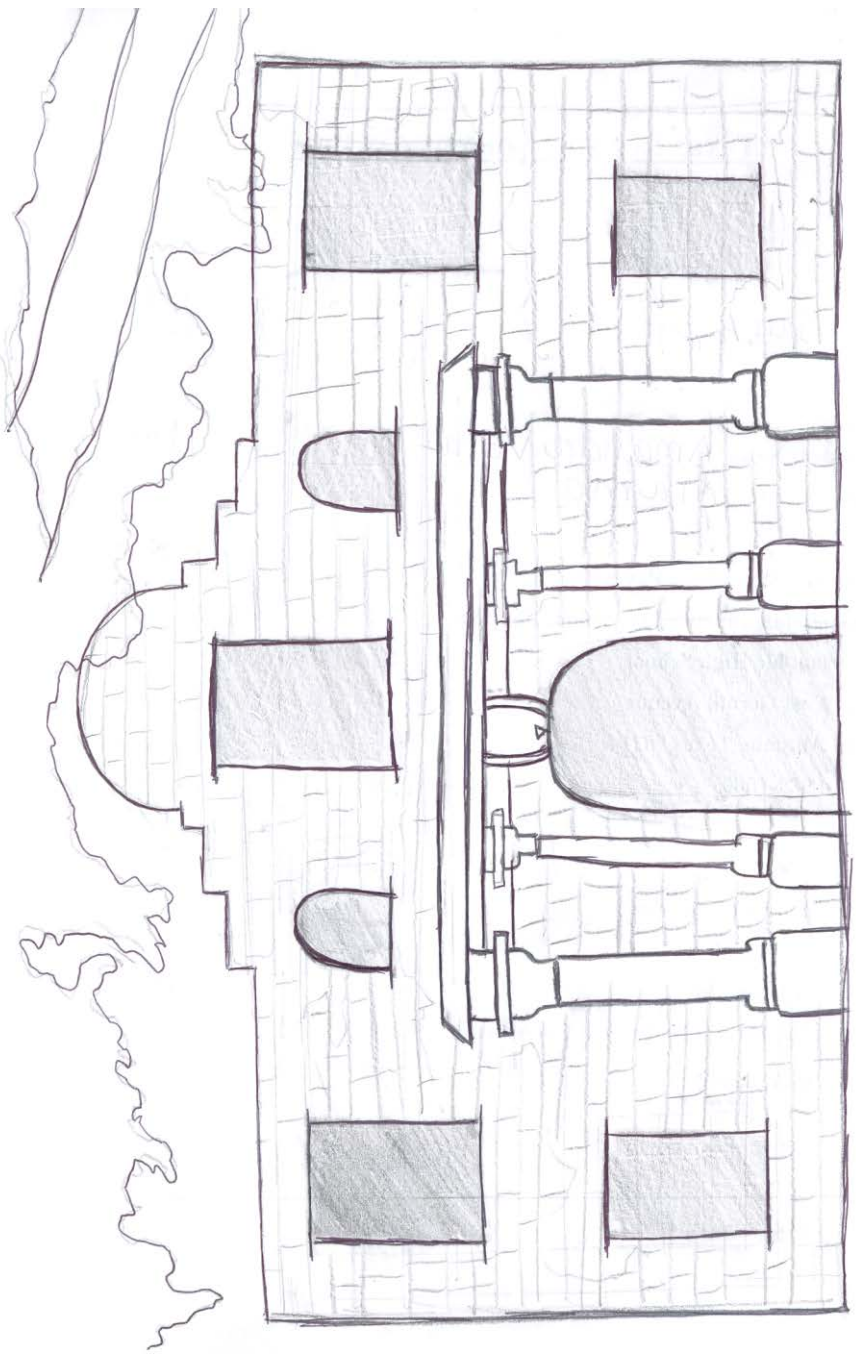

ADOPTED RULES

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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 107. TERMINOLOGY

7 TAC §107.2

The Texas State Securities Board adopts an amendment to §107.2, concerning Definitions, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7822). The amended rule will not be republished.

The amendment aligns the definitions of individual accredited investor, institutional accredited investor, and qualified institutional buyer, with the definitions of accredited investor and qualified institutional buyer used by the Securities and Exchange Commission (SEC). The SEC recently adopted amendments to these terms, which became effective December 8, 2020. The amendment also moves the definitions of qualified institutional buyer set forth elsewhere in the rules to this section, changes the definition of Form D to reference the current SEC Form D, and expands the definition of the EFD System from accepting only Form D filings to include additional types of electronic filings as permitted by Board Rule.

Definitions in the rule are coordinated with federal standards and requirements, and the amendment facilitates the Agency's ability to accept additional types of electronic filings as permitted by Board rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The amendment affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

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 March 1, 2021.

TRD-202100847

Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: March 21, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 305-8303

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CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §§109.4 - 109.6

The Texas State Securities Board adopts amendments to §109.4, concerning Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.5, concerning Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; and §109.6, concerning Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

The proposals were published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7823). The amendments to §109.4 and §109.5 were adopted with changes to the published proposal and will be republished. The changes consisted of adding the missing closing parenthesis in §109.4(b)(2) and in §109.5(b)(2). The amendment to §109.6 was adopted without changes and will not be republished.

The Securities and Exchange Commission (SEC) recently amended its definitions of accredited investors and qualified institutional buyers, which became effective December 8, 2020. The amendments incorporate the SEC definitions relating to accredited investors and qualified institutional buyers in these sections by cross-referencing §107.2, concerning Definitions, which was concurrently amended to incorporate the SEC's amendments to these definitions.

The rules are coordinated with federal standards and requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing regis-

tration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The amendments affect Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from securities registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the seller is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T, exempts from the securities registration requirements of the Act, §7, the offer and sale of any securities to any of the following persons:

(1) an "institutional accredited investor," as that term is defined in §107.2 of this title (relating to Definitions), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in §107.2 of this title;

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions)); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from dealer and agent registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities for which the dealer or agent is claiming the exemption.

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

(1) an "institutional accredited investor," as that term is defined in §107.2 of this title (relating to Definitions), excluding, however, any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in §107.2 of this title;

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions)); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.

(c) Financial statements. For purposes of determining a purchaser's total assets or net worth under this section, the issuer and the seller may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the purchaser.

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 March 1, 2021.

TRD-202100848
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: March 21, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 305-8303

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7 TAC §109.15

The Texas State Securities Board adopts the repeal of §109.15, concerning Designated Matching Services, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7824). A related rule, §133.35, concerning Application for Designation as Matching Service, has also been concurrently repealed. The repeal will not be republished.

The purpose of the repeal is to repeal a rule that is no longer in use and has become obsolete.

A rule that is no longer needed has been eliminated.

No comments were received regarding the repeal.

The repeal is adopted under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581-12 and 581-18.

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 March 1, 2021.

TRD-202100846

Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.35

The Texas State Securities Board adopts the repeal of §133.35, which adopts by reference the Application for Designation as Matching Service under §109.15 form, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7825). The form is used to apply to become a designated matching service pursuant to §109.15, which has also been concurrently repealed. The repeal will not be republished.

The purpose of the repeal is to repeal a form that is no longer in use and has become obsolete.

A form that is no longer needed has been eliminated.

No comments were received regarding the repeal.

The repeal is adopted under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581-12 and 581-18.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1007

The Texas Education Agency (TEA) adopts new §74.1007, concerning college and career readiness. The new section is adopted without changes to the proposed text as published in the January 1, 2021 issue of the *Texas Register* (46 TexReg 41) and will not be republished. The new rule specifies applicable guidelines for the annual calculation of the College, Career, or Military Readiness (CCMR) Outcomes Bonus added by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, established the CCMR Outcomes Bonus. The CCMR Outcomes Bonus allows TEA to annually award school districts funds based on the district's number of annual graduates in excess of the statewide 25th percentile for CCMR, disaggregated by economically disadvantaged status and by enrollment in a special education program under Texas Education Code (TEC), Chapter 29, Subchapter A.

Adopted new 19 TAC §74.1007 establishes the threshold percentage (25th percentile) of statewide college, career, or military readiness for the cohort of annual graduates during the 2016-2017 school year for annual graduates who are educationally disadvantaged, annual graduates who are not educationally disadvantaged, and annual graduates who are enrolled in a special education program. The adopted new rule includes the time period by which an annual graduate must enroll at a postsecondary educational institution, earn an associate degree, earn an industry-accepted certification, earn a level I or level II certificate, or enlist in the armed forces of the United States in order to demonstrate college, career, or military readiness. TEA issued final CCMR Outcomes Bonus funds for the 2019-2020 school year and preliminary CCMR Outcomes Bonus funds for the 2020-2021 school year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 1, 2021, and ended February 1, 2021. Following is a summary of the public comments received and the corresponding responses.

Comment. One school district staff member requested the rule align the CCMR Outcomes Bonus with accountability measures. The commenter stated that the proposed rule would make it necessary for school personnel to stay in contact with graduates over the summer and help them individually enroll in colleges across Texas and the United States. The commenter proposed the rule have local educational agencies ensure students are admitted and ready for enrollment by graduation.

Response. The agency disagrees. TEC, §48.110, defines college readiness as achieving college readiness standards on the SAT®, ACT®, or Texas Success Initiative (TSI) assessment and enrollment at an institution of higher education. The agency obtains these data from the National Student Clearinghouse and the Texas Higher Education Coordinating Board, which alleviates the need for school districts to track students post-graduation.

Comment. One individual commented that the bonus is beneficial for both students and school districts and provides districts with the resources to offer students extra tools and resources.

Response. The agency agrees.

Comment. Advancement Via Individual Determination (AVID) recommended the inclusion of higher education persistence rates as a CCMR Outcomes Bonus indicator.

Response. The agency disagrees. TEC, §48.110, defines college readiness as achieving college readiness standards on the SAT®, ACT®, or TSI assessment and enrollment at an institution of higher education.

Comment. The College Board recommended the inclusion of College-Level Examination Program (CLEP) for future consideration as a CCMR Outcomes Bonus indicator.

Response. The agency disagrees. TEC, §48.110, defines college readiness as achieving college readiness standards on the SAT®, ACT®, or TSI assessment and enrollment at an institution of higher education.

Comment. The Fast Growth School Coalition and the Texas School Alliance (TSA) recommended the term "military readiness" in the proposed rule language be changed to "military enlistment proxy" or "military enlistment" to align with TEC, §39.053(c)(1)(B)(iv).

Response. The agency disagrees. The statutory authority for the CCMR Outcomes Bonus is TEC, §48.110(f)(3), which uses the term "military readiness."

Comment. The Fast Growth School Coalition and TSA proposed the indicators used to calculate CCMR Outcomes Bonus thresholds be consistent with the indicators used to calculate the bonus payouts. The comment provided two recommendations: (1) the thresholds should be recalculated without the 2017 graduates' military enlistment Public Education Information Management System (PEIMS) data; and (2) when/if TEA obtains the Department of Defense (DoD) military enlistment data, then re-calculate the thresholds and the payouts for the next group of annual graduates.

Response. The agency disagrees with the recommendation relating to recalculating thresholds. The thresholds will be set one time based on 2017 annual graduates and adopted in rule. The agency included the 2017 annual graduates military enlistment as reported in PEIMS in the threshold calculations. The agency partially agrees with the recommendation relating to DoD military enlistment data. The agency will not recalculate thresholds once DoD enlistment data is received. The agency will recalculate the 2018 and 2019 annual graduate outcomes, and the updated outcomes will be used to recalculate funding for the 2019-2020 fiscal year and applicable future fiscal years.

Comment. An individual commented related to concerns on requiring SAT®, ACT®, or TSI assessment as COVID-19 impacted administrations of the assessments in 2020 and 2021. The commenter also proposed the use of other measures such as Advanced Placement/International Baccalaureate assessment scores, dual-credit course credit, or completion of a college prep course.

Response. The agency disagrees. TEC, §48.110, defines college or career readiness as achieving college readiness standards on the SAT®, ACT®, or TSI assessment in addition to enrollment at an institution of higher education or earning a certification.

Comment. An individual commented that industry-based certifications and level I or level II certificates should stand on their own as career ready without the ACT® or SAT® requirement as these assessments are not required for students to engage in a career related to their area of certification or certificate.

Response. The agency disagrees. TEC, §48.110, defines career readiness as achieving college readiness standards on the SAT®, ACT®, or TSI assessment in addition to earning a certification.

Comment. An individual commented that special education students with an individualized education program demonstrating workforce readiness, instead of SAT® and ACT®, along with certification or certificates should count toward the CCMR Outcomes Bonus.

Response. The agency disagrees. TEC, §48.110, does not provide alternative measures for students served by special education to meet the CCMR Outcomes Bonus indicators.

Comment. An individual commented that school districts may be directing students to level I and level II certificates because they are not being successful on the assessment instruments and suggested TEA consider switching from "either/or" to "and" for career readiness.

Response. The agency provides the following clarification. The proposed rule defines career readiness as achieving college readiness standards on the SAT®, ACT®, or TSI assessment in addition to earning a certificate.

Comment. An individual requested resources explaining how college, career, or military readiness differs between accountability and outcomes bonuses.

Response. The agency provides the following clarification. Resources that compare accountability and outcomes bonuses and data sources for both are available on the TEA website under Performance Reporting Resources at https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/performance-reporting-resources.

Comment. An individual requested detail on timing for including military readiness back in accountability.

Response. The agency provides the following clarification. TEA has yet to receive a timeline from the DoD regarding data requests.

Comment. An individual requested how to mitigate COVID-19 impact on college, career, and military readiness outcomes for the short term.

Response. The agency provides the following clarification. The agency will monitor and analyze the impact of COVID-19 on CCMR Outcomes Bonus data.

Comment. An individual proposed separating the indicators for earning an associate degree and enrolling in an institution of higher education.

Response. The agency disagrees. The associate degree and enrollment in an institution of higher education both align with the intent of college readiness as defined by TEC, §48.110.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.110(b)(1)-(3), as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which require the commissioner to determine the threshold percentage for college, career, or military readiness for annual graduates who are educationally disadvantaged, annual graduates who are not educationally disadvantaged, and annual graduates who are

enrolled in a special education program under TEC, Chapter 29, Subchapter A; TEC, §48.110(c), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to annually determine the minimum number of annual graduates in each cohort as described in TEC, §48.110(b), who would have to demonstrate college, career, or military readiness as described in TEC, §48.110(f), in order for the district to achieve a percentage of college, career, or military readiness for that cohort equal to the threshold percentage established for that cohort under TEC, §48.110(b); TEC, §48.110(f)(1)(B), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to establish by rule the time period by which an annual graduate must enroll at a postsecondary educational institution in order to demonstrate college readiness; TEC, §48.110(f)(2)(B), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to establish by rule the time period by which an annual graduate must earn an industry-accepted certification in order to demonstrate career readiness; TEC, §48.110(f)(3)(B), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to establish by rule the time period by which an annual graduate must enlist in the armed forces of the United States in order to demonstrate military readiness; and TEC, §48.110(g), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to establish threshold percentages under TEC, §48.110(b), using the 25th percentile of statewide college, career, or military readiness as described in TEC, §48.110(f), for the cohort of annual graduates during the 2016-2017 school year.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.110(b)(1)-(3); (c); (f)(1)(A) and (B), (2)(A) and (B), and (3)(A) and (B); and (g).

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 March 3, 2021.

TRD-202100865
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 23, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts the repeal and replacement of former §1.69 with new §1.69. Additionally, the Board adopts amendments to §1.232. The rulemaking actions are adopted without changes to the proposed text published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 253). The rules will not be republished.

Reasoned Justification.

These rulemaking actions implement changes to the Board's continuing education (CE) requirements as applied to architects. Previously, the Board adopted former §1.69, which identified the CE requirements for architects. Due to the need for substantial addition to and reorganization of the former rule, this rulemaking action repeals former §1.69 and replaces it with adopted §1.69. This notice summarizes how adopted §1.69 differs from former §1.69.

First, adopted §1.69 implements new definitions to govern the application of the rule. Under §1.69(a), the Board adopts definitions for "Approved Subject Areas" "Health, Safety, or Welfare," "Structured Course Study," and "Self-Directed Study." The adoption of these definitions will assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definitions for "Approved Subject Areas" and "Health, Safety, or Welfare," incorporate national standards for CE adopted by the National Council of Architectural Registration Boards (NCARB) and the American Institute of Architects (AIA). The adoption of these national standards will help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. The adoption of this rule is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Adopted §§1.69(b)&(c) retain the requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Adopted §1.69(d) retains the requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the adopted rule requires that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, or welfare. This is a change from the former standard that one CEPH was equivalent to a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard is consistent with NCARB and AIA guidelines, thus helping to ensure that CE approved by national bodies remains eligible for credit in Texas. Second, adopted §1.69(d) supplements the former rule by specifically categorizing certain activities as structured course study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Adopted §1.69(e) retains the allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the adopted rule supplements the former rule by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Adopted §1.69(f) retains existing exemptions from CE requirements, with one notable change. Under former §1.69(f)(4), an architect who had an active registration in another jurisdiction with a mandatory CE program was exempt from Texas CE requirements if the architect satisfied the other jurisdiction's

CE program requirements, provided that the other jurisdiction's registration requirements were substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the adopted rule, this exemption is conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, the adopted exemption does not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. Given the statutory requirement for registrants to complete CE in sustainable design, and the fact that Texas has unique statutory requirements relating to barrier-free design, it is imperative that all registrants complete courses on these topics, regardless of whether they have completed another state's CE requirements.

Adopted §1.69(g) retains existing requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with agency precedent. Maintenance of CE records in compliance with the adopted rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Adopted §1.69(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under former and adopted §1.69, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year. Under the former rule, one result of the asynchronous timing of these actions was that, if a registrant discovered at renewal that he or she did not complete CE requirements in the previous calendar year, there was no suitable remedy for the failure at the time of renewal. Former rules did allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so did not absolve the registrant of all violations of the Board's rules. For example, by completing "make-up CE", a registrant was eligible for a decreased penalty for failing to timely complete CE, but was still subject to an administrative penalty for falsely attesting to compliance with CE requirements at the time of renewal. To address this issue, adopted §1.69(h) will allow registrants an opportunity, prior to renewal, to cure a violation and avoid any penalty resulting a failure to complete CE in the previous year. Under adopted §1.69(h), a registrant who did not complete sufficient CE in the previous year will be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, because registrants will be given an opportunity to complete deficient CE prior to renewal, without penalty, adopted §1.69 will eliminate the post-attestation opportunity to complete "make-up" CE. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Adopted §1.69(j) identifies the administrative penalties for violations of CE requirements. Under former rules, the administrative penalties for CE violations were identified in §1.232. The identification of administrative penalties within adopted §1.69(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts are amended to be more responsive to the severity of the violation. For example, under the former rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities were subject to administrative penalties of $500 and $700, respectively. In comparison, under adopted §1.69(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or per claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the adopted rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from $700 in the former rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Adopted §1.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Adopted §1.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that these changes will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the former rule, due to the expected decrease in the number of disciplinary actions.

