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D-1-GN-26-007113
Velva L. Price
District Clerk
Travis County
Nancy Rodriguez

D-1-GN-26-007113

NO. ___________________

SS DISTRO USA, LLC; TOPPS DISTRO LLC d/b/a KINGPIN KUSH; JASON MORENO, Individually d/b/a MY CITY HEMP; and TREVOR KOCAOGLAN, Individually, Plaintiffs,	§	IN THE DISTRICT COURT
	§	459TH, DISTRICT COURT
V.	§	____ JUDICIAL DISTRICT
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, IMELDA GARCIA, in her official capacity as Interim Commissioner of the Texas Department of State Health Services; and GLENN HARGETT, in his official capacity as Director of the Drugs and Medical Devices Division, Texas Department of State Health Services, Defendants.	§	TRAVIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs SS Distro USA LLC, Topps Distro LLC d/b/a KingPin Kush, Jason Moreno d/b/a My City Hemp, and Trevor Kocaoglan (collectively, "Plaintiffs") file this Original Petition for Declaratory and Injunctive Relief against the Texas Department of State Health Services ("DSHS"); Imelda Garcia, in her official capacity as Interim Commissioner of DSHS; and Glenn Hargett, in his official capacity as Director of the Drugs and Medical Devices Division of DSHS (collectively, "Defendants").

Plaintiffs seek declaratory relief against DSHS under Texas Government Code § 2001.038 concerning the validity and applicability of the challenged agency rules, and prospective declaratory and injunctive relief against Garcia and Hargett in their official capacities to prevent the implementation and enforcement of agency actions alleged to exceed their statutory authority or otherwise violate Texas law.[1] In support thereof, Plaintiffs respectfully show the Court as follows:

Nature of This Action

1. This action accepts and does not ask this Court to revisit the holdings of *Texas Department of State Health Services v. Sky Marketing Corp.* ("*Sky Marketing*").[2] In resolving an interlocutory plea to the jurisdiction, the Supreme Court held that Texas Health and Safety Code § 481.034(g) authorized the Commissioner to object to the federal scheduling change and make the corresponding 2021 Schedule modifications; that the Commissioner complied with the procedures governing that action; and that the vendors did not establish an "insoluble conflict" between the scheduling decision and House Bill 1325. The Court therefore held that the pleaded procedural and substantive ultra vires claims failed and that sovereign immunity applied.

2. *Sky Marketing* further held that DSHS's October 2021 website statement was not an independently enforceable rule under the Texas Administrative Procedure Act because it merely summarized the schedules, had no independent legal effect, and was not itself enforceable. At the same time, the Court affirmed that the vendor plaintiffs had standing and that their claims were ripe because DSHS's civil licensing and enforcement authority caused concrete, traceable, and redressable economic and reputational injury.

3. Plaintiffs do not contend that the statutory delta-9 THC threshold, standing alone, renders concentrated manufactured delta-8 THC lawful; do not invoke the APA to invalidate the July

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[1] *See infra*, Proposed Orders.

[2] *Tex. Dep't of State Health Servs. v. Sky Mktg. Corp., No. 23-0887,* slip op. at 16–29 (Tex. May 1, 2026), reh'g denied June 5, 2026, mandate issued June 5, 2026.

2026 ministerial reinstatement of the Schedule language adjudicated in *Sky Marketing*; and do not seek an order requiring DSHS to rewrite the schedules or an injunction protecting nonparties. This action instead challenges matters not adjudicated there: specified March 2026 Chapter 300 provisions adopted through APA rulemaking; DSHS's separately announced 2026 detention-and-referral criterion to the extent it operates with independent legal effect; and the application of that criterion or the Reinstated Definitions to naturally occurring hemp constituents, including THCA, or to other specifically identified cannabinoids and product categories materially distinct from the concentrated manufactured delta-8 THC products at issue in *Sky Marketing*.

4. At its core, this case presents a straightforward question of constitutional structure and statutory authority: whether an executive agency may, through administrative rulemaking, accomplish what only the Texas Legislature may accomplish through legislation. Plaintiffs do not ask this Court to determine whether hemp should remain lawful in Texas as a matter of public policy. That policy determination belongs exclusively to the Legislature. Instead, Plaintiffs ask the Court to determine whether Defendants have faithfully implemented the Legislature's enactments or have instead adopted rules that effectively rewrite the statutory definition of lawful hemp, prohibit conduct the Legislature has authorized, and impose obligations that exceed Defendants' delegated authority.

5. The Texas Legislature deliberately chose to legalize and regulate hemp meeting the statutory definition enacted in House Bill 1325. Thousands of Texans relied upon that legislative decision by investing substantial capital, opening businesses, employing workers, entering commercial leases, purchasing equipment and inventory, and building lawful enterprises

throughout the State. Consumers likewise rely upon continued access to products that the Legislature has determined may be lawfully manufactured, transported, possessed, and sold.

6. The challenged agency actions threaten to fundamentally alter that legislative framework. If Texas law is to change so that products previously authorized by statute become unlawful, or if the lawful marketplace created by House Bill 1325 is to be fundamentally restructured, that decision must be made by the people's elected representatives through legislation—not by an executive agency through administrative rulemaking. This action seeks to preserve the constitutional allocation of governmental authority by ensuring that fundamental policy choices remain where the Texas Constitution places them: with the Texas Legislature.

RELATED LITIGATION AND THE DISTINCT CONTROVERSY PRESENTED HERE

7. Plaintiffs disclose that certain provisions of the March 31, 2026 amendments to Chapter 300 of Title 25 of the Texas Administrative Code are the subject of separate, previously filed litigation styled *Texas Hemp Business Council, et al. v. Texas Department of State Health Services, et al.*, Cause No. D-1-GN-26-002511, pending in the 455th Judicial District Court of Travis County, Texas, together with related interlocutory appellate proceedings. That action challenges, among other provisions, portions of the Chapter 300 amendments concerning the treatment of tetrahydrocannabinolic acid and total delta-9 tetrahydrocannabinol, transportation and importation restrictions, administrative fees, and administrative penalties. Plaintiffs do not conceal, minimize, or seek to evade the existence of that parallel litigation.

8. Certain business Plaintiffs in this action are members of the Texas Hemp Business Council and acknowledge that their interests concerning specified March 31, 2026 Chapter 300 provisions are presently represented in that organization's pending litigation. This action instead arises principally from materially subsequent agency conduct occurring after commencement of

the THBC litigation, including the July 2026 Schedule Reinstatement and Defendants' subsequent adoption, implementation, and threatened enforcement of the Post-July Implementation and Enforcement Standard described herein.

9. To the extent any claim asserted in this action also implicates a Chapter 300 provision presently at issue in the Texas Hemp Business Council litigation, Plaintiffs plead that claim only to preserve their own concrete and particularized rights, injuries, applications of the challenged provisions, and additional statutory or constitutional theories. Plaintiffs do not seek inconsistent adjudications concerning the same agency action. Should the Court determine that a discrete issue substantially overlaps with the pending Texas Hemp Business Council litigation, Plaintiffs request that the Court employ an appropriate case-management mechanism— including coordination, consolidation, transfer, stay, or abatement of only the genuinely overlapping issue—rather than dismissing claims arising from separate subsequent agency conduct.

I. INTRODUCTION

10. This case concerns the constitutional and statutory limits on administrative power. More specifically, it concerns whether an executive agency may replace the Legislature's statutory definition of hemp with a materially different definition of its own and thereby criminalize conduct the Legislature has chosen to permit.

11. The Texas Legislature answered the policy question presented here in 2019 when it enacted House Bill 1325. Consistent with federal law, the Legislature defined hemp by reference to its concentration of delta-9 tetrahydrocannabinol ("delta-9 THC") on a dry-weight basis and expressly removed hemp from the statutory definition of marijuana. The Legislature further recognized that hemp includes every part of the cannabis plant, including its cannabinoids,

extracts, derivatives, acids, salts, and isomers, so long as the plant material satisfies the statutory delta-9 THC concentration limit established by law.

12. Whether that legislative policy was wise or unwise is not before this Court. Under the Texas Constitution, those policy judgments belong exclusively to the Legislature. Administrative agencies possess only those powers affirmatively delegated to them by statute and may not enlarge their own authority through rulemaking.

13. Plaintiffs do not ask this Court to decide whether Texas should regulate hemp more strictly. Nor do Plaintiffs challenge the Legislature's authority to amend the Texas Controlled Substances Act or the Texas Agriculture Code if it chooses to adopt a different regulatory framework in the future.

14. Instead, Plaintiffs challenge specified provisions of the March 2026 Chapter 300 Amendments, Defendants' Post-July Implementation and Enforcement Standard to the extent it operates independently with binding legal effect, and materially distinct applications of the Reinstated Definitions that Plaintiffs allege exceed Defendants' statutory authority. Plaintiffs do not challenge the July 2026 ministerial reinstatement itself, seek review of the Commissioner's scheduling decision, or contend that concentrated manufactured delta-8 THC is lawful merely because it is hemp-derived or contains no more than 0.3 percent delta-9 THC.

15. This case therefore presents a straightforward question of statutory authority: whether the Legislature delegated to DSHS the power to redefine hemp or to alter the statutory distinction between lawful hemp and prohibited marijuana. It did not.

16. The Texas Administrative Procedure Act expressly authorizes judicial review of agency rules alleged to exceed statutory authority or conflict with governing statutes. Tex. Gov't Code § 2001.038. Texas courts likewise possess jurisdiction to restrain state officials acting ultra vires—that is, beyond the authority conferred upon them by law.

17. The challenged agency actions inflict immediate and continuing injury upon Plaintiffs. The business Plaintiffs are licensed or registered participants in Texas's hemp industry, while Plaintiff Kocaoglan is a former licensed cultivator and retailer, current industry consultant and compliance educator, and consumer. Plaintiffs have invested substantial capital, developed commercial relationships, entered contractual obligations, hired employees, and built lawful businesses in reliance upon the statutory framework enacted by the Legislature. The challenged agency actions place those investments, businesses, employees, and contractual relationships in immediate jeopardy by threatening civil enforcement, criminal investigation, product seizures, and irreparable commercial harm.

18. The injury is not speculative. Defendants have announced that the challenged agency actions will be enforced statewide. Plaintiffs must therefore choose between abandoning substantial portions of their lawful business operations or risking enforcement under regulatory standards that exceed Defendants' statutory authority.

19. Texas law does not require regulated parties to risk enforcement under an unlawful rule before seeking judicial review. The Legislature enacted Section 2001.038 precisely to permit pre-enforcement challenges where agency rules threaten immediate injury and exceed lawful authority.

20. This Court's task is not to decide whether hemp policy should change. That determination belongs to the Legislature. The Court's task is to determine whether the executive branch has remained within the authority delegated by the Legislature. Because the challenged agency actions conflict with Texas statutes and exceed the authority granted to DSHS, they are invalid and unenforceable.

21. Plaintiffs therefore seek declarations that the challenged agency actions are invalid under the Texas Administrative Procedure Act, that Defendants are acting beyond their lawful authority, and that Defendants should be temporarily and permanently enjoined from enforcing those rules pending final judgment.

22. This action is brought pursuant to the Texas Administrative Procedure Act ("APA"), Tex. Gov't Code Chapter 2001, including Section 2001.038, the Uniform Declaratory Judgments Act ("UDJA"), Tex. Civ. Prac. & Rem. Code Chapter 37, and the inherent equitable jurisdiction of Texas courts to restrain state officials acting outside the authority conferred upon them by law.

23. This action does not seek judicial review of a contested case, nor does it seek review of a final agency order. Rather, Plaintiffs challenge Defendants' threatened enforcement of an undefined standard that operates as an agency rule but was never promulgated through the procedures required by Texas law.

24. Section 2001.038(a) of the APA expressly authorizes a person whose legal rights or privileges are threatened by a rule to obtain a judicial declaration regarding the rule's validity or applicability where the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.

25. In addition, Texas courts have long recognized that sovereign immunity does not bar suits seeking prospective relief against state officials who act without legal authority or who exceed the authority granted to them by statute.

26. Plaintiffs therefore seek prospective ultra vires relief against Defendants solely in their official capacities.

27. Plaintiffs do not seek retrospective monetary relief from the State of Texas.

28. The Uniform Declaratory Judgments Act likewise authorizes this Court to declare the parties' respective rights, status, and legal relations under the Texas Constitution, the Texas Administrative Procedure Act, the Texas Health and Safety Code, the Texas Agriculture Code, and other applicable statutes.

A. Subject Matter Jurisdiction

29. This Court possesses subject matter jurisdiction under Section 2001.038 of the Texas Government Code because Plaintiffs challenge the validity of agency rules adopted by a state agency and allege that those rules threaten to interfere with and impair Plaintiffs' legal rights and privileges.

30. This Court likewise possesses jurisdiction over Plaintiffs' ultra vires claims because Plaintiffs allege that Defendants are acting beyond the authority delegated to them by statute and seek only prospective declaratory and injunctive relief.

31. This Court possesses jurisdiction to determine questions concerning statutory interpretation, constitutional limitations upon administrative authority, and the validity of agency rules adopted pursuant to the Texas Administrative Procedure Act.

32. No administrative proceeding presently exists that affords Plaintiffs an adequate opportunity to obtain complete relief before enforcement of the challenged agency action begins.

B. Venue

33. Venue is mandatory in Travis County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002 because this action seeks to restrain state officials acting in their official capacities.

34. Venue is independently proper under Tex. Gov't Code § 2001.038 because Defendants maintain their principal offices in Travis County, the challenged agency actions were promulgated in Travis County, and the official actions challenged in this lawsuit occurred in Travis County.

II. STATUTORY AND REGULATORY FRAMEWORK

A. The Texas Controlled Substances Act

35. The Texas Controlled Substances Act ("TCSA"), codified in Chapter 481 of the Texas Health and Safety Code, establishes the comprehensive statutory framework governing controlled substances within the State of Texas.

36. The Legislature has determined which substances are controlled, the schedules into which those substances are placed, and the criminal penalties associated with their manufacture, delivery, possession, and distribution.

37. The TCSA is a criminal statute enacted by the Legislature pursuant to its constitutional authority to define criminal offenses and prescribe punishments.

38. Because the TCSA defines criminal conduct, its provisions must be applied according to the language enacted by the Legislature and may not be enlarged or modified through administrative rulemaking.

39. Although the Legislature has delegated limited rulemaking authority to DSHS concerning the administration of controlled substance schedules, that authority is bound by statute and does not authorize the Department to amend or contradict legislative enactments.

40. Administrative rules adopted pursuant to Chapter 481 must remain consistent with the statutes enacted by the Legislature and may not create criminal liability beyond that authorized by statute.

B. The Legislature Enacted House Bill 1325 to Distinguish Hemp from Marijuana

41. The Legislature chose to define hemp using an objective scientific measurement based upon delta-9 tetrahydrocannabinol concentration on a dry-weight basis.

42. The Legislature deliberately adopted an expansive definition of hemp, providing that it includes the plant *Cannabis sativa L.* and every part of that plant, including its seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, provided the material satisfies the statutory delta-9 THC concentration limit.

43. By including cannabinoids, derivatives, extracts, acids, isomers, and related compounds within the statutory definition of hemp, the Legislature adopted an intentionally broad definition describing what constitutes lawful hemp under Texas law.