Adopted §1.69(i)(m)(n) and (o) readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Adopted §1.232 is amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the adopted amendments, this information is relocated in adopted §1.69. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

STATUTORY AUTHORITY

The repeal of §1.69 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

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 March 3, 2021.

TRD-202100878
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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22 TAC §1.69

STATUTORY AUTHORITY

Section 1.69 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1051.751, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1051.752.

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 March 3, 2021.

TRD-202100879
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

STATUTORY AUTHORITY

Amendments to §1.232 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1051.751, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1051.752.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts the repeal and replacement of former §3.69 with new §3.69. Additionally, the Board adopts amendments to §3.232. The rulemaking actions are adopted without changes to the proposed text published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 258). The rules will not be republished.

Reasoned Justification.

These rulemaking actions implement changes to the Board's continuing education (CE) requirements as applied to landscape architects. Previously, the Board adopted former §3.69, which identified the CE requirements for landscape architects. Due to the need for substantial addition to and reorganization of the former rule, this rulemaking action repeals former §3.69 and replaces it with adopted §3.69. This notice summarizes how adopted §3.69 differs from former §3.69.

First, adopted §3.69 implements new definitions to govern the application of the rule. Under §3.69(a), the Board adopts definitions for "Approved Subject Areas" "Health, Safety, and Welfare," "Structured Course Study," and "Self-Directed Study." The adoption of these definitions will assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definitions for "Approved Subject Areas" and "Health, Safety, and Welfare," incorporate national standards for CE adopted by the Landscape Architecture Continuing Education System (LA CES), a collaboration of the American Society of Landscape Architects, Canadian Society of Landscape Architects, Council of Educators in Landscape Architecture, Council of Landscape Architectural Registration Boards, Landscape Architectural Accreditation Board, and Landscape

Architecture Foundation. The adoption of these national standards will help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. The adoption of this rule is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Adopted §§3.69(b) - (c) retain the requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Adopted §3.69(d) retains the requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the adopted rule requires that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, and welfare. This is a change from the former standard that one CEPH was equivalent to a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard is consistent with LA CES guidelines, thus helping to ensure that CE approved by national bodies remains eligible for credit in Texas. Second, adopted §3.69(d) supplements the former rule by specifically categorizing certain activities as structured course study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Adopted §3.69(e) retains the allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the adopted rule supplements the former rule by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Adopted §3.69(f) retains existing exemptions from CE requirements, with one notable change. Under former §3.69(f)(4), a landscape architect who had an active registration in another jurisdiction with a mandatory CE program was exempt from Texas CE requirements if the landscape architect satisfied the other jurisdiction's CE program requirements, provided that the other jurisdiction's registration requirements were substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the adopted rule, this exemption is conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, the adopted exemption does not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. Given the statutory requirement for registrants to complete CE in sustainable design, and the fact that Texas has unique statutory requirements relating to barrier-free design, it is imperative that all registrants complete courses on these topics, regardless of whether they have completed another state's CE requirements.

Adopted §3.69(g) retains existing requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with agency precedent. Maintenance of CE records in compliance with the adopted rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Adopted §3.69(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under former and adopted §3.69, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year. Under the former rule, one result of the asynchronous timing of these actions was that, if a registrant discovered at renewal that he or she did not complete CE requirements in the previous calendar year, there was no suitable remedy for the failure at the time of renewal. Former rules did allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so did not absolve the registrant of all violations of the Board's rules. For example, by completing "make-up CE", a registrant was eligible for a decreased penalty for failing to timely complete CE, but was still subject to an administrative penalty for falsely attesting to compliance with CE requirements at the time of renewal. To address this issue, adopted §3.69(h) will allow registrants an opportunity, prior to renewal, to cure a violation and avoid any penalty resulting in a failure to complete CE in the previous year. Under adopted §3.69(h), a registrant who did not complete sufficient CE in the previous year will be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, because registrants will be given an opportunity to complete deficient CE prior to renewal, without penalty, adopted §3.69 will eliminate the post-attestation opportunity to complete "make-up" CE. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Adopted §3.69(j) identifies the administrative penalties for violations of CE requirements. Under former rules, the administrative penalties for CE violations were identified in §3.232. The identification of administrative penalties within adopted §3.69(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts are amended to be more responsive to the severity of the violation. For example, under the former rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities was subject to administrative penalties of $500 and $700, respectively. In comparison, under adopted §3.69(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or per claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the adopted rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease

from $700 in the former rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Adopted §3.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Adopted §3.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that these changes will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the former rule, due to the expected decrease in the number of disciplinary actions.

Adopted §3.69(i)(m)(n) and (o) readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Adopted §3.232 is amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the adopted amendments, this information is relocated in adopted §3.69. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rules.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

STATUTORY AUTHORITY

The repeal of §3.69 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
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For further information, please call: (512) 305-8519

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22 TAC §3.69

STATUTORY AUTHORITY

Section 3.69 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1052.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1052.252.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

STATUTORY AUTHORITY

Amendments to §3.232 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1052.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1052.252.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts the repeal and replacement of former §5.79 with new §5.79. Additionally, the Board adopts amendments to §5.242. The rulemaking actions are adopted without changes to the proposed text published in the January 8, 2021, issue of the *Texas Register* (46 TexReg 263). The rules will not be republished.

Reasoned Justification.

These rulemaking actions implement changes to the Board's continuing education (CE) requirements as applied to registered interior designers. Previously, the Board adopted former §5.79, which identified the CE requirements for registered interior designers. Due to the need for substantial addition to and reorganization of the former rule, this rulemaking action repeals former §5.79 and replaces it with adopted §5.79. This notice summarizes how adopted §5.79 differs from former §5.79.

First, adopted §5.79 implements new definitions to govern the application of the rule. Under §5.79(a), the Board adopts definitions for "Approved Subject Areas" "Health, Safety, or Welfare," "Structured Course Study," and "Self-Directed Study." The adoption of these definitions will assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definition of "Health, Safety, or Welfare," incorporates national standards for CE adopted by the International Design Continuing Education Council (IDCEC). The adoption of these national standards will help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. The adoption of this rule is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Adopted §5.79(b) and (c) retain the requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Adopted §5.79(d) retains the requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the adopted rule requires that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, or welfare. This is a change from the former standard that one CEPH was equivalent to a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard would be consistent with IDCEC guidelines, thus ensuring that CE meeting national standards remains eligible for credit in Texas. Second, adopted §5.79(d) supplements the former rule by specifically categorizing certain activities as structured course study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Adopted §5.79(e) retains the allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the adopted rule supplements the former rule by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Adopted §5.79(f) retains existing exemptions from CE requirements, with one notable change. Under former §5.79(f)(4), a registered interior designer who had an active registration in another jurisdiction with a mandatory CE program was exempt from Texas CE requirements if the registered interior designer satisfied the other jurisdiction's CE program requirements, provided that the other jurisdiction's registration requirements were substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the adopted rule, this exemption is conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, the adopted exemption does not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. Given the statutory requirement for registrants to complete CE in sustainable design, and the fact that Texas has unique statutory requirements relating to barrier-free design, it is imperative that all registrants complete courses on these topics, regardless of whether they have completed another state's CE requirements.

Adopted §5.79(g) retains existing requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with agency precedent. Maintenance of CE records in compliance with the adopted rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Adopted §5.79(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under former and adopted §5.79, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year.

Under the former rule, one result of the asynchronous timing of these actions was that, if a registrant discovered at renewal that he or she did not complete CE requirements in the previous calendar year, there was no suitable remedy for the failure at the time of renewal. Former rules did allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so did not absolve the registrant of all violations of the Board's rules. For example, by completing "make-up CE", a registrant was eligible for a decreased penalty for failing to timely complete CE, but was still subject to an administrative penalty for falsely attesting to compliance with CE requirements at the time of renewal. To address this issue, adopted §5.79(h) will allow registrants an opportunity, prior to renewal, to cure a violation and avoid any penalty resulting a failure to complete CE in the previous year. Under adopted §5.79(h), a registrant who did not complete sufficient CE in the previous year will be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, because registrants will be given an opportunity to complete deficient CE prior to renewal, without penalty, adopted §5.79 will eliminate the post-attestation opportunity to complete "make-up" CE. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Adopted §5.79(j) identifies the administrative penalties for violations of CE requirements. Under former rules, the administrative penalties for CE violations were identified in §5.242. The identification of administrative penalties within adopted §5.79(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts are amended to be more responsive to the severity of the violation. For example, under the former rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities were subject to administrative penalties of $500 and $700, respectively. In comparison, under adopted §5.79(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or per claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the adopted rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from $700 in the former rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Adopted §5.79(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Adopted §5.79(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that these changes will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the former rule, due to the expected decrease in the number of disciplinary actions.

Adopted §5.79(i)(m)(n) and (o) readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Adopted §5.242 is amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the adopted amendments, this information is relocated in adopted §5.79. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

Summary of Comments and Agency Response. Donna Vining, NCIDQ, FASID, IIDA, RID, CAPS, commented on the proposed rule. Ms. Vining, a continuing education provider, suggested that the proposed rule be amended to require registrants to pass a content examination prior to receiving a certificate of completion for a CE course offered virtually. She stated that this procedure would help to ensure that attendees were present and learning from the course. Ms. Vining has implemented this procedure for her own courses and referred to preexisting guidance published by the agency that stated online or similar courses could be considered structured if the course contained an independently-graded exam.

In response, the Board declines to adopt a rule requiring such an exam at this time. Under adopted §5.79(a)(3) and (d), a registrant may claim structured course credit for completing a course delivered by direct, in-person contact or through distance learning methods which, results in the issuance of a certificate or other record of attendance. Under the adopted rule, CE providers will be given latitude in developing processes to determine and certify attendance by registrants. Certainly, the use of an exam is one method to certify attendance, but the Board does not foreclose the use of other alternatives at this time. However, the Board has directed staff to review industry practices and consider whether more specific guidance is necessary. If it is determined that more guidance is needed, the Board may consider such recommendations through the rulemaking process.

The Board did not receive any other comments on the proposed rules.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

STATUTORY AUTHORITY

The repeal of §5.79 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

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 March 3, 2021.

TRD-202100885

Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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22 TAC §5.79

STATUTORY AUTHORITY

Section 5.79 is adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1053.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1053.252.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

STATUTORY AUTHORITY

Amendments to §5.242 are adopted under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1053.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1053.252.

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 March 3, 2021.

TRD-202100887
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: April 1, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 305-8519

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.16

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 21, 2021, adopted an amendment to 31 TAC §53.16, concerning Vessel, Motor, and Marine Licensing Fees, without change to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9168). The rule will not be republished.

The amendment alters subsection (c) to eliminate an unnecessary word and clarifies that a replacement marine dealer, manufacturer, or distributor's card does not include a decal.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments supporting or opposing adoption of the rule as published.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.041, which authorizes the commission to establish rules concerning the issuance and price of validation cards; and §31.0412, which authorizes the commission to adopt rules regarding marine dealer, manufacturer, and distributor licenses.

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 March 8, 2021.

TRD-202100910
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 28, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 389-4775

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SUBCHAPTER B. STAMPS

31 TAC §53.60

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 21, 2021, adopted an amendment to 31 TAC §53.60, concerning Stamps, without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9169). The rule will not be republished.

The amendment eliminates the exemption from the upland bird stamp requirement for persons hunting under a nonresident spring turkey license and removes references to the collector's edition stamp package. The exemption of nonresident spring turkey license holders from the upland game bird stamp requirement (and the precursor, the turkey stamp) has been in existence since at least the 1970s; however, the department is unable to determine the original reason for the exemption. For that reason, and because there is no logical reason to continue the exemption, the department has concluded that the exemption should be eliminated.

In 2015 the department discontinued the sale of the collector's edition stamp package because sales had declined to the point that the product was no longer fiscally defensible.

The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments supporting or opposing the adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.056, which authorizes the department to issue editions of wildlife stamps; §43.202, which authorizes the department to issue other editions of the archery stamp that are not valid for hunting; §43.403, which authorizes the department to issue other editions of the saltwater sportfishing stamp that are not valid for fishing; §43.652, which authorizes the commission to exempt a person or class of persons from the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapter S; §43.654, which authorizes the department to issue and sell a collector's edition of the migratory or upland game bird stamps; and §43.804, which authorizes the department to issue a collectible freshwater fishing stamp.

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 March 8, 2021.

TRD-202100911
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 28, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 389-4775

♦ ♦ ♦

SUBCHAPTER F. BONDED TITLE FOR VESSELS/OUTBOARD MOTORS

31 TAC §53.100

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 21, 2021, adopted an amendment to 31 TAC §53.100, concerning Bonded Title--Acceptable Situations, without change to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9170). The rule will not be republished.

The amendment corrects an inaccurate internal reference.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments supporting or opposing adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.0465, which authorizes the department by rule to define acceptable situations in which certificates of title may be issued after the filing of a bond.

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 March 8, 2021.

TRD-202100912
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 28, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.208 without changes to the text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 810). The rules will not be republished. Section 651.208 describes the requirements for forensic analyst and forensic technician license renewal. The current provision inadvertently omits the requirement that analysts upgrading to a higher level of licensure at renewal must complete continuing forensic education requirements. The Commission adopts the amendment to the section to clarify continuing forensic education requirements are required of all analysts biennially, whether renewing or upgrading a license. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The amendments affect 37 Texas Administrative Code §651.208.

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 March 8, 2021.

TRD-202100909
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: March 28, 2021
Proposal publication date: January 29, 2021
For further information, please call: (512) 936-0661

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter A, concerning General Provisions consisting of §§97.101 - 97.103, 97.105 and 97.107 concerning Meeting, Delegation of Duties, Recusal or Disqualification of Commission Members, Frequency of Examination and Related Entities respectively.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter A, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter A, §§97.101 - 97.103, 97.105 and 97.107 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100898
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter B, concerning Fees consisting of §§97.113 - 97.116 concerning Fees and Charges, Charges for Public Records, Reimbursement of Legal Expenses and Recovery of Costs for Extraordinary Services Not Related to an Examination, respectively.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter B, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter B, §§97.113 - 97.116 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100899
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter C, concerning Department Operations consisting of §§97.200, 97.205 - 97.207 concerning Employee Training Program, Use of Historically Underutilized Business, Posting of Certain Contracts: Enhanced Contracts and Performance Monitoring and Contracts for Professional or Personal Service, respectively.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter C, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter B, §§97.200, 97.205 - 97.207 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100900
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter D, concerning Gifts and Bequests consisting of §97.300 concerning Gifts of Money or Property.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter D, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter D, §97.300 in its entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100901
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter E, concerning Advisory Committees consisting of §97.401 concerning General Requirements.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter E, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter E, §97.401in its entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100902
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter F, concerning Rulemaking consisting of §97.500 and §97.501 concerning Petitions to Initiate Rulemaking Proceedings and Hearing on Proposed Rules, respectively.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter F, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter F, §97.500 and §97.501 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

TRD-202100903
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 8, 2021

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

Request for Proposals - Legal Services

REQUEST FOR QUALIFICATIONS/PROPOSALS

The Alamo Area Metropolitan Planning Organization (MPO) is seeking qualifications/ proposals for Legal Services.

The copy of the Request for Qualifications/Proposals (RFQ/P) may be obtained by downloading the RFQ/P from the MPO's website at *www.alamoareampo.org* or calling Isidro "Sid" Martinez, Executive Director, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 noon (CDT), Friday, April 16, 2021, to the MPO office at *aampo@alamoareampo.org.*

The MPO's Executive Committee will review the qualifications/proposals, and the contract award will be made by the MPO's Transportation Policy Board.

Funding is contingent upon the availability of Federal transportation planning funds.

TRD-202100941
Allison Blazosky
Transportation Planning Program Manager
Alamo Area Metropolitan Planning Organization
Filed: March 10, 2021

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State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Proposed Rule 1.17 (Sale of Law Practice), Texas Disciplinary Rules of Professional Conduct

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

Rule 1.17. Sale of Law Practice

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through May 4, 2021. Comments can be submitted at texasbar.com/cdrr or by email to cdrr@texasbar.com. The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on April 7, 2021. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment:

1. The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.04 (Professional Independence of a Lawyer) and 5.06 (Restrictions on Right to Practice).

Termination of Practice by the Seller

2. The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in an election for the office or resigns from a judiciary position.

3. The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

4. The Rule permits a sale of an entire practice when the lawyer leaves the geographical area of the practice.

5. This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.04(f). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

6. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to

substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

7. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.05 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

8. A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

9. All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

10. The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

11. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.01); the obligation to avoid disqualifying conflicts, and to secure the client's informed

consent for those conflicts that can be agreed to (see Rule 1.06 regarding conflicts and Rule 1.00 for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.05 and 1.09).

12. If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.15).

Applicability of the Rule

13. This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

14. Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

15. This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

TRD-202100924
Brad Johnson
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: March 9, 2021

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Brazos Valley Council of Governments

Public Notice Workforce Solutions Brazos Valley Board Request for Quotes for Available Commercial Space to Lease in Madisonville, Texas

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for lease of available commercial space in Madisonville, Texas for their workforce center. The lease for space RFQ can be downloaded at www.bvjobs.org or by request to Barbara Clemmons via email at bclemmons@bvcog.org.

The purpose of the RFQ is to solicit quotes for available commercial lease space to be used for the day-to-day operations for the workforce center in Madisonville, Texas.

The primary consideration in selecting a vendor will be their ability to provide a space to lease as specified in the RFQ.

The deadline for proposals will be 4:00 p.m. CST on March 30, 2021.

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for March 16, 2021, 10:00 AM CST. Attendance on the bidder's conference call is not mandatory. All answers to questions from the bidder's conference call will be posted at www.bvjobs.org by close of business on March 19, 2021.

Deadline for Questions: The Bidder's Conference Call will be held on **Tuesday, March 16, 2021, at 10:00 a.m. CST. The call in number is (979) 595-2802. If bidders cannot attend the bidder's conference call on March 16, 2021, they can submit their questions in writing concerning this RFQ to Barbara Clemmons at bclemmons@bvcog.org no later than March 18, 2021, 5:00 p.m. CST. Answers to all questions received will be posted to www.bvjobs.org no later than Friday, March 19, 2021, 5:00 p.m. CST.**

TRD-202100908
Barbara Clemmons
Program Specialist
Brazos Valley Council of Governments
Filed: March 8, 2021

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Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts published proposed amendments to 34 TAC §5.39 and §5.49 in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1604). Due to an error by the Texas Register, the proposed amendments to §5.39(e)(3)(B) and §5.49(a)(4) were published incorrectly. The text should read as follows:

34 TAC §5.39(e)(3)(B)

(B) "Effective [~~The effective~~] service date" [~~of an individual who accrued lifetime service credit during previous employments in hazardous duty positions~~] is determined by completing the following steps: [~~counting backwards from the first day of the individual's current continuous employment in a hazardous duty position. The~~

~~number of days to count backwards is equal to the individual's "number of days served," which is determined by counting each day of those employments. The individual accrues one full day of credit for any part of a day employed in a hazardous duty position.~~]

34 TAC §5.49(a)(4)

(4) Hazardous duty position--Has the meaning assigned by §5.39(a)(6) of this title (relating to Hazardous Duty Pay).