44. At the same time, the Legislature excluded hemp from the statutory definition of marijuana.

45. Those amendments reflected deliberate legislative choices concerning both the scope of lawful hemp and the continuing scope of prohibited marijuana.

C. The Legislature Chose a Delta-9 THC Standard

46. The Legislature did not prohibit all tetrahydrocannabinols.

47. Nor did the Legislature define hemp by reference to “total THC.”

48. Nor did the Legislature require conversion of tetrahydrocannabinolic acid (“THCA”) into delta-9 THC, whether through a post-hoc mathematical calculation or by deliberately inducing decarboxylation through heat during the testing process.

49. Instead, the Legislature selected a single analytical standard: the concentration of delta-9 tetrahydrocannabinol on a dry-weight basis.

50. Accordingly, administrative agencies may not substitute a different analytical methodology merely because they believe a different methodology would better accomplish perceived regulatory objectives.

51. Whether Texas should regulate hemp using a total-THC methodology is a policy question reserved to the Legislature.

52. Unless and until the Legislature amends the governing statutes, neither DSHS nor any other executive agency possesses authority to replace the statutory delta-9 THC standard with another regulatory standard.

53. Plaintiffs do not dispute that DSHS possesses authority, where conferred by statute, to regulate laboratory testing and to require the measurement and reporting of cannabinoids and cannabinoid concentrations in consumable hemp products. But the authority to test for or measure a chemical constituent is legally distinct from the authority to determine the substantive criterion by which a product is classified as lawful hemp or an unlawful controlled substance. Testing identifies what is present in a product; the Legislature determines the legal consequences that attach to those results.

54. A testing methodology therefore does not itself establish the legal standard for compliance. DSHS may prescribe lawful methods for measuring compliance with the standards enacted by the Legislature, but it may not convert a laboratory methodology, including a

calculation incorporating THCA or other tetrahydrocannabinols, into a new substantive legal-compliance standard unless the Legislature has authorized that standard. Administrative authority to determine *how* a statutory threshold is measured does not include authority to redefine *what threshold the law imposes*.

55. The distinction is particularly important here. Plaintiffs allege that Defendants are not merely requiring laboratories to identify or quantify particular cannabinoids; they are attaching dispositive legal consequences to those measurements by treating products that Plaintiffs contend satisfy the Legislature's statutory definition of hemp as controlled substances based upon an additional criterion not enacted by the Legislature. Plaintiffs therefore challenge not the act of testing itself, but Defendants' use of testing results, Schedule language, and the Post-July Implementation and Enforcement Standard to establish a substantive boundary between lawful hemp and controlled substances different from the boundary established by statute.

D. DSHS Possesses Limited Rulemaking Authority

56. DSHS is an executive agency created by statute.

57. As an administrative agency, DSHS possesses only those powers affirmatively delegated by the Texas Legislature together with those powers necessarily implied from the statutory scheme.

58. Administrative agencies possess no inherent legislative authority.

59. Agency rules are valid only to the extent they implement legislative enactments and remain consistent with governing statutes.

60. Administrative rulemaking may not alter statutory definitions, expand criminal prohibitions, eliminate statutory exemptions, or impose substantive requirements inconsistent with legislative enactments.

61. If an administrative rule conflicts with the governing statute, the statute controls.

62. Likewise, if an agency adopts a rule exceeding the authority delegated by the Legislature, that rule is invalid under Texas law.

E. The Distinct Agency Actions at Issue

63. This action concerns several related but legally distinct agency actions. Because those actions occurred at different times, arise under different asserted sources of authority, and present different questions under Texas law, Plaintiffs identify them separately rather than referring indiscriminately to all of them as a single regulatory action.

64. First, effective March 31, 2026, DSHS adopted amendments to Chapter 300 of Title 25 of the Texas Administrative Code governing consumable hemp products (the "March 2026 Chapter 300 Amendments"). Those amendments include provisions addressing, among other matters, the measurement and treatment of tetrahydrocannabinolic acid ("THCA") and delta-9 tetrahydrocannabinol, transportation and importation requirements, licensing and registration fees, and administrative penalties.

65. As disclosed above, certain provisions of the March 2026 Chapter 300 Amendments are presently being challenged in the separate *Texas Hemp Business Council* litigation. Plaintiffs do not contend that the filing of this action creates a new controversy merely by repackaging the same challenge to those March 2026 provisions. To the extent particular Chapter 300 provisions are implicated here, Plaintiffs identify and challenge them only insofar as necessary to protect Plaintiffs' own rights, address distinct applications or legal theories, or obtain complete relief concerning the subsequent agency actions described below.

66. After rehearing was denied and the mandate issued in *Sky Marketing* on June 5, 2026, DSHS published a July 10, 2026 notice reinstating the 2021 Schedule I language effective July

31, 2026 (the "July 2026 Schedule Reinstatement"). Plaintiffs do not allege that this ministerial reinstatement was a new APA rulemaking or that it reopened the scheduling determination resolved in *Sky Marketing*.

67. *Sky Marketing* held that House Bill 1325 did not unambiguously decontrol concentrated manufactured delta-8 THC and that the vendors had not established an insoluble conflict sufficient to support an ultra vires claim. The Court separately recognized a narrower statutory tension as to THC naturally occurring in hemp, while noting the Commissioner's representation that DSHS would not enforce the schedules against naturally occurring trace delta-8 THC. Plaintiffs rely on that distinction only as to naturally occurring constituents or other products and compounds materially distinct from concentrated manufactured delta-8 THC, and only upon product-specific proof.

68. Following the July 2026 Schedule Reinstatement, DSHS placed a statement on its Consumable Hemp Program webpage declaring that products labeled to contain delta-8 THC or "shown to contain more than trace amounts of tetrahydrocannabinols, including delta-8 THC, may be detained and referred to law enforcement." Plaintiffs refer to that specifically identified statement and its alleged use in DSHS inspections, detention decisions, referrals, and licensing administration as the "Post-July Implementation and Enforcement Standard."

69. The 2026 statement differs in pleaded legal effect from the 2021 website summary addressed in *Sky Marketing*. DSHS disclaimed any intention to enforce the 2021 statement, but the 2026 statement itself announces detention and referral consequences and states that DSHS intends to amend the consumable-hemp rules through APA rulemaking to incorporate the definition on which the statement relies. Plaintiffs allege that DSHS personnel presently use the announced criterion as a controlling standard with external consequences.

70. Plaintiffs challenge the Post-July Implementation and Enforcement Standard under § 2001.038 only to the extent it operates independently as a generally applicable and binding criterion that implements, interprets, or prescribes law or policy and determines detention, referral, licensing, or other regulatory consequences. Plaintiffs do not contend that every agency explanation or website statement is an APA rule.

71. Plaintiffs separately allege, in the alternative, that the named officials act ultra vires to the extent they apply the Post-July Implementation and Enforcement Standard or the Reinstated Definitions to naturally occurring hemp constituents, including THCA, or to another specifically identified product category materially distinct from concentrated manufactured delta-8 THC, where that application creates an insoluble conflict with an express statutory exclusion. This claim does not seek review of the merits of the Commissioner's § 481.034(g) objection.

72. For clarity, the term "Challenged Agency Actions" refers collectively to: (1) the Post-July Implementation and Enforcement Standard, as specifically defined above; (2) the application of the Reinstated Definitions only in the materially distinct circumstances pleaded herein; and (3) only those provisions or applications of the March 2026 Chapter 300 Amendments expressly identified in a particular claim. The July 2026 Schedule Reinstatement is historical context and is not itself challenged as an APA rule.

73. Throughout this Petition, an allegation that a product falls within a statutory definition or exclusion for hemp does not rest on the delta-9 THC threshold alone and does not assert that concentrated manufactured delta-8 THC is lawful on the theory rejected in *Sky Marketing*. Such allegations refer only to naturally occurring constituents or to specifically identified cannabinoids, products, and applications alleged to be materially distinct from concentrated manufactured delta-8 THC, and remain subject to product-specific proof.

III. PARTIES

A. Plaintiffs

74. Plaintiff SS DISTRO USA, LLC is a Texas limited liability company organized and existing under the laws of the State of Texas, with its principal place of business in Dallas County, Texas.

75. SS DISTRO is engaged in the lawful wholesale distribution, retail sale, and marketing of hemp and hemp-derived products regulated under Texas law.[3]

76. Plaintiff TOPPS DISTRO LLC d/b/a KINGPIN KUSH is a Texas limited liability company organized and existing under the laws of the State of Texas, with its principal place of business in Bexar County, Texas.

77. TOPPS DISTRO LLC d/b/aKINGPIN KUSH operates retail hemp businesses engaged in the lawful purchase, possession, transportation, storage, marketing, and retail sale of hemp and hemp-derived products regulated under Texas law. KINGPIN KUSH presently operates ten retail locations in Texas and has obtained Consumable Hemp Product Retail Registrations from DSHS for its retail operations.[4]

78. The threatened and ongoing injury to KINGPIN KUSH is substantial and concrete. KINGPIN KUSH presently operates ten retail locations in Texas, serves approximately 10,000 Texas customers, and derives approximately 90 percent of its revenue from hemp-derived products. Following the Reinstated Definitions and Defendants' subsequent announced interpretation, implementation, and threatened enforcement of them, KINGPIN KUSH has more than $300,000 in inventory that it cannot sell or cannot sell without unacceptable enforcement risk.

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[3] Declaration of Zaid Patka ¶¶ 4-10 ("Patka Decl."), attached as Exhibit "A."
[4] Declaration of William Hunter ¶¶ 4–6, 9–18 ("Hunter Decl."), attached as Exhibit "B."

79. Its aggregate sales are presently approximately 50 percent below ordinary levels, and its workforce has been reduced from approximately 50 employees and contractors to approximately 20—a reduction of approximately 60 percent. These losses and obligations materially threaten KINGPIN KUSH's inventory, leases, expansion investments, workforce, customer relationships, supplier relationships, market position, and goodwill.[5]

80. Plaintiff Jason Moreno, an individual doing business as MY CITY HEMP, operates the business as a sole proprietorship with its principal place of business in Webster, Texas.

81. MY CITY HEMP is engaged in the lawful transportation, wholesale distribution, retail sale, and marketing of hemp and hemp-derived products regulated under Texas law.[6]

82. Plaintiff Moreno d/b/a MY CITY HEMP also regularly purchases products through interstate commerce and sells hemp-derived products to customers outside Texas, with approximately 40 percent of its sales from December 1, 2025 through July 31, 2026 occurring through interstate transactions.[7]

83. Plaintiff TREVOR KOCAOGLAN is an individual resident of Texas, a former licensed Texas hemp cultivator and retailer, an experienced hemp-industry consultant and compliance educator, a continuing participant in the Texas hemp industry, and a consumer of hemp-derived products regulated under House Bill 1325.[8]

84. Plaintiff KOCAOGLAN previously operated RioCBDRGV as a sole proprietorship through which he cultivated hemp, conducted retail operations, provided consulting and compliance education, and assisted other Texas hemp farmers and businesses with licensing, cultivation, product testing, Certificates of Analysis, and regulatory compliance.[9]

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[5] *Id.*
[6] Declaration of Jason Moreno ¶¶ 4-18 ("Moreno Decl."), attached as Exhibit "C."
[7] Moreno Decl. ¶¶10, 18.
[8] Declaration of Trevor Kocaoglan ¶¶ 4-16, attached as Exhibit "D."
[9] Kocaoglan Decl. ¶¶ 8-16.

B. Defendants

85. Defendant TEXAS DEPARTMENT OF STATE HEALTH SERVICES ("DSHS" or the "Department") is a state agency of the State of Texas responsible for administering and enforcing the statutes and rules governing consumable hemp products, including 25 Texas Administrative Code Chapter 300, and for maintaining the Texas Schedules of Controlled Substances as provided by law. Plaintiffs challenge the validity and applicability of the agency rules, provisions, and generally applicable implementation standards identified in this Petition. DSHS is therefore a required party under Texas Government Code § 2001.038(c), which provides that the state agency must be made a party to an action challenging the validity or applicability of an agency rule. DSHS may be served through its Commissioner, Imelda Garcia, MPH, at the Department's principal office, 1100 West 49th Street, Austin, Texas 78756, or wherever she may be found.

86. Defendant, Imelda Garcia, MPH, is the Interim Commissioner of the Texas Department of State Health Services ("DSHS"). She is sued solely in her official capacity.

87. As Interim Commissioner, Ms. Garcia serves as the chief executive officer of DSHS and is charged with supervising the Department, administering its programs, and ensuring the implementation and enforcement of statutes and administrative rules entrusted to the Department.

88. The Commissioner possesses direct responsibility for the administration, implementation, interpretation, and statewide enforcement of the challenged Schedule I controlled-substance rules and is therefore a proper defendant in an action seeking prospective declaratory and injunctive relief under Section 2001.038 of the Texas Government Code and Texas ultra vires doctrine.

89. Defendant Glenn Hargett is the Director of the Drugs and Medical Devices Division of DSHS. He is sued solely in his official capacity.

90. The Drugs and Medical Devices Division is responsible for administering the Texas controlled-substance schedules, including the promulgation, implementation, interpretation, and enforcement of the challenged Schedule I definitions.

91. Upon information and belief, Defendant Hargett exercises direct supervisory authority over the personnel responsible for administering and enforcing the challenged agency actions.

92. Defendant Hargett is therefore a proper defendant because he possesses a sufficient connection with the enforcement of the challenged agency actions to afford complete prospective relief.

Rule 47 Statement

93. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiffs seek only non-monetary relief. Specifically, Plaintiffs seek declaratory relief under Texas Government Code § 2001.038 and Chapter 37 of the Texas Civil Practice and Remedies Code, temporary, preliminary, and permanent injunctive relief prohibiting enforcement of the challenged agency actions, costs of court as allowed by law, and such other and further non-monetary relief to which they may be entitled. Plaintiffs do not seek monetary damages or attorney's fees.

IV. STANDING

94. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.

95. Section 2001.038(a) of the Texas Government Code authorizes a person to challenge the validity or applicability of an agency rule if the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair a legal right or privilege of the plaintiff.

96. Plaintiffs satisfy each statutory requirement for standing under Section 2001.038.

97. Plaintiffs also satisfy the constitutional requirements for standing because they have suffered, and continue to suffer, concrete and particularized injuries that are actual or imminent, fairly traceable to Defendants' challenged conduct, and capable of being redressed by the declaratory and injunctive relief requested herein.