TRD-202100892

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/15/21 - 03/21/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/15/21 - 03/21/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202100922
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 9, 2021

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Texas Board of Professional Engineers and Land Surveyors

Request for Comment: Draft Response to Request for Policy Advisory Request Regarding the Extent of the Utilities Exemption in the Texas Engineering Practice Act

Policy Advisory Request No. 55

Re: Formal Response to Request for Policy Advisory Request Regarding The Extent of the Utilities Exemption in the Texas Engineering Practice Act

The Texas Board of Professional Engineers and Land Surveyors Policy Advisory Opinion Committee (Committee) met in public session on February 25, 2021, and approved this draft response for solicitation of public comment through the *Texas Register* and the Board's website to the referenced request dated September 16, 2020. Any comments on this draft should be submitted to the Board no later than April 19, 2021, via U.S. Mail to Texas Board of Professional Engineers and Land Surveyors, Attn: Michael Sims; 1917 S Interstate 35; Austin, Texas 78741 or via e-mail to pao@pels.texas.gov

Request:

Mr. Jose Castellanos with the Metropolitan Transit Authority of Harris County (METRO) seeks guidance on the following issues:

Does the exemption for Employees of Certain Utilities or Affiliates contained in the Texas Engineering Practice Act preclude a utility company from having to sign and seal engineering plans if sealed plans are requested by a public transportation agency?

Background:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act (the Act) [Texas Occupations Code, Chapter 1001] and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of the Act does not need to go through the full Policy Advisory process.

Based on your request, it is our understanding that METRO owns a transit corridor that is 500 feet wide and approximately 26 miles long. We further understand that METRO intends to one day build a light rail transit system within this corridor.

When utility or cable companies need to cross this corridor via underground or aerial crossings, METRO establishes lease agreements with the various companies. METRO further requires that the plans for such crossings be signed and sealed by a professional engineer licensed in the State of Texas. It is our understanding that a utility company has argued that Section 1001.058 of the Act, relating to Employees of Certain Utilities or Affiliates, exempts them from having to provide plans signed and sealed by a professional engineer.

For reference, Section 1001.058 of the Act states:

§1001.058. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES.

(a) A regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate is exempt from the licensing requirements of this chapter if the employee:

(1) performs services exclusively for the utility or affiliate; and

(2) does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications that are to be:

(A) incorporated into fixed works, systems, or facilities on the property of others; or

(B) made available to the public.

(b) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

Response:

Section 1001.058 of the Act exempts certain employees of utilities from the need to be licensed. Based on the scenario described in your request, it is our understanding that the employee of the utility submitting plans to METRO to cross its transit corridor would have ultimate responsibility for the engineering designs that are on METRO's property. As such, this employee would not meet the exemption requirements established in Section 1001.058(a)(2)(A) and would need to be licensed to provide these plans to METRO. Further, in accordance with Section 1001.401 of the Act, a licensed professional engineer is required to sign and seal final engineering works prior to releasing them from his or her control.

We further understand that METRO is establishing leases with the utility or cable companies prior to allowing them to access its property. A political subdivision can implement their own codes, ordinances, requirements, or lease conditions as long as they are not less restrictive than the requirements in the Act or Board rules. Such requirements could be added to local ordinances, franchise agreements or directly to the lease agreement. If the political subdivision requires signed and sealed design documents as part of their codes, ordinances, permitting process, franchise agreement, or other design requirements, then the

professional engineer working on behalf of the utility, as required by the political subdivision, must follow the practice requirements of the Texas Engineering Practice Act and board rules.

However, please keep in mind that if political subdivisions implement a requirement within their own codes, ordinances, permitting process, franchise agreement, or other design requirements for installation of these systems in their right of ways or transit corridors, they must not be less restrictive than the requirements in the Act or Board rules. As long as these codes, ordinances, or requirements are not less restrictive than the requirements in the Act or Board rules, the Board would have no additional jurisdiction over the content or enforcement of these codes, ordinances, or requirements that regulate installation of the systems. However, the Board does have jurisdiction over the practice of engineering and said practice, including any signed and sealed engineering document, must be done in a manner consistent with the Act and Board rules.

Conclusion:

No new Policy Advisory Opinion will be developed for this request.

TRD-202100896
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 8, 2021

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Request for Comment: Draft Response to Request for Policy Advisory Request Regarding Who is Eligible to Complete a Predominant Use Study Regarding the Use of Natural Gas or Electricity by a Business Entity

Policy Advisory Request No. 56

Re: Formal Response to Request for Policy Advisory Request Regarding Who is Eligible to Complete a Predominant Use Study Regarding the Use of Natural Gas or Electricity by a Business Entity

The Texas Board of Professional Engineers and Land Surveyors Policy Advisory Opinion Committee (Committee) met in public session on February 25, 2021, and approved this draft response for solicitation of public comment through the *Texas Register* and the Board's website to the referenced request dated September 16, 2020. Any comments on this draft should be submitted to the Board no later than April 19, 2021, via U.S. Mail to Texas Board of Professional Engineers and Land Surveyors, Attn: Michael Sims; 1917 S Interstate 35; Austin, Texas 78741 or via e-mail to pao@pels.texas.gov

Request:

The requestor seeks guidance on the following issues:

1. Are non-licensed engineering graduates from accredited colleges able to legally perform Predominant Use Studies for their employers as indicated in the Texas Comptroller of Public Accounts Rule §3.295?

2. Are non-licensed engineering graduates from accredited colleges precluded by the Texas Engineering Practice Act from performing Predominant Use Studies for firms they are not employed by?

3. Is an engineer performing, or offering to perform, a Predominant Use Study for a company the engineer is not employed by performing, or offering to perform, engineering services for the public?

4. Can a company offer to perform Predominant Use Studies if it is not a registered engineering firm and does not employ at least one-full time engineer?

5. Is it precluded by the Texas Engineering Practice Act, or at least misleading, for an engineer to stamp a Predominant Use Study that says it was performed by a company that is not a registered engineering firm, even if the engineer's registered engineering firm actually performed the work?

Background:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act (the Act) [Texas Occupations Code, Chapter 1001] and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of a statute or Board rule and does not need to go through the full Policy Advisory process.

For background, predominant use studies are discussed specifically in 34 Texas Administrative Code §3.295, relating to Natural Gas and Electricity. Contained in Title 34, relating to Public Finance, Part 1, relating to the Comptroller of Public Accounts, Chapter 3, relating to Tax Administration, Subchapter O, relating to State and Local Sales and Use Taxes of the Texas Administrative Code is 34 Texas Administrative Code §3.295.

Predominant use is not directly defined in the Comptroller's rules, but is discussed specifically in 34 Texas Administrative Code §3.295(f) - (g). Predominant use studies are conducted to determine the taxability of natural gas or electricity used by a business entity and the potential eligibility of sales tax exemptions. Please note that predominant use studies fall under the jurisdiction of the Office of the Comptroller of Public Accounts (Comptroller). As such, the mechanisms of how a predominant use study is conducted is outside of the Board's jurisdiction. Questions on the actual process of conducting a predominant use study should be directed to the Office of the Comptroller.

However, the referenced rules do stipulate who can conduct a predominant use study. Per 34 Texas Administrative Code §3.295(g)(1)(C), the kilowatt rating or BTU rating, duty factor, and electrical or natural gas computations of a predominant use study must be certified by a registered engineer or a person with an engineering degree from an accredited engineering college. Further, the owner of the business and the engineer must certify the study per 34 Texas Administrative Code §3.295(g)(1)(D).

While 34 Texas Administrative Code §3.295 allows predominant use studies to be completed by a registered engineer or a person with an engineering degree from an accredited engineering college (termed a "graduate engineer" under §1001.406 of the Act), the Act limits who is allowed to offer engineering services to the public in Texas.

Specifically, §1001.003 of the Act defines the practice of engineering as the performance or an offer to perform any public or private service or creative work which requires engineering education, training, and experience in applying special knowledge or judgement of the mathematical, physical, or engineering sciences to the service or creative work. Functions that constitute the practice of engineering in Texas, including consultation, evaluation, or performing an engineering survey or study. The completion of predominant use studies requires engineering education, training, and experience; and, if done for third-party clients, constitute the practice of engineering. As such, the completion of a predominant use study would be considered the practice of engineering.

Further §§1001.004(c)(2)(A) and 1001.301(a) require that only a person licensed as a professional engineer may engage in the practice of engineering in Texas. However, Subchapter B of the Act does allow for exemptions from this requirement, specifically if the person is not performing engineering services for the public. For example, the ex-

emption covers the activities of an employee of a private corporation or privately owned public utility when the employee is conducting engineering services only for his or her employer.

However, based on discussions with staff at the Comptroller's office, it is our understanding that the actual knowledge and skills needed to complete a predominant use study would not meet the definition of the "practice of engineering" as defined in the Act. According to the Comptroller's Office, a predominant use study involves gathering readily available data associated with the equipment, such as the BTU rating and duty factor. Further, this data is then only used in simple mathematical equations that could be completed by anyone. Special knowledge of mathematical, physical, or engineering sciences is not needed to complete the study.

Response:

Regarding your first two questions, while a graduate engineer or professional engineer are required to complete a predominant use study under the relevant rules promulgated by the Comptroller, the Board does not consider the completion of said studies to meet the definition of the practice of engineering. As such, a licensed professional engineer is not required to complete a predominant use study to be compliant with Board rules and the Board would not require these studies to be signed and sealed by a licensed professional engineer. Further, as the Board does not consider these studies to be the practice of engineering, and thus not subject to the Act, the firm registration requirements would also not be applicable.

Conclusion:

No new Policy Advisory Opinion will be developed for this request.

TRD-202100895
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 8, 2021

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Response to Request for Policy Advisory Request Regarding the Ability to Sign and Seal Modifiable Electronic Engineering Plans

Policy Advisory Request No. 50

Re: Response to Request for Policy Advisory Request Regarding the Ability to Sign and Seal Modifiable Electronic Engineering Plans

The Texas Board of Professional Engineers and Land Surveyors Policy Advisory Opinion Committee (Committee) met in public session on February 25, 2021, and approved this response.

Request:

Mr. Guillermo Guerrero, P.E. with Burns & McDonnell seeks guidance on the following issues:

1. Does the Board consider digital model-based systems as a form of electronic engineering work?

2. Can a digital model-based system be used to replace in its entirety, or supplement in part, a paper-based system?

3. For digital model-based systems, can sealing requirements be satisfied by sealing the Transmittal sheet used to transmit the model?

Background:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act (the Act) and Board Rules to address specific questions. Consistent with the requirements of the Texas Engineering Practice Act, Subchapter M, relating to Advisory Opinions, the Committee reviewed this request and determined to accept it as Policy Advisory Opinion on May 23, 2019. The Committee directed Board staff to further study the issues in the request and form a workgroup to gather stakeholder input. The workgroup consisted of approximately 20 individuals and met three times in January, July, and November 2020. Based on feedback from the workgroup, the Board offers the following response.

Response:

The answer to the first two questions is addressed in the Act. The Board does consider digital model-based systems to fall under the definition of the practice of engineering as found in Section 1001.003 of the Act, relating to the Practice of Engineering. Since the Act is silent on the exact format engineering work takes, a digital model-based system is an acceptable method to transmit engineering work, as is a paper-based system. Digital models should be signed and sealed as any other engineering work should be.

The third question is not clearly addressed by the Act or Board rules. The current signing and sealing rules were written with traditional paper or PDF type files in mind, not a large electronic file or digital model. The current rules do not specifically address the methodology to seal a large, modifiable file or set of files. The Board recognizes that there are many electronic programs or packages used to generate models, files, or other digital engineering work and that technology changes very quickly. It is also not the role of the Board to endorse or require any specific software package or vendor as part of its rules or policies. Therefore, the Board offers the following performance standards to consider when sealing and transmitting a large electronic file.

When transmitting a file or software package as the engineering work product, the engineer shall ensure the file meets the following criteria, each of which will be discussed in more detail below:

--The design professional's identity is clearly indicated and confirmable.

--The version of the file being sealed is identified and saved.

--All responsible parties and design professionals are clearly identified.

--Consideration has been given to address tracking of modifications.

The Design Professional's Identity is Indicated and Confirmable

The purpose of an engineer's signature and seal is to convey to all parties that the work product is final, compliant with all applicable regulations and codes, and has been created in a manner consistent with generally accepted principles of the engineering profession. Further, the signature and seal communicates that the sealed work product was done either by the sealing engineer or under his or her direct supervision. Lastly, the engineer's seal provides a unique identifier that allows interested parties to identify and locate the design professional when needed. Ideally, the signature and seal will be embedded somewhere in the electronic file itself. However, we understand that such a process may not be readily available with many engineering design software packages. If you are unable to embed a seal and signature, a transmittal sheet that is signed and sealed that notates the unique version of the model that is being sealed is an acceptable alternative until such time the software allows the embedding of seal and signature.

Version Control

If you decide to transmit an electronic file as your engineering work product, care must be taken to be able to readily identify the exact version of the file that is being signed and sealed. Possible methods to identify the signed and sealed version include notating the date and

time the sealed file was saved, the file size, a unique version number or through other security methods including hashing or block chain. By identifying the version that was signed and sealed, the responsible design professional can clearly identify any subsequent changes to the file that were not part of the signed and sealed version. Any engineering modifications after the signed and sealed version would not be considered official unless they are signed and sealed by a licensed professional engineer. Further, if an unlicensed person made modifications and tried to reissue the file, it would be identifiable, and the Board could investigate the matter for the potential unlicensed practice of engineering. Lastly, a copy of the signed and sealed version should be maintained by the responsible party to address any complaints or compliance questions.

Responsible Parties

If multiple design professionals work on a project that is transmitted as an electronic file, the identity of the design professional and which part of the design he or she responsible for should be indicated and embedded in the file. Similar to the seal and signature, if the software does not allow this information to be directly embedded in the electronic file, it can be captured on a transmittal memo until such time the software allows for the embedding of this information.

Modification Tracking and Notification

The electronic file and software should be capable of tracking modifications or indicating that changes have been made to the original work product. If a change has been made, subsequent design professionals would need to either sign and seal the modifications, or if the revisions necessitated changes outside of his or her area of expertise, to notify the original design professional to review the changes. Note, this responsibility is on the subsequent design professional, not the original designer. The original designer is not responsible for any modification made to his or her signed and sealed design, but should be aware that follow-up from subsequent design professional may become necessary. An example of this circumstance is an electrical engineer needing to make a tweak to a signed and sealed design that would necessitate a structural design change to the building. If the electrical engineer does not have the expertise to evaluate the structural change, the electrical engineer should contact the structural engineer who originally signed and sealed the design to review the change.

Stakeholder Feedback

To solicit feedback from stakeholders and interested parties, the Board published a draft version of this response in December 2020 in both the *Texas Register* and on the Board's website for a 30-day comment period. No comments were received.

Summary

The Board recognizes that technology evolves quickly and as a result, the method of transmitting engineering designs is also evolving. This Policy Advisory is intended to provide guidance to professional engineers that wish to transmit their work through electronic files. The Board will continue to monitor technological advances and will update this guidance as needed.

TRD-202100894

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Filed: March 8, 2021

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 19, 2021.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **April 19, 2021.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Ahern Rentals, Incorporated; DOCKET NUMBER: 2020-0904-PST-E; IDENTIFIER: RN102853066; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; PENALTY: $2,516; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Bell County Water Control and Improvement District Number 2; DOCKET NUMBER: 2020-1271-MWD-E; IDENTIFIER: RN101610491; LOCATION: Little River Academy, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011090001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Bison Drilling and Field Services LLC; DOCKET NUMBER: 2020-1221-PWS-E; IDENTIFIER: RN106652894; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for

nitrate; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the July 1, 2019 - December 31, 2019, monitoring period; PENALTY: $1,925; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: Brazoria County Conservation and Reclamation District Number 3; DOCKET NUMBER: 2020-1243-WQ-E; IDENTIFIER: RN111063426; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $938; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Georgetown; DOCKET NUMBER: 2020-1321-MWD-E; IDENTIFIER: RN102917242; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010489003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $8,775; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: Corbet Water Supply Corporation; DOCKET NUMBER: 2020-1200-PWS-E; IDENTIFIER: RN101438760; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection for Pressure Plane Numbers 3 and 5; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; and 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tanks at least once every five years; PENALTY: $3,325; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Corix Utilities (Texas) Incorporated; DOCKET NUMBER: 2020-1234-PWS-E; IDENTIFIER: RN101204055; LOCATION: Colorado City, Mitchell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; PENALTY: $5,006; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Coryell City Water Supply District; DOCKET NUMBER: 2020-1207-PWS-E; IDENTIFIER: RN102682937; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of each of the facility's two wells; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's five pressure tanks annually; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well in accordance with 16 TAC Chapter 76 or submit test results proving that the wells are in a non-deteriorated condition; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $20,930; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Elliott Oil & Gas Operating Company; DOCKET NUMBER: 2020-1277-AIR-E; IDENTIFIER: RN111008108; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: natural gas processing facility; RULES VIOLATED: 30 TAC §101.221(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all pollution emission capture equipment and abatement equipment in good working order and operated properly during facility operations; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $6,875; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Falls Transport LLC; DOCKET NUMBER: 2020-1298-PST-E; IDENTIFIER: RN109459347; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,005; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Khurram Adnan dba Store T 24 4; DOCKET NUMBER: 2020-1291-PST-E; IDENTIFIER: RN102395936; LOCATION: DeSoto, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met;

30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, and catchment basins of an UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $10,988; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Pharith Ang dba Poplar Superette; DOCKET NUMBER: 2020-1233-PST-E; IDENTIFIER: RN102050101; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,163; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Rock Solid Precast, LP; DOCKET NUMBER: 2020-1241-AIR-E; IDENTIFIER: RN110370574; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: concrete manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 151486, General Conditions (GC) Number (9), Amendments to the Air Quality Standard Permit for Concrete Batch Plants, Special Conditions (SC) Number (5)(D), and THSC, §382.085(b), by failing to install an automatic shut-off or warning device on the storage silos; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 151486, GC Number (10), Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Number (5)(E), and THSC, §382.085(b), by failing to water, treat with dust-suppressant chemicals, oil, or pave and clean all permanent in-plant roads and vehicle work areas to achieve maximum control of dust emissions; and 30 TAC §116.115(c) and §116.615(8), Standard Permit Registration Number 151486, GC Number (8), Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Number (3)(J)(ix), and THSC, §382.085(b), by failing to maintain records for the quarterly visible emissions observations; PENALTY: $14,627; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: S & M Retail, Corp dba Payless Fuel Center of Mesquite; DOCKET NUMBER: 2020-1290-PST-E; IDENTIFIER: RN102428448; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Snell Motor Company, Incorporated dba Snell Collision Center; DOCKET NUMBER: 2020-1266-PST-E; IDENTIFIER: RN100678077; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated UST; PENALTY: $2,481; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Texas Juvenile Justice Department; DOCKET NUMBER: 2020-1203-PST-E; IDENTIFIER: RN101541654; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 676-7487; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: voestalpine Texas LLC; DOCKET NUMBER: 2020-1303-IWD-E; IDENTIFIER: RN106597875; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: direct-reduced iron/hot-briquetting iron facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0005097000, Outfall Numbers 001 and 101, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), §319.5(b), and TPDES Permit Number WQ0005097000, Outfall Number 101, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: $9,301; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(18) COMPANY: Walnut Creek Special Utility District; DOCKET NUMBER: 2020-1285-PWS-E; IDENTIFIER: RN101190056; LOCATION: Springtown, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: YES Management, LLC; DOCKET NUMBER: 2020-1286-PWS-E; IDENTIFIER: RN101284925; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90200390 for Fiscal Year 2020; and 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent level of 15 color units for color or receive written approval from the executive director to use the water source for public drinking water; PENALTY: $165; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: ZRPRASLA INCORPORATED dba Friendly Food Mart; DOCKET NUMBER: 2020-1219-PST-E; IDENTIFIER: RN101672285; LOCATION: Plantersville, Grimes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release of a regulated substance within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm a suspected release of a regulated substance requiring reporting under 30 TAC §334.72 within 30 days of discovery; PENALTY: $25,901; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202100920
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 9, 2021

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Enforcement Orders

An agreed order was adopted regarding Carolina E. Morales and Claudia E. Morales dba Quail Run Mobile Home Park, Docket No. 2019-1345-PWS-E on March 9, 2021, assessing $367 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clarksville Quick Corporation dba Quick Track #23, Docket No. 2019-1615-PST-E on March 9, 2021, assessing $2,438 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Starr Transportation Corp., Docket No. 2020-0296-MSW-E on March 9, 2021, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100927
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2021

♦ ♦ ♦

NOTICE OF HEARING QUADVEST, L.P.: SOAH Docket No. 582-21-1513; TCEQ Docket No. 2020-1560-MWD; Permit No. WQ0015825001

APPLICATION. Quadvest, L.P., 26926 Farm-to-Market Road 2978, Magnolia, Texas 77354, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015825001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. TCEQ received this application on October 1, 2019.

The facility will be located at 0.9 mile north of the intersection of Cypress Rosehill Road and Farm-to-Market Road 2920, in Harris County, Texas 77377. The treated effluent will be discharged directly to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) Section §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Spring Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.698055%2C30.098611&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Malcolm Purvis Library, 510 Melton Street, Magnolia, in Montgomery County, Texas and at the Northwest Branch Library, 11355 Regency Green Drive, Cypress, in Harris County, Texas.

CONTESTED CASE HEARING. Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - April 15, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/j/1611896796?pwd=bTBOUTcvc0puVld2M0ZBY0xBY0Ntdz09

Meeting ID: 161 189 6796

Password: 6U224C

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 161 189 6796

Password: 190810

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on February 1, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION. If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

Further information may also be obtained from Quadvest, L.P. at the address stated above or by calling Mr. Mark Urback, P.E., at (281) 356-5347.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: March 4, 2021

TRD-202100926
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2021

♦ ♦ ♦

Notice of Informational Meeting on an Air Quality Standard Permit for Permanent Rock and Concrete Crushers: Proposed Air Quality Registration Number 163301

APPLICATION. West Texas Aggregate LLC, P.O. Box 60788, Midland, Texas 79711-0788 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration Number 163301, which would authorize construction of a permanent rock and concrete crusher. The facility is proposed to be located at the following driving directions: from the intersection of Al Mooney Rd. and SH-27 (Memorial Blvd.), go south on SH-27 for approximate 0.6 miles. Site entrance will be on the right, Kerrville, Kerr County, Texas 78028. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.964254&lng=-99.085756&zoom=13&type=r. This application was submitted to the TCEQ on November 13, 2020. The executive director determined the application was technically complete on November 30, 2020.

The executive director shall approve or deny the application not later than 30 days after the end of the public comment period, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit. The comment period for this project has been extended to April 6, 2021, at 5:00 p.m.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ San Antonio Regional Office, located at 14250 Judson Road, San Antonio, Texas 78233-4480, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

The TCEQ will conduct an informational meeting to answer questions and discuss the application. Formal comments will not be taken at the informational meeting. The meeting will be held:

Tuesday, April 6, 2021, at 7:00 p.m.

Members of the public who would like to ask questions during the meeting may access the meeting via webcast by following this link: *https://www.gotomeeting.com/webinar/join-webinar* and entering Webinar ID 973-000-523. It is recommended that you join the webinar and register for the public informational meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (562) 247-8422 and enter access code 386-933-237. Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. General information can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from West Texas Aggregate LLC, P.O. Box 60788, Midland, Texas 79711-0788, or by calling Mrs. Lacretia White REM, Project Manager at (972) 768-9093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

TRD-202100890
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 4, 2021

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Danam Enterprises Inc. dba Hildebrand Grocery: SOAH Docket No. 582-21-1500; TCEQ Docket No. 2018-0728-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - April 15, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 10, 2019 concerning

assessing administrative penalties against and requiring certain actions of DANAM ENTERPRISES INC. dba Hildebrand Grocery, for violations in Bexar County, Texas, of: Texas Water Code § 26.3475(c)(1) and (d) and 30 Texas Administrative Code §§334.49(a)(2), (a)(4), (c)(2)(C), (c)(4), 334.50(b)(1)(A), (d)(9)(A)(V), 334.72, 334.74, and 334.606.

The hearing will allow DANAM ENTERPRISES INC. dba Hildebrand Grocery, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford DANAM ENTERPRISES INC. dba Hildebrand Grocery, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of DANAM ENTERPRISES INC. dba Hildebrand Grocery to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.**

DANAM ENTERPRISES INC. dba Hildebrand Grocery, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054, Tex. Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: March 9, 2021

TRD-202100925
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2021

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Notice of Water Rights Application

Notice Issued March 05, 2021

APPLICATION NO. 13727; El Paso Water Utilities Public Service Board, 1154 Hawkins Blvd., El Paso, Texas 79925, Applicant, has applied for a water use permit to authorize the modification and maintenance of a dam and reservoir on an unnamed tributary of the Rio Grande, Rio Grande Basin for flood control purposes in El Paso County. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application was received on March 17, 2020. Additional information and fees were received on March 18, March 19, September 11, and September 17, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 28, 2020.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief

Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13727 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202100904
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2021

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Texas Health and Human Services Commission

Public Notice: Texas State Plan for Medical Assistance Amendment effective April 1, 2021

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2021.

The purpose of the amendment is to update fee schedules in the current state plan by adjusting fees, rates, or charges for Family Planning Services.

The proposed amendment is estimated to result in an annual aggregate expenditure of $24,410 for federal fiscal year (FFY) 2021, consisting of $21,355 in federal funds and $3,055 in state general revenue. For FFY 2022, the estimated result is an annual aggregate expenditure of $45,826, consisting of $40,089 in federal funds and $5,737 in state general revenue. For FFY 2023, the estimated result is an annual aggregate expenditure of $45,034, consisting of $39,395 in federal funds and $5,639 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at: *http://rad.hhs.texas.gov/rate-packets.*

Rate Hearing. A rate hearing was conducted online on February 5, 2021, at 9:00 a.m. Information about the proposed rate changes and the hearing were published in the January 29, 2021 issue of the *Texas Register* (46 TexReg 871). The notice of hearing can be found at *http://www.sos.state.tx.us/texreg/index.shtml.*

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at *Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us.* Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail Texas Health and Human Services Commission Attention: Provider Finance, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery Texas Health and Human Services Commission Attention: Provider Finance, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd, Austin, Texas 78751. Phone number for package delivery: (512) 730-7401

Fax Attention: Provider Finance at (512) 730-7475

Email *PFDAcuteCare@hhs.texas.gov*

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202100905
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 8, 2021

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Department of State Health Services

Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by John Hellerstedt, M.D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Unit, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.texas.gov/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

-Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts are possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
(2) Acetylmethadol;
(3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Other name: acryloylfentanyl);
(5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino) cyclohexymethyl]benzamide);
(6) Allylprodine;
(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);
(8) α-Methylfentanyl or any other derivative of fentanyl;

(9) α-Methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] *N*-phenylpropanamide);
(10) Benzethidine;
(11) β-Hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
(12) β-Hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
(13) β-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide; *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide);
(14) Betaprodine;
(15) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(16) Clonitazene;
*(17) Crotonyl fentanyl (Other name: (6-2-5) (E)-N-(1-Phenethylpiperidin-4-yl)-N-phenylbut-2-enamide);
(18) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide);
(19) Diampromide;
(20) Diethylthiambutene;
(21) Difenoxin;
(22) Dimenoxadol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *p*-fluoroisobutyryl fentanyl);
(30) Furanyl fentanyl (*N*-(1-phenethylpiperdin-4-yl)-*N*-phenylfuran-2-carboxamide);
(31) Furethidine;
(32) Hydroxypethidine;
(33) Ketobemidone;
(34) Levophenacylmorphan;
(35) Meprodine;
(36) Methadol;
(37) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(38) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
(39) 3-Methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(40) Moramide;
(41) Morpheridine;
(42) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(43) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
(44) Noracymethadol;
(45) Norlevorphanol;

substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

7. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.05 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

8. A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

9. All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

10. The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

11. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.01); the obligation to avoid disqualifying conflicts, and to secure the client's informed

(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-*N*-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine; and
(24) Thebacon.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) α-Ethyltryptamine (Other names: etryptamine; Monase; α-ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; AET);
(2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5- dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA);
(3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α-desmethyl DOB);
(4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA);
(5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);
(6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);
(7) 4-Methoxyamphetamine (Other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine; PMA);
(8) 5-Methoxy-3,4-methylenedioxyamphetamine (Other names: MMDA);
(9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy-α-methyl-phenethylamine; "DOM";"STP");
(10) 3,4-Methylenedioxyamphetamine (Other names: MDA; Love Drug);
(11) 3,4-Methylenedioxymethamphetamine (Other names: MDMA; MDM; Ecstasy; XTC);
(12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl-α-methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);
(13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other names: *N*-hydroxy MDA);
(14) 3,4,5-Trimethoxyamphetamine (Other names: TMA);

(15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole, 5-MeO-DMT);

(16) α-Methyltryptamine (Other name: AMT), its isomers, salts, and salts of isomers;

(17) Bufotenine (Other names: 3-β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6-β-7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga);

(22) Lysergic acid diethylamide;

(23) Marihuana.

The term marihuana does not include hemp, as defined in Title 5, Agriculture Code, Chapter 121.

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) *N*-ethyl-3-piperidyl benzilate;

(28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

*(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), except for up to 0.3 percent delta-9-tetrahydrocannabinols in hemp (as defined under Texas Agriculture Code 121), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenyl-cyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);

(37) 3,4-methylenedioxypyrovalerone (MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name:2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);

(47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);

(48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48);

(51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

(54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

(56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

*(58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, except for extracts derived from hemp (as defined under Texas Agriculture Code 121) containing up to 0.3% delta-9-tetrahydrocannabinol on a dry weight basis, other than separated resin (whether crude or purified) obtained from the plant;

(59) 4-Methyl-*N*-ethylcathinone (4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (4-MePPP);

(61) α-Pyrrolidinopentiophenone ([α]-PVP);

(62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);

(63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);

(64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);

(65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);

(66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);

(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);

(68) α-Pyrrolidinobutiophenone (Other name: [α]-PBP);

(69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);

(70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);

(71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);

(72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (Other name: MPTP);

(73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexyl-methyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA, ABD-CHMINACA);

*(74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB, 5F-MDMB-PINACA);

*(75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-caboxamido)-3-methylbutanoate (Other name: 5F-AMB);

*(76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);

*(77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);

*(78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);

*(79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA); and

*(80) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA).

-Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
(2) Mecloqualone; and
(3) Methaqualone.

-Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);
(2) *N*-Benzylpiperazine (Other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;
(3) Cathinone (Other names: 2-amino-1-phenyl-1-propanone; α-aminopropiophenone; 2-aminopropiophenone; norephedrone);
(4) Fenethylline;
(5) Methcathinone (Other names: 2-(methylamino)-propiophenone; α-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; α-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; UR1432);
(6) 4-Methylaminorex (Other names: U4Euh; McN-422);
(7) *N*-Ethylamphetamine; and
(8) *N,N*-Dimethylamphetamine (Other names: *N,N*-α-trimethylbenzene-ethaneamine; *N,N*-α-trimethylphenethylamine).

-Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of

isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-Hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

(1-2) 3-(1-Naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

(1-3) 3-(1-Naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

(1-4) 1-(1-Naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent; and,

(1-5) 3-Phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-Dimethylheptyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other name: CP-47,497);

(3) 5-(1,1-Dimethyloctyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol, CP-47,497 C8 homolog);

(4) 1-Pentyl-3-(1-naphthoyl)indole (Other names: JWH-018; AM678);

(5) 1-Butyl-3-(1-naphthoyl)indole (Other name: JWH-073);

(6) 1-Hexyl-3-(1-naphthoyl)indole (Other name: JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other name: JWH-200);

(8) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (Other name: JWH-250);

(9) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other name: JWH-081);

(10)1-Pentyl-3-(4-methyl-1-naphthoyl)indole (Other name: JWH-122);

(11)1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other name: JWH-398);

(12) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (Other name: AM2201);

(13) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (Other name: AM694);

(14) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19, RCS-4);

(15) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18;RCS-8); and

(16) 1-Pentyl-3-(2-chlorophenylacetyl)indole (Other name: JWH-203).

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

*(1) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);
*(2) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);
*(3) *N*-(4-Chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);
*(4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);
*(5) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);
(6) Fentanyl-related substances.

(6-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(6-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(6-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(6-1-5) Replacement of the *N*-propionyl group by another acyl group.

(6-2) This definition includes, but is not limited to, the following substances:

(6-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

(6-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name:*o*-methyl acetylfentanyl);

(6-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl); and,

(6-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl).

*(7) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

*(8) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

*(9) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

*(10) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

*(11) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

*(12) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

(13) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

(14) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

(15) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));

(16) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(17) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

(18) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(19) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(20) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(21) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(22) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

(23) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one); and,

*(24) *N*,*N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: isotonitazene; *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine)

SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:
(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemedine, naloxegol, naloxone and its salts, *6β-naltrexol, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine (Other names: Morphine methyl ester; methyl morphine);
(1-2) Dihydroetorphine (Other name: DHE);
(1-3) Ethylmorphine (Other name: Dionin);
(1-4) Etorphine hydrochloride (Other names: Etorphine HCl; M99);
(1-5) Granulated opium;
(1-6) Hydrocodone (Other name: dihydrocodeinone);
(1-7) Hydromorphone (Other names: Dilaudid; dihydromophinone);
(1-8) Metopon;
(1-9) Morphine (Other names: MS Contin; Roxanol; Oramorph; RMS; MSIR);
(1-10) Noroxymorphone;
(1-11) Opium extracts;
(1-12) Opium fluid extracts;
(1-13) Oripavine;
(1-14) Oxycodone (Other names: OxyContin; Percocet; Endocet; Roxicodone; Roxicet);
(1-15) Oxymorphone (Other name: Numorphan);
(1-16) Powdered opium;
(1-17) Raw opium (Other name: gum opium);
(1-18) Thebaine; and
(1-19) Tincture of opium (Other name: Laudanum).
(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw;
(4) Cocaine, including:
(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;
(4-2) Coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:
(4-2-1) Decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or
(4-2-2) Ioflupane.
(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Schedule II opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil (Other name: Alfenta);
(2) Alphaprodine (Other name: Nisentil);
(3) Anileridine (Other name: Leritine);
(4) Bezitramide (Other name: Burgodin);
(5) Carfentanil (Other name: Wildnil);
(6) Dextropropoxyphene, bulk (nondosage form) (Other name: Propoxyphene);
(7) Dihydrocodeine (Other names: Didrate; Parzone);
(8) Diphenoxylate;
(9) Fentanyl (Other names: Duragesic; Oralet; Actiq; Sublimaze; Innovar);
(10) Isomethadone (Other name: Isoamidone);
(11) Levo-alphacetylmethadol (Other names: levo-α-acetylmethadol; levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone (Other names: Dolophine; Methadose; Amidone);
(16) Methadone Intermediate (Other name: 4-cyano-2-dimethylamino-4,4-diphenyl butane);
(17) Moramide Intermediate (Other name: 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid);
*(18) Oliceridine (Other name: N-[(3-methoxythiophen-2-yl)methyl] ({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl})amine fumarate)
(19) Pethidine (meperidine);
(20) Pethidine Intermediate-A (Other name: 4-cyano-1-methyl-4-phenylpiperidine);
(21) Pethidine Intermediate-B (Other name: ethyl-4-phenylpiperidine-4-carboxylate);
(22) Pethidine Intermediate-C (Other name: 1-methyl-4-phenylpiperidine-4-carboxylic acid);
(23) Phenazocine (Other names: Narphen; Prinadol);
(24) Piminodine;
(25) Racemethorphan;
(26) Racemorphan (Other name: Dromoran);
(27) Remifentanil (Other name: Ultiva);
(28) Sufentanil (Other name: Sufenta;
(29) Tapentadol; and
(30) Thiafentanil (Other name: methyl 4-(2-methoxy-*N*-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

- **Schedule II stimulants**

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;
(3) Methylphenidate and its salts;
(4) Phenmetrazine and its salts; and
(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

-Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;
(2) Glutethimide;
(3) Pentobarbital; and
(4) Secobarbital.

-Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-t*rans*-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9*H*-dibenzo[b,d]pyran-9-one); and

(2) Dronabinol in oral solution in drug products approved for marketing by the U.S. Food and Drug Administration.

-Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:
  (1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;
(2) Immediate precursor to amphetamine and methamphetamine:
  (2-1) Phenylacetone (Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);
(3) Immediate precursors to phencyclidine (PCP):
  (3-1) 1-phenylcyclohexylamine;
  (3-2) 1-piperidinocyclohexanecarbonitrile (PCC); and

(4) Immediate precursor to fentanyl:
(4-1) 4-anilino-N-phenethylpiperidine (ANPP).

SCHEDULE III

Schedule III consists of:

-Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) A compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;
(2) A suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the U.S. Food and Drug Administration for marketing only as a suppository;
(3) A substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;
(4) Chlorhexadol;
(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food Drug and Cosmetic Act.
(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
(7) Lysergic acid;
(8) Lysergic acid amide;
(9) Methyprylon;
(10) Perampanel, and its salts, isomers, and salts of isomers;
(11) Sulfondiethylmethane;
(12) Sulfonethylmethane;
(13) Sulfonmethane; and,
(14) Tiletamine and zolazepam or any salt thereof. (Some trade or other names for a tiletamine zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8 trimethyl-pyrazolo[3,4-e][1,4] diazepin-7(1H)-one, flupyrazapon.)