A. Plaintiffs Possess Legally Protected Interests.

98. Plaintiff TREVOR KOCAOGLAN possesses concrete and legally protected interests directly impaired by the challenged agency actions. Kocaoglan is a former licensed Texas hemp cultivator and retailer, an experienced hemp-industry consultant and compliance educator, a continuing participant in the Texas hemp industry, and a consumer of hemp-derived products. He remains willing and interested in resuming paid consulting, cultivation, retail, and other lawful hemp-related commercial activities, but the challenged agency actions presently deter that participation by creating substantial uncertainty and enforcement risk concerning whether products satisfying the Legislature's statutory definition of hemp may nevertheless be treated as controlled substances. The challenged agency actions further impair Kocaoglan's ability to purchase, possess, use, recommend, and provide compliance guidance concerning hemp-derived products that he understands to be lawful under House Bill 1325.[10]

99. Kocaoglan's concern regarding enforcement is not hypothetical or based merely upon generalized disagreement with State policy. In 2023, before the challenged agency actions at issue in this action, a shipment associated with his hemp business was detained and his business

[10] Kocaoglan Decl. ¶¶ 8–17, 23–40.

and his mother's residence were searched while he was attempting to operate under Texas's hemp licensing, testing, and documentation requirements.[11]

100. Kocaoglan does not contend that the Reinstated Definitions caused that earlier incident. Rather, the incident demonstrates why present uncertainty concerning whether products documented and represented as lawful hemp may nevertheless be treated as controlled substances has a concrete and particularized effect upon his conduct and why he takes the present threat of enforcement seriously.[12]

101. These restrictions presently alter Kocaoglan's conduct, interfere with his ability to participate in the lawful marketplace established by the Legislature, and subject him to a credible threat of regulatory or criminal enforcement for activities he would otherwise undertake. Declaratory and injunctive relief prohibiting enforcement of the challenged agency actions would remove or substantially reduce those injuries and permit Kocaoglan to resume and continue those lawful activities.[13]

102. The injury to SS DISTRO is not hypothetical or dependent upon some future contingency. Approximately 90 percent of the products presently carried by SS DISTRO are affected by the Reinstated Definitions, and those products constitute the core of its wholesale business rather than incidental product lines. The remaining portion of SS DISTRO's existing product selection cannot, by itself, sustain the company's present wholesale operation.

103. Following the Reinstated Definitions and Defendants' subsequent announced interpretation, implementation, and threatened enforcement of them, SS DISTRO has experienced loss of inventory value, product returns, cancelled orders, nonpayment for affected products previously purchased by customers, and continuing uncertainty among its licensed

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[11] *Id*. at ¶¶18–24.
[12] *Id.*
[13] Kocaoglan Decl. ¶¶ 36–41.

business customers concerning which products may lawfully be possessed, transported, distributed, or sold. Existing affected inventory has lost much or all of its ordinary commercial value in Texas, and SS DISTRO cannot realistically replace approximately 90 percent of its product catalog without substantial time, expense, supplier development, compliance review, and rebuilding customer demand. If the Reinstated Definitions remain in effect and are enforced against the products described above, SS DISTRO will almost certainly be forced to cease operations, resulting in the loss of established customer and supplier relationships, market position, reputation, and business goodwill.[14]

104. The injury to Plaintiff Moreno d/b/a MY CITY HEMP is likewise concrete, present, and substantial. Plaintiff Moreno d/b/a MY CITY HEMP is a licensed Texas hemp retailer and wholesaler whose entire revenue is derived from hemp-derived products, and approximately 90 percent of the products and product lines it previously carried are affected or placed in substantial legal uncertainty by the Reinstated Definitions. Following the Reinstated Definitions and Defendants' subsequent announced interpretation, implementation, and threatened enforcement of them, MY CITY HEMP has reduced its product selection from approximately 50 SKUs to only nine, cancelled virtually all purchase orders, handled significant product returns and return requests, and experienced a substantial reduction in the wholesale business that historically constituted the majority of its operations.[15]

105. MY CITY HEMP has already reduced its workforce from four employees to three, a 25 percent reduction, and anticipates approximately $83,000 in lost Texas sales. Its operating manager has been required to contribute personal funds to keep the business operating. The resulting loss of sales, stranded inventory, diminished customer demand, and continuing

[14] Patka Decl. ¶¶ 23-41.
[15] Moreno Decl. ¶¶ 29–49.

operating expenses place MY CITY HEMP at serious and immediate risk of closure and threaten customer and supplier relationships, reputation, market position, and business goodwill that could not readily be restored through an award of monetary damages.[16]

106. Plaintiffs' ability to purchase, possess, transport, distribute, market, and sell hemp-derived products therefore constitutes an existing commercial and economic interest directly affected by the challenged agency actions. The threatened application of those rules does not merely affect Plaintiffs as members of the public; it directly governs the products they may sell, the inventory they may possess, the commercial transactions in which they may engage, and the conditions under which they may continue operating their businesses.[17]

107. The challenged agency actions presently interfere with and threaten to impair those interests by subjecting products Plaintiffs contend satisfy the Legislature's statutory definition of hemp to treatment as Schedule I controlled substances. As regulated businesses, the Plaintiff retailers consequently face the immediate choice of altering or curtailing otherwise lawful commercial activity and suffering resulting losses to inventory, revenue, customers, contracts, employees, investments, and goodwill, or continuing that activity while exposing themselves to potential product seizure, administrative sanctions, license consequences, criminal investigation, and other enforcement measures.[18]

108. These injuries are concrete, particularized, and directly traceable to the challenged agency actions, and they are redressable by the declaratory and injunctive relief requested in this action. Plaintiffs therefore need not await an actual seizure, license action, or criminal

[16] *Id.*
[17] Hunter Decl. ¶¶ 9–18, 25–43; Patka Decl. ¶¶ 8–15, 17–41; Moreno Decl. ¶¶8–18, 22–43.
[18] *Id.*

prosecution before challenging rules whose threatened application presently interferes with and impairs their legal rights and privileges under Texas Government Code § 2001.038.[19]

B. The Challenged Agency Actions Threaten Immediate Injury.

109. Defendants have adopted and announced their intention to enforce the challenged Schedule I rules.[20]

110. Such enforcement threatens Plaintiffs with criminal investigation, administrative enforcement, product seizures, license consequences, interruption of ordinary business operations, contractual liability, loss of inventory, destruction of commercial goodwill, and substantial economic harm.[21]

111. Plaintiffs further recognize that enforcement of the challenged agency actions may involve state or municipal law-enforcement agencies, departments, officials, or other governmental actors not presently named as parties. Plaintiffs do not presently seek relief against any such nonparty based merely upon the possibility of future enforcement.

112. If, however, any state or municipal agency, department, official, or other governmental actor adopts, announces, threatens, initiates, or undertakes enforcement against Plaintiffs or their specifically identified products based upon the Challenged Agency Actions, the Post-July Implementation and Enforcement Standard, or an interpretation or application thereof challenged in this action, Plaintiffs intend to seek leave to amend their pleadings, as permitted by the Texas Rules of Civil Procedure and any applicable scheduling order, to join any proper parties, assert any claims that have become ripe, and request such additional prospective declaratory or injunctive relief as may then be necessary and legally available.

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[19] *Id.*
[20] *Id.*
[21] Hunter Decl. ¶¶ 25-43; Moreno Decl. ¶¶ 22–34, 43; Patka Decl. ¶¶ 17–35; Kocaoglan Decl. ¶¶ 30–40.

113. Nothing in this Petition should be construed as conceding the lawfulness of any such future enforcement action or as waiving any claim, defense, or remedy arising from conduct occurring after the filing of this action.

114. Plaintiffs need not await actual enforcement before seeking judicial review.

115. Section 2001.038 expressly authorizes pre-enforcement review where the threatened application of a rule interferes with or impairs legal rights or privileges.

C. Plaintiffs Are Already Suffering Present Injury.

116. Plaintiffs' injuries are not limited to speculative future enforcement.

117. Since the announcement of the challenged agency actions, Plaintiffs have incurred substantial legal and compliance expenses.[22]

118. Plaintiffs have devoted management time and financial resources to evaluating the consequences of the challenged agency actions.