-Schedule III

(1) Nalorphine.

-Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) A material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-4) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-6) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

-Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine.

-Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) Androstanediol--

(1-1) 3β,17β-dihydroxy-5α-androstane;

(1-2) 3α,17β-dihydroxy-5α-androstane;

(2) Androstanedione (5α-androstan-3,17-dione);

(3) Androstenediol--

(3-1) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

(3-2) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

(3-3) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(4) Androstenedione--

(4-1) 1-androstenedione (5α-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) Bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(6) Boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

(7) Boldione (androsta-1,4-diene-3,17-dione);

(8) Calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(9) Clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

(10) Dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one);

(11) Δ-1-Dihydrotestosterone (17β-hydroxy-5α-androst-1-en-3-one) (Other Name: 1-testosterone);

(12) Desoxymethyltestosterone (17α-methyl-5α-androst-2-en-17β-ol; madol);

(13) 4-Dihydrotestosterone (17β-hydroxy-androstan-3-one);

(14) Drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

(15) Ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

(16) Fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

(17) Formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

(18) Furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(19) 13β-Ethyl-17β-hydroxygon-4-en-3-one;

(20) 4-Hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

(21) 4-Hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

(22) Mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

(23) Mesterolone (1α-methyl-17β-hydroxy-5α-androstan-3-one);

(24) Methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

(25) Methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

(26) Methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

(27) 17α-Methyl-3β, 17β-dihydroxy-5α-androstane;
(28) Methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one);
(29) 17α-Methyl-3α,17β-dihydroxy-5α-androstane;
(30) 17α-Methyl-3β,17β-dihydroxyandrost-4-ene;
(31) 17α-Methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);
(32) Methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);
(33) 17α-Methyl-17β-hydroxyestra-4,9-11-trien-3-one;
(34) Methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);
(35) Mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);
(36) 17α-Methyl-delta-1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (Other name: 17α -methyl-1-testosterone);
(37) Nandrolone (17β-hydroxyestr-4-en-3-one);
(38) Norandrostenediol--
(38-1) 19-Nor-4-androstenediol (3β,17β-dihydroxyestr-4-ene);
(38-2) 19-Nor-4-androstenediol (3α,17β-dihydroxyestr-4-ene);
(38-3) 19-Nor-5-androstenediol (3β,17β-dihydroxyestr-5-ene);
(38-4) 19-Nor-5-androstenediol (3α,17β-dihydroxyestr-5-ene);
(39) Norandrostenedione--
(39-1) 19-Nor-4-androstenedione (estr-4-en-3,17-dione);
(39-2) 19-Nor-5-androstenedione (estr-5-en-3,17-dione;
(40) 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
(41) Norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);
(42) Norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);
(43) Norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);
(44) Normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);
(45) Oxandrolone (17α-methyl-17β-hydroxy-2-oxa-5α-androstan-3-one);
(46) Oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);
(47) Oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-5α-androstan-3-one);
(48) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole);
(49) Stanozolol (17α-methyl-17β-hydroxy-5α-androst-2-eno[3,2-c]-pyrazole);
(50) Stenbolone (17β-hydroxy-2-methyl-5α-androst-1-en-3-one);
(51) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
(52) Testosterone (17β-hydroxyandrost-4-en-3-one);
(53) Tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one);
(54) Trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and
(55) any salt, ester, or ether of a drug or substance.

-Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[b,d]pyran-1-ol; (-)-Δ-9-(*trans*)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances or any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alfaxalone (5α-pregnan-3α-ol-11,20-dione);
(2) Alprazolam;
(3) Barbital;
(4) Brexanolone (3α-hydroxy-5α-pregnan-20-one) (Other name: allopregnanolone);
(5) Bromazepam;
(6) Camazepam;
(7) Chloral betaine;
(8) Chloral hydrate;
(9) Chlordiazepoxide;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Dichloralphenazone;
(18) Estazolam;
(19) Ethchlorvynol;
(20) Ethinamate;
(21) Ethyl loflazepate;
(22) Fludiazepam;
(23) Flunitrazepam;
(24) Flurazepam;
(25) Fospropofol;

(26) Halazepam;
(27) Haloxazolam;
(28) Ketazolam;
*(29) Lemborexant;
(30) Loprazolam;
(31) Lorazepam;
(32) Lormetazepam;
(33) Mebutamate;
(34) Medazepam;
(35) Meprobamate;
(36) Methohexital;
(37) Methylphenobarbital (mephobarbital);
(38) Midazolam;
(39) Nimetazepam;
(40) Nitrazepam;
(41) Nordiazepam;
(42) Oxazepam;
(43) Oxazolam;
(44) Paraldehyde;
(45) Petrichloral;
(46) Phenobarbital;
(47) Pinazepam;
(48) Prazepam;
(49) Quazepam;
*(50) Remimazolam;
(51) Suvorexant;
(52) Temazepam;
(53) Tetrazepam;
(54) Triazolam;
(55) Zaleplon;
(56) Zolpidem; and
(57) Zopiclone.

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);
(10) Phentermine;
(11) Pipradrol;
(12) Sibutramine;
(13) Solriamfetol ((*R*)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β-amino-carbamate (ester));
and
(14) SPA [1-dimethylamino-1,2-diphenylethane].

-Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
(2) Dextropropoxyphene (α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane); and
(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (other name: tramadol).

-Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;
(2) Carisoprodol;
(3) Eluxadoline (other name: 5-[[[(2*S*-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1*S*)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;
(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and
(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

-Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

-Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names; BRV; UCB-34714; Briviact);
*(2) Cenobamate [(1R-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate;
(3) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;
(4) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-proprionamide];
*(5) Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl-benzamide]; and
(6) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-202100928

Barbara L. Klein
General Counsel
Department of State Health Services
Filed: March 9, 2021

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2021-2 Special Purpose Notice of Funding Availability (NOFA): Predevelopment

i. Summary

The Texas Department of Housing and Community Affairs (Department) announces availability of up to $200,000 for grants of up to $50,000 per eligible applicant for reimbursement of eligible costs incurred through eligible predevelopment activities undertaken in preparation for developing affordable housing under 10 TAC Chapter 11 (Housing Tax Credit Program Qualified Allocation Plan) or 10 TAC Chapter 13 (Multifamily Direct Loan Rule).

ii. Eligible Applicants

To be eligible, Applicants must be private nonprofit organizations designated as 501(c)3 or 501(c)4 under the Internal Revenue Code. Eligibility is further limited to organizations and affiliates that have not received an award of funds from the Department for a multifamily development after January 1, 2011, or a predevelopment grant under the 2019-2 or 2020-4 Special Purpose Notice of Funding Availability.

iii. Eligible Predevelopment Activities and Costs

To be eligible, activities and costs must be necessary in order to ultimately submit an Application for funding under 10 TAC Chapter 11 or 10 TAC Chapter 13, and may include, without limitation, Third Party Reports, accounting fees, architectural and engineering fees, zoning change fees, land surveys, and fees related to obtaining site control, such as earnest money or extension fees). Internal costs of operation are not eligible for reimbursement, nor are consultant fees and other fees and costs incurred in preparing an Application.

iv. Application Deadline and Availability

Applications will be accepted from March 1, 2021, through August 31, 2021, and will be prioritized based on the business day of receipt. Applications materials are available on the Department's website at:

https://www.tdhca.state.tx.us/multifamily/nofas-rules.htm; and https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm.

Questions regarding the 2021 Multifamily Direct Loan Annual NOFA may be addressed to Charlotte Flickinger at (512) 475-0538 or charlotte.flickinger@tdhca.state.tx.us.

TRD-202100893
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 5, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2340 "CASINO MILLIONS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2340 is "CASINO MILLIONS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2340 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2340.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $100, $200, $500, $1,000, $10,000 and $5,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2340 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
5X SYMBOL	WINX5

10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$5,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2340), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2340-0000001-001.

H. Pack - A Pack of the "CASINO MILLIONS" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASINO MILLIONS" Scratch Ticket Game No. 2340.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASINO MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-one (81) Play Symbols. BONUS PLAY AREAS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. GAMES 1 - 5 PLAY AREAS: In each GAME, if the player matches any of the YOUR NUMBERS Play Symbols to the DEALER'S NUMBER Play Symbol, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. EACH GAME IS PLAYED SEPARATELY. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-one (81) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-one (81) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-one (81) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-one (81) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-eight (38) times.

D. GENERAL: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: Winning and Non-Winning Tickets will not contain more than two (2) matching Prize Symbols across the three (3) BONUS play areas, excluding Tickets winning thirty-eight (38) times.

G. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

H. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

I. GAMES 1 - 5: A Ticket can win up to thirty (35) times in the main play area.

J. GAMES 1 - 5: All non-winning YOUR NUMBERS Play Symbols will be different.

K. GAMES 1 - 5: All DEALER'S NUMBER Play Symbols will be different.

L. GAMES 1 - 5: On both winning and Non-Winning Tickets, a DEALER'S NUMBER Play Symbol in a GAME will never match a YOUR NUMBERS symbol from a different GAME.

M. GAMES 1 - 5: On all Tickets, a Prize Symbol will not appear more than six (6) times, except as required by the prize structure to create multiple wins.

N. GAMES 1 - 5: Non-winning Prize Symbols will not appear more than three (3) times in the same GAME.

O. GAMES 1 - 5: On Non-Winning Tickets, a DEALER'S NUMBER Play Symbol will never match a YOUR NUMBERS Play Symbol.

P. GAMES 1 - 5: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $50 and 50).

Q. GAMES 1 - 5: Consecutive Non-Winning Tickets within a Pack will not have matching GAMES.

R. GAMES 1 - 5: On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000 and $5,000,000 will each appear at least once, with respect to other parameters, play action or prize structure.

S. GAMES 1 - 5: The "2X" (DBL) Play Symbol will never appear as a DEALER'S NUMBER Play Symbol.

T. GAMES 1 - 5: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

U. GAMES 1 - 5: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

V. GAMES 1 - 5: The "2X" (DBL) Play Symbol will never appear more than three (3) times on a Ticket.

W. GAMES 1 - 5: The "5X" (WINX5) Play Symbol will never appear as a DEALER'S NUMBER Play Symbol.

X. GAMES 1 - 5: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

Y. GAMES 1 - 5: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

Z. GAMES 1 - 5: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

AA. GAMES 1 - 5: The "10X" (WINX10) Play Symbol will never appear as a DEALER'S NUMBER Play Symbol.

BB. GAMES 1 - 5: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

CC. GAMES 1 - 5: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

DD. GAMES 1 - 5: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

EE. GAMES 1 - 5: The "20X" (WINX20) Play Symbol will never appear as a DEALER'S NUMBER Play Symbol.

FF. GAMES 1 - 5: The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

GG. GAMES 1 - 5: The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

HH. GAMES 1 - 5: The "20X" (WINX20) Play Symbol will never appear more than one (1) time on a Ticket.

II. GAMES 1 - 5: The "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO MILLIONS" Scratch Ticket Game prize of $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO MILLIONS" Scratch Ticket Game prize of $1,000 or $10,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "CASINO MILLIONS" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number of Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "CASINO MILLIONS" Scratch Ticket Game prize, including the top level prize of $5,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If claiming a top prize of $5,000,000, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASINO MILLIONS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASINO MILLIONS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets man-

ufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,600,000 Scratch Tickets in Scratch Ticket Game No. 2340. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2340 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	825,000	8.00
$100	495,000	13.33
$200	412,500	16.00
$500	111,100	59.41
$1,000	6,600	1,000.00
$10,000	200	33,000.00
$5,000,000	4	1,650,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2340 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2340, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202100907

Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 8, 2021

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Rio Grande Council of Governments

Request for Qualifications - Technical Consultants for Upper Rio Grande Flood Planning Region (RFPG)

The Region 14 RFPG, acting through the Rio Grande Council of Governments (RGCOG) invites all qualified parties to submit a Request for Qualifications for Engineering Services to prepare a regional flood plain as prescribed by the TWDB. The qualified firm shall also assist the Region 14 URGFPG in preparing an appropriate scope of work that adequately addresses all tasks in 31 TAC §361 and contains the elements needed for the state plan as defined in 31 TAC §362.

Proposals must be received no later than 5:00 p.m., Mountain Time, on Friday March 19, 2021, to Annette Gutierrez through electronic submission at *annetteg@riocog.org.* The Request for Qualifications will be available at *Region-14-RFQ-for-Technical-Consultants.pdf (westtexaswaterplanning.org).*

RGCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202100914
Annette Gutierrez
Executive Director
Rio Grande Council of Governments
Filed: March 8, 2021

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 4

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE

[in $ Millions 2016 Dollars, Over an Infinite Time Horizon]

Item	Primary estimate (7%)	Lower estimate (7%)	Upper estimate (7%)
Present Value of Costs			
Present Value of Cost Savings			
Present Value of Net Costs			
Annualized Costs			
Annualized Cost Savings			
Annualized Net Costs			

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; it is also available electronically at *https://www.regulations.gov*. FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA/Economics Staff, ''Elimination of the 21 CFR 610.30 Test for *Mycoplasma* Preliminary Regulatory Impact Analysis, Preliminary Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' 2018. (Available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*.)

List of Subjects in 21 CFR part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 1. The authority citation for part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

Subpart D—[Removed and Reserved]

■ 2. Remove and reserve subpart D, consisting of § 610.30.

Dated: July 29, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–17085 Filed 8–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1308 and 1312

[Docket No. DEA–500]

RIN 1117–AB53

Implementation of the Agriculture Improvement Act of 2018

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The purpose of this interim final rule is to codify in the Drug Enforcement Administration (DEA) regulations the statutory amendments to the Controlled Substances Act (CSA) made by the Agriculture Improvement Act of 2018 (AIA), regarding the scope of regulatory controls over marihuana, tetrahydrocannabinols, and other marihuana-related constituents. This interim final rule merely conforms DEA's regulations to the statutory amendments to the CSA that have already taken effect, and it does not add additional requirements to the regulations.

DATES: Effective August 21, 2020. Electronic comments must be submitted, and written comments must be postmarked, on or before October 20, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''RIN 1117–AB53/Docket No. DEA–500'' on all correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *http://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted, and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, Diversion Control Division; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–2596.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and the complete Economic Impact Analysis, to this interim final rule are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *http://www.regulations.gov* under FDMS Docket ID: DEA–500 (RIN 1117–AB53/Docket Number DEA–500) for easy reference.

Executive Summary

The Agriculture Improvement Act of 2018, Public Law 115–334 (the AIA), was signed into law on December 20, 2018. It provided a new statutory definition of ''hemp'' and amended the definition of marihuana under 21 U.S.C. 802(16) and the listing of tetrahydrocannabinols under 21 U.S.C. 812(c). The AIA thereby amends the regulatory controls over marihuana, tetrahydrocannabinols, and other marihuana-related constituents in the Controlled Substances Act (CSA).

This rulemaking makes four conforming changes to DEA's existing regulations:

• It modifies 21 CFR 1308.11(d)(31) by adding language stating that the definition of ''Tetrahydrocannabinols'' does not include ''any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639*o.*''

• It removes from control in schedule V under 21 CFR 1308.15(f) a ''drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols.''

• It also removes the import and export controls described in 21 CFR 1312.30(b) over those same substances.

• It modifies 21 CFR 1308.11(d)(58) by stating that the definition of ''Marihuana Extract'' is limited to extracts ''containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight basis.''

This interim final rule merely conforms DEA's regulations to the statutory amendments to the CSA that have already taken effect, and it does not add additional requirements to the regulations. Accordingly, there are no additional costs resulting from these regulatory changes. However, as discussed below, the changes reflected in this interim final rule are expected to result in annual cost savings for affected entities.

Changes to the Definition of Marihuana

The AIA amended the CSA's regulatory controls over marihuana by amending its definition under the CSA. Prior to the AIA, marihuana was defined in 21 U.S.C. 802(16) as follows:

> The term ''marihuana'' means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

The AIA modified the foregoing definition by adding that the ''term 'marihuana' does not include hemp, as defined in section 1639*o* of Title 7.'' 21 U.S.C. 802(16)(B). Furthermore, the AIA added a definition of ''hemp'' to 7 U.S.C. 1639*o,* which reads as follows:

> The term 'hemp' means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Taken together, these two changes made by the AIA limit the definition of marihuana to only include cannabis or cannabis-derived material that contain more than 0.3% delta-9-tetrahydrocannabinol (also known as Δ^9-THC) on a dry weight basis. Thus, to fall within the current CSA definition of

marihuana, cannabis and cannabis-derived material must both fall within the pre-AIA CSA definition of marihuana and contain more than 0.3 percent Δ^9-THC on a dry weight basis. Pursuant to the AIA, unless specifically controlled elsewhere under the CSA, any material previously controlled under Controlled Substance Code Number 7360 (marihuana) or under Controlled Substance Code Number 7350 (marihuana extract), that contains 0.3% or less of Δ^9-THC on a dry weight basis—*i.e.,* ''hemp'' as that term defined under the AIA—is not controlled. Conversely, any such material that contains greater than 0.3% of Δ^9-THC on a dry weight basis remains controlled in schedule I.

In order to meet the AIA's definition of hemp, and thus qualify for the exception in the definition of marihuana, a cannabis-derived product must itself contain 0.3% or less Δ^9-THC on a dry weight basis. It is not enough that a product is labeled or advertised as ''hemp.'' The U.S. Food and Drug Administration (FDA) has recently found that many cannabis-derived products do not contain the levels of cannabinoids that they claim to contain on their labels.[1] Cannabis-derived products that exceed the 0.3% Δ^9-THC limit do not meet the statutory definition of ''hemp'' and are schedule I controlled substances, regardless of claims made to the contrary in the labeling or advertising of the products.

In addition, the definition of hemp does not automatically exempt any product derived from a hemp plant, regardless of the Δ^9-THC content of the derivative. In order to meet the definition of ''hemp,'' and thus qualify for the exemption from schedule I, the derivative must not exceed the 0.3% Δ^9-THC limit. The definition of ''marihuana'' continues to state that ''*all* parts of the plant Cannabis sativa L.,'' and ''*every* compound, manufacture, salt, derivative, mixture, or preparation of such plant,'' are schedule I controlled substances unless they meet the definition of ''hemp'' (by falling below the 0.3% Δ^9-THC limit on a dry weight basis) or are from exempt parts of the plant (such as mature stalks or non-germinating seeds). *See* 21 U.S.C. 802(16) (emphasis added). As a result, a cannabis derivative, extract, or product that exceeds the 0.3% Δ^9-THC limit is a schedule I controlled substance, even if the plant from which it was derived contained 0.3% or less Δ^9-THC on a dry weight basis.

[1] *See* FDA, Warning Letters and Test Results for Cannabidiol-Related Products, *https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm484109.htm.*

Finally, nothing in the AIA or in these implementing regulations affects or alters the requirements of the Food, Drug, & Cosmetic Act (FD&C Act). *See* 7 U.S.C. 1639r(c). Hemp products that fall within the jurisdiction of the FD&C Act must comply with its requirements. FDA has recently issued a statement regarding the agency's regulation of products containing cannabis and cannabis-derived compounds, and DEA refers interested parties to that statement, which can be found at *https://www.fda.gov/newsevents/Newsroom/PressAnnouncements/ucm628988.htm.*

Changes to the Definition of Tetrahydrocannabinols

The AIA also modified the listing for tetrahydrocannabinols under 21 U.S.C. 812(c) by stating that the term tetrahydrocannabinols does not include tetrahydrocannabinols in hemp. Specifically, 21 U.S.C. 812(c) Schedule I now lists as schedule I controlled substances: ''Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 1639*o* of Title 7).''

Therefore, the AIA limits the control of tetrahydrocannabinols (for Controlled Substance Code Number 7370). For tetrahydrocannabinols that are naturally occurring constituents of the plant material, Cannabis sativa L., any material that contains 0.3% or less of Δ^9-THC by dry weight is not controlled, unless specifically controlled elsewhere under the CSA. Conversely, for tetrahydrocannabinols that are naturally occurring constituents of Cannabis sativa L., any such material that contains greater than 0.3% of Δ^9-THC by dry weight remains a controlled substance in schedule I.

The AIA does not impact the control status of synthetically derived tetrahydrocannabinols (for Controlled Substance Code Number 7370) because the statutory definition of ''hemp'' is limited to materials that are derived from the plant Cannabis sativa L. For synthetically derived tetrahydrocannabinols, the concentration of Δ^9-THC is not a determining factor in whether the material is a controlled substance. All synthetically derived tetrahydrocannabinols remain schedule I controlled substances.

This rulemaking is modifying 21 CFR 1308.11(d)(31) to reflect this statutory change. By this rulemaking, 21 CFR 1308.11(d)(31) is being modified via the addition of subsection (ii), which reads: ''Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639*o*.''

Removal of Schedule V Control of FDA-Approved Products Containing Cannabidiol

Previously DEA, pursuant to 21 CFR 1308.15, separately controlled in Schedule V drug products in finished dosage formulations that have been approved by FDA and that contain cannabidiol (CBD) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols (under Controlled Substance Code Number 7367). The FDA-approved substances described under Drug Code 7367 are no longer controlled, by virtue of the AIA. As a result, DEA is removing the listing for ''Approved cannabidiol drugs'' under schedule V in 21 CFR 1308.15.

Note that CBD in a mixture with a Δ^9-THC concentration greater than 0.3% by dry weight is not exempted from the definition of ''marihuana'' or ''tetrahydrocannabinols.'' Accordingly, all such mixtures exceeding the 0.3% limit remain controlled substances under schedule I.

Removal of Import/Export Provisions Involving FDA-Approved Products Containing CBD

Previously DEA, pursuant to 21 CFR 1312.30, required import and export permits pursuant to 21 U.S.C. 811(d)(1), 952(b)(2), and 953(e)(3) for the import and export of drug products in finished dosage formulations that have been approved by FDA and that contain CBD derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols. Because such substances are no longer controlled substances, DEA is likewise removing the import and export permit requirement for these substances. The regulation is revised to delete § 1312.30(b).

Drug Code 7350 for Marihuana Extract

The current control status of marihuana-derived constituents depends upon the concentration of Δ^9-THC in the constituent. DEA is amending the scope of substances falling within the Controlled Substances Code Number for marihuana extract (7350) to conform to the amended definition of marihuana in the AIA. As amended, the Drug Code 7350 definition reads:

Marihuana Extract—meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight

basis, other than the separated resin (whether crude or purified) obtained from the plant.

21 CFR 1308.11(d)(58). The drug code 7350 became effective on January 13, 2017. 81 FR 90194.

Regulatory Analysis

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring the publication of a prior notice of proposed rulemaking and the pre-promulgation opportunity for public comment, if such actions are determined to be unnecessary, impracticable, or contrary to the public interest.

DEA finds there is good cause within the meaning of the APA to issue these amendments as an interim final rule and to delay comment procedures to the post-publication period, because these amendments merely conform the implementing regulations to recent amendments to the CSA that have already taken effect. DEA has no discretion with respect to these amendments. This rule does no more than incorporate the statutory amendments into DEA's regulations, and publishing a notice of proposed rulemaking or soliciting public comment prior to publication is unnecessary. *See* 5 U.S.C. 553(b)(B) (relating to notice and comment procedures). ''[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.'' *Gray Panthers Advocacy Committee* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also United States* v. *Cain,* 583 F.3d 408, 420 (6th Cir. 2009) (contrasting legislative rules, which require notice-and-comment procedures, ''with regulations that merely restate or interpret statutory obligations,'' which do not); *Komjathy* v. *Nat. Trans. Safety Bd.,* 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule ''does no more than repeat, virtually verbatim, the statutory grant of authority'' notice-and-comment procedures are not required).

In addition, because the statutory changes at issue have already been in effect since December 20, 2018, DEA finds good cause exists to make this rule effective immediately upon publication. *See* 5 U.S.C. 553(d). Therefore, DEA is issuing these amendments as an interim final rule, effective upon publication in the **Federal Register**.

Although publishing a notice of proposed rulemaking and soliciting public comment prior to publication are unnecessary in this instance because these regulations merely implement statutory changes over which the agency has no discretion, DEA is soliciting public comment on this rule following its publication. For that reason, DEA is publishing this rule as an interim final rule and is establishing a docket to receive public comment on this rule. To the extent required by law, DEA will consider and respond to any relevant comments received.

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Cost)

This interim final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 13771. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined and it has been determined that it is not a significant regulatory action under E.O. 12866 because it is a non-discretionary action that is dictated by the statutory amendments to the CSA enacted by the AIA. While not determined to be a significant regulatory action, this action has been reviewed by the OMB.

As explained above, DEA is obligated to issue this interim final rule to revise its regulations so that they are consistent with the provisions of the CSA that were amended by the AIA. In issuing this interim final rule, DEA has not gone beyond the statutory text enacted by Congress. Thus, DEA would have to issue this interim final rule regardless of the outcome of the agency's regulatory analysis. Nonetheless, DEA conducted this analysis as discussed below.

Summary of Benefits and Costs

This analysis is limited to the provisions of the AIA that are being directly implemented by this DEA interim final rule. DEA has reviewed these regulatory changes and their expected costs and benefits. Benefits, in the form of cost savings realized by DEA registrants handling previously controlled substances, will be generated as a direct result of the publication of this interim final rule. DEA does not expect there to be any costs associated with the promulgation of this interim final rule. The following is a summary; a detailed economic analysis of the interim final rule can be found in the rulemaking docket at *http://www.regulations.gov.*

The AIA's revised definitions of marihuana and tetrahydrocannabinols effectively decontrol hemp as defined under the AIA. DEA's regulatory authority over any plant with less than 0.3% THC content on a dry weight basis, and any of the plant's derivatives under the 0.3% THC content limit, is removed as a result. It is important to note, however, that this does not mean that hemp is not under federal regulatory oversight. The AIA directs the U.S. Department of Agriculture (USDA) to review and approve commercial hemp production plans developed by State, territory, and Indian tribal agencies and to develop its own production plan. 7 U.S.C. 1639p, 1639q. Until these regulations are finalized, State commercial hemp pilot programs authorized under the 2014 Farm Bill are still in effect and current participants may proceed with plans to grow hemp while new regulations are drafted.[2] DEA expects the USDA to assess the costs and benefits of this new regulatory apparatus once those rules are finalized. For these reasons, DEA considers any potential costs or benefits broadly related to changes in the domestic industrial hemp market due to the

[2] *See* USDA, Hemp Production Program Questions and Answers, *https://www.ams.usda.gov/publications/content/hemp-production-program-questions-and-answers.*

decontrol of hemp, including but not limited to the expansion in the number of producers, consumer products, and the impact on supply chains to be outside the scope of this analysis.

To determine any cost savings resulting from this decontrol action, DEA analyzed its registration, import, and export data. The removal of DEA's regulatory authority over hemp as defined under the AIA will impact only DEA registrants that currently import viable hemp seed intended for germination. Viable hemp seed was classified as a schedule I controlled substance prior to the amendments to the CSA enacted by the AIA. The importation and exportation of controlled substances requires an importer or exporter to first register with DEA, and then apply and obtain a permit to import or export controlled substances for each shipment.[3] The decontrol of hemp with this interim final rule means that viable hemp seed is no longer subject to those schedule I requirements, as long as the material contains less than the 0.3% limit.

Based on the number of import and export permits issued, DEA estimated the number of import and export permit applications that would no longer be needed. DEA reviewed internal data tracking the number of imports and exports for hemp seed over a three year period beginning January 1, 2016 and ending December 31, 2018.[4] During this three year period, there was an average of 88 import permits issued for hemp seed per year, and no exports. These import permits were issued only to participants in state commercial hemp pilot programs, including state departments of agriculture and higher education institutions, which are considered ''fee exempt'', and do not pay the $1,523 annual importer registration fee.[5] However, fee-exempt institutions are still required to obtain a DEA registration and renew that registration annually by filling out and submitting DEA form 225a. DEA expects these institutions to relinquish their schedule I importer registrations as a result of the promulgation of this interim final rule.

DEA estimates the average annual cost savings attributable to the elimination of import permits for hemp seed, and the elimination of annual registration renewals for hemp seed importers to be $3,225.[6] This cost savings is realized entirely by DEA registrants. Since the anticipated reduction in import permits and registration renewals being processed is negligible relative to the total amount of permits and renewals processed by DEA annually, DEA is not expected to experience a measurable decrease in workflow or use of resources, and therefore, will incur no cost savings. The results of this analysis are summarized below:

Average Annual Import Permit Application (DEA Form 357) Cost Savings	
Estimated hourly wage ($/hour): [7]	$45.54
Load for benefits (percent of labor rate): [8]	*43%*
Loaded labor rate ($/hour): [9]	$65.06
Average hourly burden, per application:	0.25
Average annual # of import permit applications for hemp seed:	88
Average annual hemp seed import permit application labor costs: [10]	$1,431.32
Average annual mailing cost of hemp seed import permit applications: [11]	$1,579.50
Annual Registration Renewal Application (DEA Form 225a) Cost Savings	
Estimated hourly wage ($/hour): [12]	$59.56
Load for benefits (percent of labor rate): [13]	*43%*
Loaded labor rate ($/hour): [14]	$85.09
# of Importers no longer requiring registration:	21
Average hourly burden, per application: [15]	0.12
Average annual registration renewal application labor cost: [16]	$214.43
Total Annual Cost Savings:	$3,225.25

This interim final rule removes FDA-approved products containing CBD from schedule V control, including controls over the importation and exportation of this class of drugs. There is currently only one drug that meets these criteria for decontrol.[17] To determine any cost savings resulting from this decontrol action, DEA analyzed its registration, import, and export data. DEA believes all entities that currently handle FDA-approved CBD products also handle other controlled substances. This means the decontrol of this product will not allow these DEA registrants to benefit from any registration-related cost savings. However, like importers of viable hemp seed, importers and exporters of FDA-approved CBD products will no longer be required to obtain import and export permits from DEA.

DEA analyzed its internal import and export data to identify the average

[3] *See* 21 CFR 1312.11(a), 1312.21(a).

[4] DEA import data is organized by drug code. Hemp seed falls within drug code ''7360—Marihuana''.

[5] *See* 21 CFR 1301.21(a)(1).

[6] Rounded down to the nearest whole dollar.

[7] Median hourly wage, Bureau of Labor Statistics, Occupational and Employment and Wages, May 2018, 11–3071 Transportation, Storage, and Distribution Managers (*http://www.bls.gov/oes/current/oes_nat.htm*). The DEA considers this occupational category to be representative of the type of employee that is likely to fill out and submit import permits on behalf of a DEA registered importer.

[8] Bureau of Labor Statistics, ''Employer Costs for Employee Compensation—March 2019'' (ECEC) reports that average benefits for private industry is 30% of total compensation. The 30% of total compensation equates to 42.86% (30% / 70%) load on wages and salaries.

[9] $45.54 × (1 + 0.4286) = $65.06.

[10] ($65.06 × 0.25) × 88 = $1,431.32.

[11] 91% of import permits are submitted via paper form and delivered to DEA by an express carrier with respondent-paid means for return delivery. The estimated cost burden is $19.50 per response: 2 × $9.75 = $19.50. $9.75 is based on a major express carrier's national 3-day flat rate for envelopes. The DEA assumes that 91% of import permits submitted in any given year incur this mailing cost.

[12] Estimates are based on the population of the regulated industry participating in these business activities. The DEA assumes that a general and operations manager (11–1021, 2018 Standard Occupational Classification) will complete the form on behalf of the applicant or registrant.

[13] Bureau of Labor Statistics, ''Employer Costs for Employee Compensation—March 2019'' (ECEC) reports that average benefits for private industry is 30% of total compensation. The 30% of total compensation equates to 42.86% (30% / 70%) load on wages and salaries.

[14] $59.56 × (1 + 0.4286) = $85.09.

[15] The DEA assumes all forms are submitted online.

[16] ($85.09 × 0.5) × 21 = $214.43.

[17] *See* FDA, Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers, *https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-questions-and-answers#approved.*

number of permits issued for FDA-approved CBD products over a three year period beginning January 1, 2016 and ending December 31, 2018. During this period there was an average of 52 import permits and one export permit issued per year, the elimination of which will result in an average annual cost savings of $1,814.[18] This cost savings is realized entirely by DEA registrants. Since the anticipated reduction in import and export permits being processed is negligible relative to the total number of permits processed by DEA annually, DEA is not expected to experience a measurable decrease in workflow or use of resources, and therefore, will incur no cost savings. The results of this analysis are summarized below:

Average Annual Import Permit Application (DEA Form 357) Cost Savings	
Estimated hourly wage ($/hour): [7]	$45.54
Load for benefits (percent of labor rate): [8]	*43%*
Loaded labor rate ($/hour): [9]	$65.06
Average hourly burden, per application:	0.25
Average annual # of import permit applications for FDA-approved CBD:	52
Average annual FDA-approved CBD import permit application labor costs: [19]	$845.74
Average annual mailing cost for import permit applications: [11] [20]	$916.50
Average Annual Export Permit Application (DEA Form 161) Cost Savings	
Estimated hourly wage ($/hour): [7]	$45.54
Load for benefits (percent of labor rate): [8]	*43%*
Loaded labor rate ($/hour): [9]	$65.06
Average hourly burden, per collection:	0.5
Average annual # of export permit applications for FD-approved CBD:	1
Average annual FDA-approved CBD export permit application labor costs: [21]	$32.53
Average annual mailing cost of export permit applications: [11]	$19.50
Total Annual Cost Savings:	$1,814.27

This interim final rule amends the definition of marihuana extract to conform to the revised definitions of marihuana and tetrahydrocannabinols. This revised definition now includes the 0.3%-THC content limit for the extract, meaning hemp-derived extracts containing less than 0.3%-THC content are also decontrolled along with the plant itself. As discussed previously, the production of hemp and its extracts as defined under the AIA now falls under the same regulatory oversight shared between the States, territories, and Indian tribal agencies, and the USDA. The FDA also affirms its regulatory oversight over cannabis-derived compounds, such as CBD, whether or not these compounds are ''classified as hemp under the 2018 Farm Bill.'' [22] For these reasons, DEA considers any potential costs or benefits broadly related to changes in the markets for domestic hemp extracts due to their decontrol, including but not limited to the expansion in the number of producers, consumer products, and the impact on supply chains to be outside the scope of this analysis.

Like FDA-approved CBD products and viable hemp seeds, entities no longer require a DEA registration or import and export permits to handle hemp extract that does not exceed the statutory 0.3% THC limit. DEA's import and export data does capture a minimal number of instances of the importation and exportation of CBD; however, this data does not detail whether or not the CBD was derived from Cannabis sativa L. plants containing less than 0.3% THC content. For this reason, DEA does not have a good basis to estimate the annual number of imported or exported hemp-derived extracts that no longer require permits as a result of the promulgation of this interim final rule, but after reviewing its data, believes this number to be minimal. Therefore, DEA concludes that this provision of the interim final rule is likely to result in a minimal benefit to DEA registrants, but DEA does not have a good basis to quantify this amount.

As part of its core function, DEA's Diversion Control Division is responsible for managing over 1.8 million DEA registrations, processing new and renewal registration applications, processing registration modification requests, issuing certificates of registration, issuing import and export permits, issuing renewal notifications, conducting due diligence, maintaining and operating supporting information systems, etc. Therefore, DEA does not anticipate it will realize any measurable cost savings to the government as a result of the negligible decreases in registrant services resulting from the promulgation of this interim final rule.

As described above, DEA estimates the average annual benefit in the form of cost savings to DEA registrants as a result of the promulgation of this interim final rule to be $5,039.[23] DEA calculated the present value of this cost savings over a 20 year period at a 3 percent and 7 percent discount rate. At a 3 percent discount rate, the present value of benefits is $74,968, while the present value of costs is $0, making the net present value (NPV) $74,968. At a 7 percent discount rate, the present value of benefits is $53,383, the present value of costs is $0, making the NPV is $53,383.[24] The table below summarizes the present value and annualized benefit calculations.

Discount Rate	3%	7%
Annual benefit ($)	5,039	5,039
Present value of benefits ($)	74,968	53,383
Present value of costs ($)	0	0
Years	20	20

[18] Rounded down to the nearest whole number.

[19] ($65.06 × 0.25) × 52 = $845.74.

[20] 52 × .91 = 47 (rounded down) permits mailed per year; 47 × $19.50 = $916.50.

[21] ($65.06 × 0.5) × 1 = $32.53.

[22] Ibid.

[23] The total average annual cost savings resulting from the decontrol of viable hemp seed ($3,225) and FDA-approved CBD products ($1,814).

[24] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–4, Regulatory Analysis (2003).

Net present value ($)	74,968	53,383

Figures are rounded.

E.O. 13771 deregulatory actions are final actions that have totals costs less than zero. Also, under E.O. 13771, regulatory actions that expand production options, which are considered to be ''enabling rules,'' generally qualify as E.O. 13771 deregulatory actions. This interim final rule decontrols hemp, hemp extracts and FDA-approved products containing CBD, and it results in cost savings to the public, as discussed above. Accordingly, DEA has determined that this interim final rule is an E.O. 13771 Deregulatory Action.

Executive Order 12988

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law, impose enforcement responsibilities on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of E.O. 13132.

Executive Order 13175

This interim final rule is required by statute, and will not have tribal implications or impose substantial direct compliance costs on Indian tribal governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) applies to rules that are subject to notice and comment under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553). As explained in the interim final rule, DEA determined that there was good cause to exempt this interim final rule from pre-publication notice and comment. Consequently, the RFA does not apply to this interim final rule.

Paperwork Reduction Act of 1995

This interim final rule does not involve a collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–21.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. 2 U.S.C. 1532.