119. Plaintiffs have modified inventory decisions, purchasing practices, product offerings, marketing strategies, and commercial planning because of the threatened enforcement.[23]

120. Plaintiffs have delayed or cancelled business expansion.[24]

121. Plaintiffs have experienced uncertainty among customers, suppliers, lenders, insurers, and commercial partners.[25]

122. Plaintiffs have suffered impairment of existing contractual relationships and business goodwill.[26]

123. These injuries are presently occurring and will continue absent judicial intervention.

D. Plaintiffs Have No Adequate Remedy at Law.

[22] *Id.*
[23] Hunter Decl. ¶¶ 25–43; Patka Decl. ¶¶ 17–35; Kocaoglan Decl. ¶¶ 30–40; Moreno Decl. ¶¶ 22–34
[24] *Id.*
[25] *Id.*
[26] Moreno Decl. ¶¶29–43; Hunter Decl. ¶¶ 25–43; Patka Decl. ¶¶ 17–35; Kocaoglan Decl. ¶¶ 30–40.

124. Monetary damages cannot adequately compensate Plaintiffs for the loss of customer relationships, market position, business reputation, goodwill, and continuing uncertainty caused by enforcement of invalid administrative rules.[27]

125. Plaintiffs seek prospective relief against state officials acting in their official capacities.

126. Texas law does not provide an adequate post-enforcement remedy that would fully restore Plaintiffs to the position they occupied before enforcement of the challenged agency actions.[28]

127. Requiring Plaintiffs to violate the challenged agency actions and await criminal prosecution, administrative sanctions, or product seizure before obtaining judicial review would defeat the purpose of Section 2001.038.

E. Plaintiffs' Injuries Are Traceable to Defendants.

128. Plaintiffs' injuries result directly from Defendants' adoption, implementation, interpretation, and threatened enforcement of the challenged agency actions.[29]

F. Plaintiffs' Injuries Are Redressable.

129. A declaration that the challenged agency actions are invalid under Section 2001.038 would eliminate the uncertainty presently affecting Plaintiffs' businesses.[30]

130. Temporary and permanent injunctive relief prohibiting enforcement of the challenged agency actions would prevent the irreparable injuries described herein.

G. This Controversy Is Ripe.

131. The issues presented are fit for judicial determination.

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[27] Patka Decl. ¶¶ 17–35.
[28] *Id.*
[29] Hunter Decl. ¶¶ 42–43; Patka Decl. ¶¶ 40–41; Moreno Decl. ¶¶48–49; Kocaoglan Decl. ¶¶ 36–41.
[30] *Id.*

132. The challenged agency actions have been adopted.

133. Plaintiffs presently conduct business regulated by those rules.

134. Delaying judicial review until after enforcement begins would unnecessarily expose Plaintiffs to irreparable injury and would frustrate the Legislature's purpose in enacting Section 2001.038.

135. Accordingly, Plaintiffs possess standing to maintain each claim asserted in this Petition.

V. LEGISLATIVE HISTORY AND PURPOSE OF HOUSE BILL 1325

136. The challenged agency actions cannot be evaluated in isolation. Their validity depends upon the authority delegated by the Texas Legislature and the statutory framework the Legislature enacted through House Bill 1325.

137. The legislative history and structure of House Bill 1325 provide important context for determining whether Defendants acted within the authority delegated to them.

A. The Legislature Chose to Legalize Hemp.

138. Prior to 2019, Texas law generally treated all cannabis as marijuana unless specifically excluded by statute.

139. In December 2018, Congress enacted the Agriculture Improvement Act of 2018, commonly known as the "2018 Farm Bill," which removed hemp from the federal Controlled Substances Act and established a federal regulatory framework for hemp production.

140. During the following legislative session, the Texas Legislature enacted House Bill 1325.

141. House Bill 1325 represented a deliberate policy decision by the Legislature to legalize hemp while continuing to prohibit marijuana.

142. The Legislature therefore created two separate statutory categories:

a. marijuana, which remained prohibited under the Texas Controlled Substances Act; and

b. hemp, which became lawful subject to the regulatory framework enacted by the Legislature.

143. The distinction between those categories lies at the center of this litigation.

B. Section 481.103 Must Be Harmonized with House Bill 1325.

144. Defendants' anticipated defense rests principally upon Section 481.103 of the Texas Health and Safety Code, which includes tetrahydrocannabinols and certain related compounds within Penalty Group 2.

145. Plaintiffs do not dispute that Section 481.103 remains valid law.

146. Rather, Plaintiffs allege that Section 481.103 must be construed together with the statutory amendments enacted through House Bill 1325, giving effect to every provision enacted by the Legislature.

147. Texas courts presume that statutes relating to the same subject matter are intended to operate harmoniously and should be construed together whenever reasonably possible.

148. Courts likewise presume that the Legislature does not enact meaningless language, that every statutory provision serves a purpose, and that no portion of a statute should be rendered superfluous if a reasonable construction gives effect to all provisions.

149. As such, Section 481.103 cannot be interpreted in isolation from the Legislature's subsequent enactment of House Bill 1325.

150. Before House Bill 1325, Texas law generally treated cannabis and tetrahydrocannabinol-containing materials as controlled substances unless specifically excluded by statute.

151. House Bill 1325 fundamentally altered that statutory framework.

152. The Legislature expressly removed hemp from the statutory definition of marijuana.

153. The Legislature further enacted a comprehensive statutory definition of hemp that includes the plant *Cannabis sativa L.* and every part of that plant, including its seeds, derivatives, extracts, cannabinoids, acids, salts, isomers, and salts of isomers, provided the material contains not more than the statutory concentration of delta-9 tetrahydrocannabinol on a dry-weight basis.

154. Those amendments were substantive legislative enactments, not merely technical revisions.

155. By excluding qualifying hemp from the statutory definition of marijuana while simultaneously adopting an expansive statutory definition of hemp, the Legislature established the legal boundary between lawful hemp and prohibited marijuana.

156. The Legislature therefore resolved the precise policy question presented in this litigation.

157. House Bill 1325 must be given operative effect together with Section 481.103, but Plaintiffs do not contend that the statutory definition of hemp, standing alone, categorically removes every hemp-derived tetrahydrocannabinol from the controlled-substance schedules. Sky Marketing forecloses that contention as to concentrated manufactured delta-8 THC of the kind adjudicated there.

158. The present controversy instead concerns applications materially outside that holding, including naturally occurring hemp constituents and other specifically identified products, compounds, or circumstances for which Plaintiffs establish an express statutory exclusion or other insoluble statutory conflict.

159. In those materially distinct circumstances, Section 481.103 and House Bill 1325 must be construed, if reasonably possible, so that each enactment retains operative effect. The

controlled-substance provisions remain applicable according to their lawful scope, while express statutory exclusions enacted by House Bill 1325 must likewise be respected according to their terms.

160. Plaintiffs therefore do not ask the Court to hold that every cannabinoid, derivative, acid, extract, or isomer satisfying the statutory delta-9 threshold is necessarily outside the controlled-substance schedules. They ask the Court to determine whether Defendants may apply the challenged agency actions to the particular naturally occurring constituents, products, compounds, or applications pleaded herein without creating an insoluble conflict with an express statutory exclusion.

161. To the extent such a conflict is established on product-specific proof, Defendants may not eliminate or narrow the statutory exclusion through administrative interpretation, implementation, or enforcement.

162. Nor may Defendants use an independently operative administrative criterion to achieve a substantive result that the Legislature has not authorized.

163. Plaintiffs' claims therefore preserve the continuing force of Section 481.103, the scheduling determination upheld in Sky Marketing, and the statutory exclusions enacted by House Bill 1325, while asking the Court to determine their lawful application to the materially distinct circumstances presented here.

164. Every provision enacted by the Legislature must be given operative effect whenever reasonably possible.

165. The only construction that harmonizes House Bill 1325 with Section 481.103 is one recognizing that Section 481.103 continues to govern tetrahydrocannabinols that remain

controlled substances while House Bill 1325 excludes qualifying hemp from that prohibition according to the statutory definition enacted by the Legislature.