Congressional Review Act

This interim final rule is not a major rule as defined by the Congressional Review Act (CRA) (5 U.S.C. 804). DEA is submitting the required reports with a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1308

Administrative practice and procedure; Drug traffic control; Reporting and recordkeeping requirements.

21 CFR Part 1312

Administrative practice and procedure; Drug traffic control; Exports; Imports; Reporting and recordkeeping requirements.

For the reasons set forth above, 21 CFR parts 1308 and 1312 are amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b).

■ 2. In § 1308.11, paragraphs (d)(31) and (58) are revised to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(31) Tetrahydrocannabinols 7370

(i) Meaning tetrahydrocannabinols, except as in paragraph (d)(31)(ii) of this section, naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers

6 cis or trans tetrahydrocannabinol, and their optical isomers

3, 4 cis or trans tetrahydrocannabinol, and its optical isomers

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(ii) Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639*o*.

* * * * *

(58) Marihuana Extract 7350

Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, containing greater than 0.3% delta-9-tetrahydrocannabinol on a dry weight basis, other than the separated resin (whether crude or purified) obtained from the plant.

* * * * *

§ 1308.15 [Amended]

■ 3. In § 1308.15, paragraph (f) is removed.

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

■ 4. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 821, 871(b), 952, 953, 954, 957, 958.

§ 1312.30 [Amended]

■ 5. In § 1312.30, paragraph (b) is removed and reserved.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–17356 Filed 8–20–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

32 CFR Part 625

[Docket ID: USA–2020–HQ–0010]

RIN 0702–AA98

Surface Transportation—Administrative Vehicle Management

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 5

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Texas Register

AGENCY Department of State Health Services
ISSUE 09/18/2020
ACTION Miscellaneous

Notice of Objection

Notice of Objection to the Drug Enforcement Administration's interim final rule amending the regulatory controls over marihuana, tetrahydrocannabinols, and other marihuana-related constituents in the Controlled Substances Act.

On August 21, 2020, the Acting Administrator of the Drug Enforcement Administration (DEA) issued an interim final rule making four conforming changes to DEA's existing scheduling regulations. The interim final rule was published in the *Federal Register,* Volume 85, Number 163, pages 51639-51645 and was effective August 21, 2020. Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, the commissioner may object during the 30-day period beginning on the day after the date of publication in the *Federal Register* of a final order designating a substance as controlled or deleting a substance from the schedules.

The interim final rule modifies 21 CFR 1308.11(d)(31) by adding language stating that the definition of "Tetrahydrocannabinols" does not include "any material, compound, mixture or preparation that falls within the definition of hemp set forth in 7 U.S.C 1639o." The commissioner objects to this modification.

The interim final rule modifies 21 CFR 1308.11(d)(58) by stating that the definition of "Marihuana Extract" is limited to extracts "containing greater than 0.3 percent delta-9-**tetrahydrocannabinol** on a dry weight basis." The commissioner objects to this modification.

In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby object to the modifications of the two definitions to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-**tetrahydrocannabinol**. Multiple **tetrahydrocannabinol** isomers and variants may have pharmacological or psychoactive properties.

In accordance with Section 481.034(g), a public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register.* The meeting date will be posted on the Schedules of Controlled Substances website (https://dshs.texas.gov/drugs/controlled-substances.aspx). Please contact Karen Tannert at (512) 231-5747 or karen.tannert@dshs.texas.gov, if you have questions.

TRD-202003702

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: September 9, 2020

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CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 6

Decision

On August 21, 2020, the Acting Administrator of the Drug Enforcement Administration issued an interim final rule making four conforming changes to DEA's existing scheduling regulations. The interim final rule was published in the *Federal Register*, Volume 85, Number 163, pages 51639-51645 and was effective August 21, 2020. Pursuant to Section 481.034(g), as amended by the 75th Legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, the commissioner may object during the 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as controlled or deleting a substance from the schedules.

The interim final rule modifies 21 CFR 1308.11(d)(31) by adding language stating that the definition of "Tetrahydrocannabinols" does not include "any material, compound, mixture or preparation that falls within the definition of hemp set forth in 7 U.S.C 1639o."

The interim final rule modifies 21 CFR 1308.11(d)(58) by stating that the definition of "Marihuana Extract" is limited to extracts "containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight basis."

In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., objected to the modifications of the two definitions to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-tetrahydrocannabinol. Multiple tetrahydrocannabinol isomers and variants may have pharmacological or psychoactive properties.

On September 18, 2020, the Commissioner notified the public of his objection. Pursuant to Section 481.034(g), on October 6, 2020, the Commissioner held a hearing to allow public comment with respect to the objection. Zero comments were received during the hearing and zero written comments were received by October 8, 2020.

TEXAS
Health and Human
Services

Decision: The modifications of the two definitions above are not adopted

November 17, 2020

John Hellerstedt, M.D.
Commissioner

Date

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 7

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Texas Register

AGENCY Department of State Health Services
ISSUE 01/29/2021
ACTION Miscellaneous

Decision Order Regarding the Modification of the Definition of Tetrahydrocannabinols in Schedule I of the Schedules of Controlled Substances

On August 21, 2020, the Acting Administrator of the Drug Enforcement Administration (DEA) issued an interim final rule making four conforming changes to DEA's existing scheduling regulations. The interim final rule was published in the *Federal Register,* Volume 85, Number 163, pages 51639-51645 and was effective August 21, 2020. Pursuant to Section 481.034(g), as amended by the 75th Legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, the commissioner may object during the 30-day period beginning on the day after the date of publication in the *Federal Register* of a final order designating a substance as controlled or deleting a substance from the schedules.

The interim final rule modifies 21 CFR 1308.11(d)(31) by adding language stating that the definition of "Tetrahydrocannabinols" does not include "any material, compound, mixture or preparation that falls within the definition of hemp set forth in 7 U.S.C 1639o."

The interim final rule modifies 21 CFR 1308.11(d)(58) by stating that the definition of "Marihuana Extract" is limited to extracts "containing greater than 0.3 percent delta-9-**tetrahydrocannabinol** on a dry weight basis."

In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., objected to the modifications of the two definitions to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-**tetrahydrocannabinol**. Multiple **tetrahydrocannabinol** isomers and variants may have pharmacological or psychoactive properties.

On September 18, 2020, the Commissioner notified the public of his objection. Pursuant to Section 481.034(g), on October 6, 2020, the Commissioner held a hearing to allow public comment with respect to the objection. Zero comments were received during the hearing and zero written comments were received by October 8, 2020.

Decision: The modifications of the two definitions above are not adopted.

John Hellerstedt, M.D., Commissioner, signed this order on November 17, 2020.

TRD-202100284

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: January 20, 2021

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CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	**126TH JUDICIAL DISTRICT**
	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	**TRAVIS COUNTY, TEXAS**
Defendants.	§	

PLAINTIFFS' EXHIBIT 8

SCHEDULES OF CONTROLLED SUBSTANCES

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by John Hellerstedt, M.D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Unit, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.texas.gov/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

-Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-α-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
(2) Acetylmethadol
(3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Other name: acryloylfentanyl);

(5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino) cyclohexymethyl]benzamide);
(6) Allylprodine;
(7) Alphacetylmethadol (except levo-α-cetylmethadol, levo-α-acetylmethadol, levomethadyl acetate, or LAAM);
(8) α-Methylfentanyl or any other derivative of fentanyl;
(9) α-Methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] *N*-phenylpropanamide);
(10) Benzethidine;
(11) β-Hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
(12) β-Hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
*(13) β-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide, *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide);
(14) Betaprodine;
(15) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
(16) Clonitazene;
*(17) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide)
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimethylthiambutene;
(23) Dioxaphetyl butyrate;
(24) Dipipanone;
(25) Ethylmethylthiambutene;
(26) Etonitazene;
(27) Etoxeridine;
(28) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *p*-fluoroisobutyryl fentanyl);
(29) Furanyl fentanyl (*N*-(1-phenethylpiperdin-4-yl)-*N*-phenylfuran-2-carboxamide);
(30) Furethidine;
(31) Hydroxypethidine;
(32) Ketobemidone;
(33) Levophenacylmorphan;

(34) Meprodine;
(35) Methadol;
*(36) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
(37) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
(38) 3-Methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
(39) Moramide;
(40) Morpheridine;
(41) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(42) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
(43) Noracymethadol;
(44) Norlevorphanol;
(45) Normethadone;
(46) Norpipanone;
(47) Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-phenethylpiperidin-4-yl)acetamide);
*(48) *o*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl)
*(49) *p*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
(50) *p*-Fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4 piperidinyl] propanamide);
(51) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(52) Phenadoxone;
(53) Phenampromide;
(54) Phencyclidine;
(55) Phenomorphan;
(56) Phenoperidine;
(57) Piritramide;
(58) Proheptazine;
(59) Properidine;
(60) Propiram;
(61) Tetrahydrofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide);
(62) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(63) Tilidine;
(64) Trimeperidine; and

(65) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide.

-Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-*N*-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine; and
(24) Thebacon.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) α-Ethyltryptamine (Other names: etryptamine; Monase; α-ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; AET);

(2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5- dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA);

(3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α-desmethyl DOB);

(4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA);

(5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);

(6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);

(7) 4-Methoxyamphetamine (Other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine; PMA);

(8) 5-Methoxy-3,4-methylenedioxy-amphetamine;

(9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy-α-methyl-phenethylamine; "DOM";"STP");

(10) 3,4-Methylenedioxy-amphetamine;

(11) 3,4-Methylenedioxy-methamphetamine (Other names: MDMA; MDM);

(12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl-α-methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);

(13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other names: *N*-hydroxy MDA);

(14) 3,4,5-Trimethoxy amphetamine;

(15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole, 5-MeO-DMT);

(16) α-Methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(17) Bufotenine (Other names: 3-β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6-β-7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga);

(22) Lysergic acid diethylamide;

(23) Marihuana

The term marihuana does not include hemp, as defined Title 5, Agriculture Code, Chapter 121.

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) *N*-ethyl-3-piperidyl benzilate;

(28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols,

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;
6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;
3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenyl-cyclohexyl)-pyrrolidine; PCPy; PHP, rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);

(37) 3,4-methylenedioxypyrovalerone (MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name:2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

(46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);

(47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);

(48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

(50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48);

(51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

(54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

(56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant;

(59) 4-Methyl-*N*-ethylcathinone (4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (4-MePPP);

(61) α-Pyrrolidinopentiophenone ([α]-PVP);

(62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one

(Other names: butylone; bk-MBDB);

(63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);

(64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);

(65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);

(66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);

(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);

(68) α-Pyrrolidinobutiophenone (Other name: [α]-PBP);

(69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);

(70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);

(71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201),

(72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP); and,

(73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexyl-methyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA, ABD-CHMINACA).

-Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

-Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (Other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) *N*-Benzylpiperazine (Other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(3) Cathinone (Other names: 2-amino-1-phenyl-1-propanone; α-aminopropiophenone; 2-aminopropiophenone, norephedrone);

(4) Fenethylline;

(5) Methcathinone (Other names: 2-(methylamino)-propiophenone; α-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; α-*N*-methylaminopropiophenone; monomethylpropion; ephedrone; *N*-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; UR1432);

(6) 4-Methylaminorex;

(7) *N*-Ethylamphetamine; and

(8) *N,N*-Dimethylamphetamine (Other names: *N,N*-α-trimethylbenzene-ethaneamine; *N,N*-α-trimethylphenethylamine).

-Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) The term ‘cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-Hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(1-2) 3-(1-Naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(1-3) 3-(1-Naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(1-4) 1-(1-Naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(1-5) 3-Phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-Dimethylheptyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other name: CP-47,497);

(3) 5-(1,1-Dimethyloctyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol, CP-47,497 C8 homolog);

(4) 1-Pentyl-3-(1-naphthoyl)indole (Other names: JWH-018; AM678);

(5) 1-Butyl-3-(1-naphthoyl)indole (Other name: JWH-073);

(6) 1-Hexyl-3-(1-naphthoyl)indole (Other name: JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other name: JWH-200);

(8) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (Other name: JWH-250);

(9) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other name: JWH-081);

(10)1-Pentyl-3-(4-methyl-1-naphthoyl)indole (Other name: JWH-122);

(11)1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other name: JWH-398);

(12) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (Other name: AM2201);

(13) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (Other name: AM694);

(14) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19, RCS-4);

(15) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18;RCS-8); and

(16) 1-Pentyl-3-(2-chlorophenylacetyl)indole (Other name: JWH-203).

-Schedule I temporarily listed substances subject to emergency scheduling by the US Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

*(1) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB, 5F-MDMB-PINACA);

*(2) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-caboxamido)-3-methylbutanoate (Other name: 5F-AMB);

*(3) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);

*(4) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);

*(5) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);

*(6) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA);

*(7) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);

(8) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);

(9) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);

(10) *N*-(4-Chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);

(11) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);

(12) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);

(13) Fentanyl-related substances.

(13-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(13-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(13-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(13-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(13-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(13-1-5) Replacement of the *N*-propionyl group by another acyl group;

*(13-2) This definition includes, but is not limited to, the following substances:

*(13-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

*(13-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name:*o*-methyl acetylfentanyl);

*(13-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl);

*(13-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl);

*(13-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide (Other name: crotonyl fentanyl);

(14) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

(15) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

(16) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

(17) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

(18) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(19) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

*(20) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

*(21) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

*(22) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));

*(23) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

*(24) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

*(25) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

*(26) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

*(27) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

*(28) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

*(29) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

*(30) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemedine, naloxegol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;
(1-2) Dihydroetorphine;
(1-3) Ethylmorphine;
(1-4) Etorphine hydrochloride;
(1-5) Granulated opium;
(1-6) Hydrocodone;
(1-7) Hydromorphone;
(1-8) Metopon;
(1-9) Morphine;
*(1-10) Noroxymorphone;
(1-11) Opium extracts;
(1-12) Opium fluid extracts;
(1-13) Oripavine;
(1-14) Oxycodone;
(1-15) Oxymorphone;
(1-16) Powdered opium;
(1-17) Raw opium;

(1-18) Thebaine; and
(1-19) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:
(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) Coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) Decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or

(4-2-2) Ioflupane.

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

-Schedule II Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Carfentanil;
(6) Dextropropoxyphene, bulk (nondosage form);
(7) Dihydrocodeine;
(8) Diphenoxylate;

(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (Other names: levo-α-acetylmethadol; levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone Intermediate (Other name: 4-cyano-2-dimethylamino-4,4-diphenyl butane);
(17) Moramide Intermediate (Other name: 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid);
(18) Pethidine (meperidine);
(19) Pethidine Intermediate-A (Other name: 4-cyano-1-methyl-4-phenylpiperidine);
(20) Pethidine Intermediate-B (Other name: ethyl-4-phenylpiperidine-4-carboxylate;
(21) Pethidine Intermediate-C (Other name: 1-methyl-4-phenylpiperidine-4-carboxylic acid);
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil;
(28) Tapentadol; and
*(29) Thiafentanil (Other name: methyl 4-(2-methoxy-*N*-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

- **Schedule II stimulants**

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;
(3) Methylphenidate and its salts;

(4) Phenmetrazine and its salts; and
(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

-Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;
(2) Glutethimide;
(3) Pentobarbital; and
(4) Secobarbital.

-Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-t*rans*-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9*H*-dibenzo[b,d]pyran-9-one); and

(2) Dronabinol in oral solution in drug products approved for marketing by the United States Food and Drug Administration.

-Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:
(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;
(2) Immediate precursor to amphetamine and methamphetamine:
(2-1) Phenylacetone (Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);
(3) Immediate precursors to phencyclidine (PCP):
(3-1) 1-phenylcyclohexylamine;
(3-2) 1-piperidinocyclohexanecarbonitrile (PCC); and

(4) Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethylpiperidine (ANPP).

SCHEDULE III

Schedule III consists of:

-Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) A compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) A suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the U.S. Food and Drug Administration for marketing only as a suppository;

(3) A substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

*(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Perampanel, and its salts, isomers, and salts of isomers;

(11) Sulfondiethylmethane;

(12) Sulfonethylmethane;

(13) Sulfonmethane; and,

(14) Tiletamine and zolazepam or any salt thereof. (Some trade or other names for a tiletamine zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2 (ethylamino) 2 (2 thienyl)

cyclohexanone. Some trade or other names for zolazepam: 4 (2 fluorophenyl) 6,8 dihydro 1,3,8 trimethyl-pyrazolo [3,4 e][1,4] diazepin 7(1H) one, flupyrazapon.)

-Schedule III

(1) Nalorphine

-Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) A material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-4) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-6) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

-Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine.

-Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) Androstanediol--

(1-1) 3β,17β-dihydroxy-5α-androstane;

(1-2) 3α,17β-dihydroxy-5α-androstane;

(2) Androstanedione (5α-androstan-3,17-dione);

(3) Androstenediol--

(3-1) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

(3-2) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

(3-3) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(4) Androstenedione--

(4-1) 1-androstenedione (5α-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) Bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(6) Boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

(7) Boldione (androsta-1,4-diene-3,17-dione);

(8) Calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(9) Clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

(10) Dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one);

(11) Δ-1-Dihydrotestosterone (a.k.a.`1-testosterone') (17β-hydroxy-5α-androst-1-en-3-one);

(12) Desoxymethyltestosterone (17α-methyl-5α-androst-2-en-17β-ol; madol);

(13) 4-Dihydrotestosterone (17β-hydroxy-androstan-3-one);

(14) Drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

(15) Ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

(16) Fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

(17) Formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

(18) Furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(19) 13β-Ethyl-17β-hydroxygon-4-en-3-one;

(20) 4-Hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

(21) 4-Hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

(22) Mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

(23) Mesterolone (1α-methyl-17β-hydroxy-5α-androstan-3-one);

(24) Methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

(25) Methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

(26) Methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

(27) 17α-Methyl-3β, 17β-dihydroxy-5α-androstane;

(28) Methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one);

(29) 17α-Methyl-3α,17β-dihydroxy-5α-androstane;

(30) 17α-Methyl-3β,17β-dihydroxyandrost-4-ene;

(31) 17α-Methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);

(32) Methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);

(33) 17α-Methyl-17β-hydroxyestra-4,9-11-trien-3-one;

(34) Methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);

(35) Mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);

(36) 17α-Methyl-delta-1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (Other name: 17α -methyl-1-testosterone);

(37) Nandrolone (17β-hydroxyestr-4-en-3-one);

(38) Norandrostenediol--

(38-1) 19-Nor-4-androstenediol (3β,17β-dihydroxyestr-4-ene);

(38-2) 19-Nor-4-androstenediol (3α,17β-dihydroxyestr-4-ene);

(38-3) 19-Nor-5-androstenediol (3β,17β-dihydroxyestr-5-ene);

(38-4) 19-Nor-5-androstenediol (3α,17β-dihydroxyestr-5-ene);

(39) Norandrostenedione--

(39-1) 19-Nor-4-androstenedione (estr-4-en-3,17-dione);

(39-2) 19-Nor-5-androstenedione (estr-5-en-3,17-dione;

(40) 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(41) Norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);

(42) Norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);

(43) Norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);

(44) Normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);

(45) Oxandrolone (17α-methyl-17β-hydroxy-2-oxa-5α-androstan-3-one);

(46) Oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);

(47) Oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-5α-androstan-3-one);

(48) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole);

(49) Stanozolol (17α-methyl-17β-hydroxy-5α-androst-2-eno[3,2-c]-pyrazole);

(50) Stenbolone (17β-hydroxy-2-methyl-5α-androst-1-en-3-one);

(51) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(52) Testosterone (17β-hydroxyandrost-4-en-3-one);

(53) Tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one);

(54) Trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and

(55) any salt, ester, or ether of a drug or substance.

-Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[b,d]pyran-1-ol; (-)-Δ-9-(*trans*)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alfaxalone (5α-pregnan-3α-ol-11,20-dione);
(2) Alprazolam;
(3) Barbital;
*(4) Brexanolone (3α-hydroxy-5α-pregnan-20-one) (Other name: allopregnanolone);
(5) Bromazepam;
(6) Camazepam;
(7) Chloral betaine;
(8) Chloral hydrate;
(9) Chlordiazepoxide;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Dichloralphenazone;
(18) Estazolam;
(19) Ethchlorvynol;
(20) Ethinamate;
(21) Ethyl loflazepate;
(22) Fludiazepam;
(23) Flunitrazepam;
(24) Flurazepam;
(25) Fospropofol;
(26) Halazepam;
(27) Haloxazolam;
(28) Ketazolam;
(29) Loprazolam;
(30) Lorazepam;
(31) Lormetazepam;
(32) Mebutamate;
(33) Medazepam;
(34) Meprobamate;
(35) Methohexital;
(36) Methylphenobarbital (mephobarbital);

(37) Midazolam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazepam;
(42) Oxazolam;
(43) Paraldehyde;
(44) Petrichloral;
(45) Phenobarbital;
(46) Pinazepam;
(47) Prazepam;
(48) Quazepam;
(49) Suvorexant;
(50) Temazepam;
(51) Tetrazepam;
(52) Triazolam;
(53) Zaleplon;
(54) Zolpidem; and
(55) Zopiclone, its salts, isomers, and salts of isomers.

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Modafinil;
(9) Pemoline (including organometallic complexes and their chelates);
(10) Phentermine;
(11) Pipradrol;
*(12) Solriamfetol ((*R*)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β-amino-carbamate (ester));

(13) Sibutramine; and
(14) SPA [1-dimethylamino-1,2-diphenylethane].

-Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
(2) Dextropropoxyphene (α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane); and
(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (other name: tramadol).

-Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;
(2) Carisoprodol;
(3) Eluxadoline (other name: 5-[[[(2*S*-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1*S*)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;
(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and
(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

-Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

-Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names; BRV; UCB-34714; and Briviact);

(2) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(3) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-proprionamide];

(4) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid]; and

(5) Approved cannabidiol drugs.*

A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1*R*-3-methyl-6*R*-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols

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Katie Frank on behalf of David Sergi
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Associated Case Party: SKY MARKETING CORP

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TAB B – Trial Court's Temporary Injunction Order

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	
	§	**126TH JUDICIAL DISTRICT**
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	
Defendants.	§	**TRAVIS COUNTY, TEXAS**

TEMPORARY INJUNCTION

On November 5, 2021, the Court held a hearing on the Application of Plaintiffs for a Temporary Injunction and Defendants' Plea to the Jurisdiction. Michelle Williamson, official court reporter for the 345th District Court made a record.

After considering the pleadings on file, the admissible evidence, and the arguments of counsel, the Court GRANTS the Plaintiffs' Application for a Temporary Injunction, finding that:

1. Plaintiffs have asserted a valid *ultra vires* claim against Commissioner Hellerstedt for declaratory and injunctive relief for his amendments to the definitions for the terms "tetrahydrocannabinols" and "Marihuana extract" as reflected in the 2021 Department of State Health Services' Schedule of Controlled Substances.

2. Plaintiffs have asserted a valid cause of action under the Administrative Procedures Act (APA) against DSHS for its changes to DSHS's webpage

wherein DSHS proclaims that Delta-8 in any concentration is considered a Schedule I controlled substance.

3. Plaintiffs have shown a probable right to declaratory and injunctive relief because Commissioner Hellerstedt's action amending the definitions failed to meet the requirements found in § 481.034 of the Texas Health & Safety Code, and DSHS's rule as stated on its website concerning Delta-8 failed to comply with the rule making requirements found in the APA.

4. As a result of Commissioner Hellerstedt's *ultra vires* actions and DSHS's APA violations, Plaintiffs will suffer imminent and irreparable harm such as brand erosion, reputational damage, including loss of customers' goodwill, unsalvageable loss of nationwide customers, loss of market share, loss of marketing techniques, employee force reduction, revenue lost and costs incurred by not being able to manufacture, process, distribute, or sell hemp products that fall within the newly adopted definitions for "tetrahydrocannabinol" and/or "Marihuana extract," having to relocate or shut down part of Plaintiffs' businesses and contributing to the insolvency of Plaintiffs' vendors and customers, and subjecting all of Plaintiffs' employees and similarly situated company employees and individual consumers to potential arrest and other criminal penalties. In addition, Plaintiffs Darrell Suriff and David Walden, along with other similarly situated individual consumers throughout Texas, will have no effective treatment to anxiety, depression, insomnia, migraines, loss of appetite, chronic pain, and nausea. Plaintiffs, along with these other individuals, may be forced to seek other

dangerous alternatives, like opioids or street drugs.

5. Plaintiffs cannot be adequately compensated in damages because the damages are not quantifiable and there is no monetary relief that can be obtained from Defendants. Such injuries would be compounded should Defendants not be immediately restrained from their activities.

6. This Temporary Injunction will preserve the status quo that existed prior to Commissioner Hellerstedt's *ultra vires* conduct and DSHS's APA violations and is in the public's interest. The harm to the Plaintiffs if this Temporary Injunction is not granted outweighs any potential harm to the Defendants by this Temporary Injunction's issuance. Granting injunctive relief will benefit the public interest.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Plaintiffs' Application for a Temporary Injunction is GRANTED and DSHS and DR. JOHN WILLIAM HELLERSTEDT, in his official capacity as Commissioner of DSHS, his officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise are enjoined as follows:

1. The Court hereby enjoins the effectiveness going forward of amendments to the terms ""tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services's Schedule of Controlled Substances. More specifically, DSHS shall remove from its currently published Schedule of Controlled Substances the most recent modifications of the definitions to the following terms: "*(31) Tetrahydrocannabinols" and "*(58) Marihuana

extract," and any subsequent publications of the same (if any) until further order of this Court.

2. The Court hereby enjoins the effectiveness going forward of the rule stated on DSHS's website that Delta-8 THC in any concentration is considered a Schedule I controlled substance.

This prohibition lasts until the conclusion of the final trial of this case or further notice of the Court.

Actual notice of this Temporary Injunction shall be made by personal service in accordance with the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a final trial on the merits is set for January 28, 2022.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs shall post with the Clerk of this Court a bond in the amount of $1000.00.

SIGNED on November 8, 2021, at 10:22 a.m.

Jan Soifer

Jan Soifer, Judge Presiding

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wherein DSHS proclaims that Delta-8 in any concentration is considered a Schedule I controlled substance.

3. Plaintiffs have shown a probable right to declaratory and injunctive relief because Commissioner Hellerstedt's action amending the definitions failed to meet the requirements found in § 481.034 of the Texas Health & Safety Code, and DSHS's rule as stated on its website concerning Delta-8 failed to comply with the rule making requirements found in the APA.

4. As a result of Commissioner Hellerstedt's *ultra vires* actions and DSHS's APA violations, Plaintiffs will suffer imminent and irreparable harm such as brand erosion, reputational damage, including loss of customers' goodwill, unsalvageable loss of nationwide customers, loss of market share, loss of marketing techniques, employee force reduction, revenue lost and costs incurred by not being able to manufacture, process, distribute, or sell hemp products that fall within the newly adopted definitions for "tetrahydrocannabinol" and/or "Marihuana extract," having to relocate or shut down part of Plaintiffs' businesses and contributing to the insolvency of Plaintiffs' vendors and customers, and subjecting all of Plaintiffs' employees and similarly situated company employees and individual consumers to potential arrest and other criminal penalties. In addition, Plaintiffs Darrell Suriff and David Walden, along with other similarly situated individual consumers throughout Texas, will have no effective treatment to anxiety, depression, insomnia, migraines, loss of appetite, chronic pain, and nausea. Plaintiffs, along with these other individuals, may be forced to seek other

dangerous alternatives, like opioids or street drugs.

5. Plaintiffs cannot be adequately compensated in damages because the damages are not quantifiable and there is no monetary relief that can be obtained from Defendants. Such injuries would be compounded should Defendants not be immediately restrained from their activities.

6. This Temporary Injunction will preserve the status quo that existed prior to Commissioner Hellerstedt's *ultra vires* conduct and DSHS's APA violations and is in the public's interest. The harm to the Plaintiffs if this Temporary Injunction is not granted outweighs any potential harm to the Defendants by this Temporary Injunction's issuance. Granting injunctive relief will benefit the public interest.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Plaintiffs' Application for a Temporary Injunction is GRANTED and DSHS and DR. JOHN WILLIAM HELLERSTEDT, in his official capacity as Commissioner of DSHS, his officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise are enjoined as follows:

1. The Court hereby enjoins the effectiveness going forward of amendments to the terms ""tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services's Schedule of Controlled Substances. More specifically, DSHS shall remove from its currently published Schedule of Controlled Substances the most recent modifications of the definitions to the following terms: "*(31) Tetrahydrocannabinols" and "*(58) Marihuana

extract," and any subsequent publications of the same (if any) until further order of this Court.

2. The Court hereby enjoins the effectiveness going forward of the rule stated on DSHS's website that Delta-8 THC in any concentration is considered a Schedule I controlled substance.

This prohibition lasts until the conclusion of the final trial of this case or further notice of the Court.

Actual notice of this Temporary Injunction shall be made by personal service in accordance with the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a final trial on the merits is set for January 28, 2022.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs shall post with the Clerk of this Court a bond in the amount of $1000.00.

SIGNED on November 8, 2021, at 10:22 a.m.

Jan Soifer

Jan Soifer, Judge Presiding

TAB C – Defendants' Notice of Appeal

CAUSE NO D-1-GN-21-006174

SKY MARKETING CORP., D/B/A HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, AND DAVID WALDEN *Plaintiffs*,	§	IN THE DISTRICT COURT
	§	TRAVIS COUNTY, TEXAS
v.	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, JOHN HELLERSTEDT, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS DSHS, *Defendants*.	§	126TH DISTRICT COURT

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, the Texas Department of State Health Services (DSHS) and Dr. John Hellerstedt, in his official capacity as Commissioner of DSHS, through counsel, hereby file this Notice of Interlocutory Appeal in compliance with Texas Rule of Appellate Procedure 25.1.

The trial court number and style of this case is D-1-GN-21-006174; *Sky Marketing Corp., D/B/A Hometown Hero, Create A Cig Temple, LLC, Darrell Suriff, And David Walden v. Texas Department of State Health Services, John Hellerstedt, In His Official Capacity as Commissioner of The Texas DSHS*, in the 126th District Court, Travis County, Texas.

Defendants desire to appeal the November 8, 2021, interlocutory orders signed by the Honorable Judge Jan Soifer which denied Defendant's plea to the jurisdiction and granted Plaintiff's motion for a temporary injunction. *See* Exhibits 1 and 2. Defendants are entitled to an interlocutory appeal under Texas Rule of Appellate Procedure 28.1(a)

and Texas Civil Practice and Remedies Code § 51.014(a)(4) and (8), which allow for an appeal from an interlocutory order that grants a temporary injunction or denies a plea to the jurisdiction by a governmental unit.

Defendants appeal to the Third Court of Appeals.

This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child protection case, as defined in Rule 28.4.

NOTICE OF AUTOMATIC STAY

This notice of appeal automatically stays the trial and all other trial court proceedings of this matter pending resolution of this appeal. Tex. Civ. Prac. & Rem. Code § 51.014(b).

NOTICE THAT THE DEFENDANTS NEED NOT FILE A COST BOND

Notice is further given that pursuant to Civil Practice and Remedies Code § 6.001 Defendants – a department of this state and the head of a department of this state – are not required to file a bond. Tex. Civ. Prac. & Rem. Code § 6.001(a). Defendants' appeal is therefore perfected upon the filing of the notice of appeal.

NOTICE REGARDING SUPERSEDEAS

Notice is also given that, upon the filing of this instrument, the temporary injunction is superseded pursuant to Texas Civil Practice and Remedies Code Section 6.001(b) and Texas Rules of Appellate Procedure 24.2(a)(3), 29.1(b).

NOTICE REGARDING CLERK'S RECORD

Pursuant to Texas Rule of Appellate Procedure 35.3, Defendants-Appellants respectfully

request that the District Clerk of Travis County, Texas, file the Clerk's Record in the above referenced cause.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN E. COWLES
Deputy Attorney General for Civil Litigation

ELIZABETH BROWN FORE
Chief, Administrative Law Division

/s/Cynthia O. Akatugba
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on November 10, 2021, on the following attorney-in-charge, by e-service and/or e-mail:

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ATTORNEYS FOR PLAINTIFFS

/s/Cynthia O. Akatugba
CYNTHIA O. AKATUGBA
Assistant Attorney General

TAB B – Trial Court's Temporary Injunction Order

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, and DAVID WALDEN	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
VS.	§	
	§	**126TH JUDICIAL DISTRICT**
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, and JOHN HELLERSTEDT, in his official capacity as Commissioner of the Texas DSHS,	§	
Defendants.	§	**TRAVIS COUNTY, TEXAS**

TEMPORARY INJUNCTION

On November 5, 2021, the Court held a hearing on the Application of Plaintiffs for a Temporary Injunction and Defendants' Plea to the Jurisdiction. Michelle Williamson, official court reporter for the 345th District Court made a record.

After considering the pleadings on file, the admissible evidence, and the arguments of counsel, the Court GRANTS the Plaintiffs' Application for a Temporary Injunction, finding that:

1. Plaintiffs have asserted a valid *ultra vires* claim against Commissioner Hellerstedt for declaratory and injunctive relief for his amendments to the definitions for the terms "tetrahydrocannabinols" and "Marihuana extract" as reflected in the 2021 Department of State Health Services' Schedule of Controlled Substances.

2. Plaintiffs have asserted a valid cause of action under the Administrative Procedures Act (APA) against DSHS for its changes to DSHS's webpage

wherein DSHS proclaims that Delta-8 in any concentration is considered a Schedule I controlled substance.

3. Plaintiffs have shown a probable right to declaratory and injunctive relief because Commissioner Hellerstedt's action amending the definitions failed to meet the requirements found in § 481.034 of the Texas Health & Safety Code, and DSHS's rule as stated on its website concerning Delta-8 failed to comply with the rule making requirements found in the APA.

4. As a result of Commissioner Hellerstedt's *ultra vires* actions and DSHS's APA violations, Plaintiffs will suffer imminent and irreparable harm such as brand erosion, reputational damage, including loss of customers' goodwill, unsalvageable loss of nationwide customers, loss of market share, loss of marketing techniques, employee force reduction, revenue lost and costs incurred by not being able to manufacture, process, distribute, or sell hemp products that fall within the newly adopted definitions for "tetrahydrocannabinol" and/or "Marihuana extract," having to relocate or shut down part of Plaintiffs' businesses and contributing to the insolvency of Plaintiffs' vendors and customers, and subjecting all of Plaintiffs' employees and similarly situated company employees and individual consumers to potential arrest and other criminal penalties. In addition, Plaintiffs Darrell Suriff and David Walden, along with other similarly situated individual consumers throughout Texas, will have no effective treatment to anxiety, depression, insomnia, migraines, loss of appetite, chronic pain, and nausea. Plaintiffs, along with these other individuals, may be forced to seek other

dangerous alternatives, like opioids or street drugs.

5. Plaintiffs cannot be adequately compensated in damages because the damages are not quantifiable and there is no monetary relief that can be obtained from Defendants. Such injuries would be compounded should Defendants not be immediately restrained from their activities.

6. This Temporary Injunction will preserve the status quo that existed prior to Commissioner Hellerstedt's *ultra vires* conduct and DSHS's APA violations and is in the public's interest. The harm to the Plaintiffs if this Temporary Injunction is not granted outweighs any potential harm to the Defendants by this Temporary Injunction's issuance. Granting injunctive relief will benefit the public interest.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Plaintiffs' Application for a Temporary Injunction is GRANTED and DSHS and DR. JOHN WILLIAM HELLERSTEDT, in his official capacity as Commissioner of DSHS, his officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise are enjoined as follows:

1. The Court hereby enjoins the effectiveness going forward of amendments to the terms ""tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services's Schedule of Controlled Substances. More specifically, DSHS shall remove from its currently published Schedule of Controlled Substances the most recent modifications of the definitions to the following terms: "*(31) Tetrahydrocannabinols" and "*(58) Marihuana

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IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a final trial on the merits is set for January 28, 2022.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs shall post with the Clerk of this Court a bond in the amount of $1000.00.

SIGNED on November 8, 2021, at 10:22 a.m.

Jan Soifer

Jan Soifer, Judge Presiding

TAB C – Defendants' Notice of Appeal

CAUSE NO D-1-GN-21-006174

SKY MARKETING CORP., D/B/A HOMETOWN HERO, CREATE A CIG TEMPLE, LLC, DARRELL SURIFF, AND DAVID WALDEN *Plaintiffs*,	§	IN THE DISTRICT COURT
	§	TRAVIS COUNTY, TEXAS
v.	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, JOHN HELLERSTEDT, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS DSHS, *Defendants*.	§	126TH DISTRICT COURT

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, the Texas Department of State Health Services (DSHS) and Dr. John Hellerstedt, in his official capacity as Commissioner of DSHS, through counsel, hereby file this Notice of Interlocutory Appeal in compliance with Texas Rule of Appellate Procedure 25.1.

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and Texas Civil Practice and Remedies Code § 51.014(a)(4) and (8), which allow for an appeal from an interlocutory order that grants a temporary injunction or denies a plea to the jurisdiction by a governmental unit.

Defendants appeal to the Third Court of Appeals.

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request that the District Clerk of Travis County, Texas, file the Clerk's Record in the above referenced cause.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

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First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN E. COWLES
Deputy Attorney General for Civil Litigation

ELIZABETH BROWN FORE
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on November 10, 2021, on the following attorney-in-charge, by e-service and/or e-mail:

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ATTORNEYS FOR PLAINTIFFS

/s/Cynthia O. Akatugba
CYNTHIA O. AKATUGBA
Assistant Attorney General

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Associated Case Party: SKY MARKETING CORP

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Associated Case Party: Sky Marketing Corp., d/b/a Hometown Hero

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Associated Case Party: John Hellerstedt

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