166. In other words, Section 481.103 continues to apply to tetrahydrocannabinols not falling within the Legislature's statutory definition of hemp, while qualifying hemp remains excluded from criminal prohibition as expressly directed by House Bill 1325.

167. Defendants' contrary interpretation effectively repeals the Legislature's hemp definition through administrative construction rather than legislative amendment.

168. Administrative agencies possess no authority to repeal, narrow, or substantially modify statutory exemptions enacted by the Legislature.

169. Nor may an agency expand the scope of criminal liability by administrative interpretation where the Legislature has chosen a different statutory standard.

170. If the Legislature concludes that hemp should instead be regulated according to a total-THC methodology or that additional cannabinoids, isomers, acids, derivatives, or extracts should again become controlled substances notwithstanding House Bill 1325, the Legislature remains free to amend the statutes accordingly.

171. Unless and until the Legislature does so, however, DSHS must administer the statutory framework the Legislature enacted rather than substitute one of its own.

172. Plaintiffs therefore allege that Defendants' interpretation of Section 481.103 impermissibly elevates one statutory provision while effectively nullifying the later-enacted provisions of House Bill 1325.

173. Because the challenged agency actions cannot be reconciled with the Legislature's comprehensive statutory definition of hemp, those rules exceed Defendants' delegated authority and are invalid under Sections 2001.038 and 2001.042 of the Texas Government Code.

C. The Legislature Deliberately Chose a Delta-9 THC Standard Rather Than a Total Tetrahydrocannabinol Standard

174. DSHS itself previously recognized the statutory limitation at issue here. During the Department's 2024 four-year review of Chapter 300, commenters raised concerns regarding the statutory 0.3% delta-9 THC threshold and recommended changes to the manner in which hemp was regulated. DSHS responded that "[t]he definition of hemp is in statute" at Texas Health and Safety Code § 443.001(5), incorporating Texas Agriculture Code § 121.001, and further explained that "[c]hange to statute requires legislative action and, hence, is outside the scope of the 4-year rule review."[31] Thus, before the present controversy arose, DSHS itself recognized that alteration of the statutory definition of hemp requires legislative action.

175. That limitation cannot be avoided by leaving the statutory definition formally unchanged while accomplishing the same substantive result through interpretation, implementation, or enforcement. If DSHS lacks authority to amend the Legislature's definition of hemp directly, it likewise lacks authority to narrow that definition indirectly by imposing an additional administrative criterion under which products satisfying the statutory definition are nevertheless classified, detained, referred for enforcement, or otherwise treated as controlled substances. The legal boundary established by the Legislature cannot depend upon the administrative vehicle DSHS chooses to employ.

176. Subsequent legislative developments further demonstrate that when a legislature intends to regulate hemp according to a total tetrahydrocannabinol methodology, it knows how to do so expressly.

[31] Tex. Dep't of State Health Servs., Rule Review of 25 Tex. Admin. Code ch. 300, 49 Tex. Reg. 6034, 6034 (Aug. 9, 2024) (responding that "[t]he definition of hemp is in statute" and that "[c]hange to statute requires legislative action and, hence, is outside the scope of the 4-year rule review").

177. Following enactment of House Bill 1325, Congress enacted Section 781 of Division B of Public Law 119-37 in November 2025. Effective November 12, 2026, Section 781 expressly amends the federal definition of "hemp" by replacing the existing "delta-9 tetrahydrocannabinol concentration" standard with a "total tetrahydrocannabinols concentration (including tetrahydrocannabinolic acid)" standard of not more than 0.3 percent on a dry-weight basis.[32]

178. Plaintiffs do not contend that Section 781 governs the interpretation of Texas law or alters the meaning of House Bill 1325.

179. Rather, Plaintiffs cite that enactment solely as persuasive evidence that legislative bodies understand the distinction between a delta-9 THC standard and a total tetrahydrocannabinol standard and expressly identify the latter when that is the policy they intend to adopt.

180. The Texas Legislature made no comparable amendment to House Bill 1325.

181. Nor has the Texas Legislature amended the statutory definition of hemp to replace the delta-9 THC standard with a total tetrahydrocannabinol standard.

182. Defendants may not accomplish by administrative rulemaking what the Legislature has not enacted by statute.

183. Where the Legislature includes particular language in one statute but omits comparable language from another addressing the same subject matter, courts presume the omission was intentional. The Legislature's decision to define hemp by reference to delta-9 THC, while omitting any reference to total tetrahydrocannabinols or tetrahydrocannabinolic acid, must therefore be respected. An administrative agency may not supply by rule language that the Legislature deliberately chose not to enact.

[32] Pub. L. No. 119-37, div. B, § 781, 139 Stat. 426, 559–61 (2025) (effective 365 days after enactment) (amending 7 U.S.C. § 1639o).

VI. FACTUAL BACKGROUND

A. The July 2026 Reinstatement of Schedule I Definitions

184. Following the conclusion of the *Sky Marketing* litigation, DSHS took action in July 2026 to reinstate and republish Schedule I controlled-substance language addressing tetrahydrocannabinols (the "July 2026 Schedule Reinstatement" or "Reinstated Definitions").

185. The Reinstated Definitions were published in the Texas Register with an effective date of July 31, 2026.

186. *Sky Marketing* held that § 481.034(g) authorized the Commissioner's 2021 scheduling action, that the procedures applicable to that action were satisfied, and that House Bill 1325 did not unambiguously decontrol concentrated manufactured delta-8 THC merely because it was derived from hemp material or remained at or below 0.3 percent delta-9 THC.

187. Plaintiffs therefore do not allege that the July 2026 ministerial reinstatement, standing alone, required a new APA proceeding, revived the claims rejected in *Sky Marketing*, or permits this Court to review the merits of the Commissioner's § 481.034(g) objection.

188. Plaintiffs likewise do not allege that the statutory delta-9 THC threshold, standing alone, resolves the legality of a concentrated or manufactured intoxicating cannabinoid product.

189. *Sky Marketing* nevertheless recognized a narrower tension between the Schedule language and the statutory decontrol of THC naturally occurring in hemp. The Court found that tension nonjusticiable on the record before it because the Commissioner disclaimed enforcement as to naturally occurring trace delta-8 THC and the vendors sought to sell concentrated manufactured delta-8 products that dramatically exceeded naturally occurring levels.

190. Plaintiffs invoke that distinction only as to products alleged to contain naturally occurring hemp constituents, including THCA, or other specifically identified cannabinoids or product

categories materially distinct from concentrated manufactured delta-8 THC. Plaintiffs seek prospective, plaintiff-specific relief against those applications, not an order rewriting the schedules or reviewing the discretionary merits of the Commissioner's objection.

B. Defendants' Post-July Interpretation and Enforcement of the Reinstated Definitions

191. After the Reinstated Definitions took effect, DSHS published the following criterion on its Consumable Hemp Program webpage: "Consumable hemp products labeled to contain delta-8 THC or shown to contain more than trace amounts of tetrahydrocannabinols, including delta-8 THC, may be detained and referred to law enforcement."

192. On its face, the statement is not confined to the concentrated manufactured delta-8 products addressed in *Sky Marketing*. It extends to "tetrahydrocannabinols" generally and establishes a "trace amounts" criterion while separately acknowledging that consumable hemp products may contain no more than 0.3 percent delta-9 THC on a dry-weight basis.

193. The same webpage states that DSHS intends to amend the consumable-hemp rules pursuant to the APA to incorporate the definition on which the announced position depends. It also expressly identifies present detention and referral consequences for products that fail the announced criterion.

194. Plaintiffs allege that DSHS personnel use the Post-July Implementation and Enforcement Standard in inspections, detention decisions, referrals, and licensing administration as a controlling criterion for determining whether products may remain in commerce. Those pleaded consequences distinguish this case from the unenforceable 2021 website summary addressed in *Sky Marketing*.

195. Plaintiffs further allege that the Reinstated Definitions themselves do not use the phrase "trace amounts" or prescribe a generally applicable detention-and-referral criterion for every

tetrahydrocannabinol. The 2026 statement therefore does more than quote the Schedule text and, as applied beyond concentrated manufactured delta-8 THC, does more than restate the precise holding of *Sky Marketing*.

196. These circumstances create a distinct controversy only to the extent the Post-July Implementation and Enforcement Standard is presently used with independent, binding effect. Plaintiffs do not contend that DSHS's plan to conduct future APA rulemaking, by itself, transforms the webpage statement into a rule.

197. If the Post-July Implementation and Enforcement Standard is a generally applicable agency statement that independently implements, interprets, or prescribes law or policy and determines detention, referral, licensing, or other regulatory consequences, Plaintiffs allege that it is a "rule" under Texas Government Code § 2001.003(6) and was not adopted through required APA procedures.

198. Alternatively, if the Post-July Implementation and Enforcement Standard is not an APA rule, Plaintiffs allege that the named officials may not use it to create an application of the schedules that is materially distinct from *Sky Marketing* and insolubly conflicts with an express statutory exclusion, including as applied to naturally occurring hemp constituents such as THCA.

C. Immediate Impact Upon Plaintiffs.

199. The challenged agency actions immediately affected Plaintiffs' business planning and commercial operations.

200. Plaintiffs were required to evaluate existing inventory, contractual obligations, manufacturing practices, testing procedures, purchasing decisions, marketing plans, and future business operations.[33]

[33] Hunter Decl. ¶¶ 25–42; Patka Decl. ¶¶ 17–35; Moreno Decl. ¶¶22–43.

201. The effects of the Reinstated Definitions and Defendants' subsequent announced interpretation, implementation, and threatened enforcement of them are not confined to purely intrastate retail transactions. Plaintiff Jason Moreno d/b/a MY CITY HEMP regularly purchases hemp-derived products through interstate commerce and sells products to customers outside Texas. From December 1, 2025 through July 31, 2026, approximately 40 percent of MY CITY HEMP's sales were interstate. Those products are purchased, received, stored, handled, and shipped from MY CITY HEMP's Texas location.[34]

202. Accordingly, the Reinstated Definitions and Defendants' subsequent announced interpretation, implementation, and threatened enforcement of them, directly affects MY CITY HEMP's ability not only to conduct retail and wholesale transactions within Texas, but also to receive, possess, store, transport, and ship hemp-derived products moving in interstate commerce.[35]

203. Plaintiffs incurred substantial legal expenses in determining the effect of the challenged agency actions.[36]

204. Plaintiffs postponed commercial decisions pending clarification of Defendants' enforcement position.[37]

205. Plaintiffs modified inventory and purchasing practices because of uncertainty created by the challenged agency actions.[38]

206. Plaintiffs experienced disruption in relationships with customers, suppliers, manufacturers, lenders, insurers, and other commercial partners.[39]

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[34] Moreno Decl. ¶¶ 10, 18, 30.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*

207. Certain customers delayed or cancelled purchases.[40]

208. Certain suppliers expressed uncertainty concerning continued commercial relationships.[41]

209. Plaintiffs reasonably anticipate that these injuries will continue unless the challenged agency actions are declared invalid.

D. An Actual Controversy Exists.

210. Plaintiffs contend that the challenged agency actions exceed the authority delegated to DSHS by the Texas Legislature.

211. Defendants contend that the challenged agency actions constitute a lawful exercise of their rulemaking authority.

212. The parties therefore present an actual and justiciable controversy concerning the validity of the challenged agency actions under the Texas Administrative Procedure Act and Texas law.

213. Because Defendants have announced their intention to enforce the challenged agency actions, Plaintiffs face immediate and continuing injury absent judicial intervention.

214. This controversy is ripe for judicial determination.

VII. THE CHALLENGED AGENCY ACTIONS CONFLICT WITH THE STATUTORY FRAMEWORK ENACTED BY THE LEGISLATURE

A. Administrative Rules Must Yield to Conflicting Statutes.

215. Administrative agencies possess only those powers affirmatively delegated by the Legislature.

216. An administrative rule is valid only if it is consistent with the statute under which it is promulgated.

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[40] *Id.*

[41] *Id*.

217. An agency may adopt rules necessary to implement legislative enactments.

218. An agency may not adopt rules that amend, enlarge, narrow, or otherwise alter the meaning of statutes enacted by the Legislature.

219. Where a rule conflicts with the governing statute, the statute controls.

220. Likewise, an agency may not accomplish indirectly through rulemaking what it lacks authority to accomplish directly through legislation.

221. These principles preserve the constitutional separation of powers by ensuring that policy decisions remain with the Legislature while implementation remains with the Executive Branch.

B. The Challenged Agency Actions Depart from the Legislature's Chosen Standard.

222. Plaintiffs allege that the challenged agency actions do not merely administer the statutory definition enacted by the Legislature.

223. Instead, the challenged agency actions employ an analytical methodology materially different from the one selected by the Legislature.

224. As interpreted and applied by Defendants, the challenged agency actions effectively classify certain products as Schedule I controlled substances even though those products satisfy the statutory definition of hemp enacted by the Legislature.

225. Plaintiffs allege that this result cannot be reconciled with the statutory text.

226. If products meeting the Legislature's definition of hemp may nevertheless be treated as Schedule I controlled substances through administrative rulemaking, the statutory definition enacted by the Legislature no longer controls.

227. Instead, the operative legal definition becomes the one adopted administratively by DSHS.

228. Plaintiffs allege that the Legislature delegated no such authority.

C. The Challenged Agency Actions Effectively Narrow the Legislature's Hemp Exemption.

229. The Legislature excluded hemp from the statutory definition of marijuana.

230. The Legislature thereby created a statutory exemption from criminal liability for hemp meeting the statutory definition.

231. Plaintiffs allege that the challenged agency actions substantially narrow that exemption.

232. As interpreted by Defendants, products that the Legislature excluded from the statutory definition of marijuana become subject to Schedule I treatment under the challenged agency actions.

233. Plaintiffs allege that this administrative narrowing of the statutory exemption exceeds DSHS's delegated authority.

234. Only the Legislature may determine whether previously lawful conduct should become subject to criminal prohibition.

235. Administrative agencies may not expand criminal liability through rulemaking absent express legislative authorization.

D. The Conflict Produces Immediate Practical Consequences.

236. Because the challenged agency actions conflict with the statutory framework enacted by the Legislature, Plaintiffs are presently unable to determine with certainty whether products that satisfy the statutory definition of hemp will nevertheless be treated as Schedule I controlled substances by Defendants.

237. That uncertainty has disrupted ordinary commercial operations throughout the regulated hemp industry.

238. Businesses must choose between adhering to the statutory definitions enacted by the Legislature or attempting to anticipate regulatory interpretations that Plaintiffs allege exceed statutory authority.

239. Such uncertainty is precisely the type of injury that Section 2001.038 was enacted to address.

240. Plaintiffs therefore seek judicial resolution of this statutory conflict before enforcement of the challenged agency actions causes additional irreparable injury.

VIII. THE TEXAS HEMP INDUSTRY AND THE EFFECT OF THE CHALLENGED AGENCY ACTIONS

241. Following enactment of House Bill 1325 in 2019, the Texas Legislature established a comprehensive statutory framework governing the cultivation, manufacture, processing, transportation, distribution, testing, and retail sale of hemp and hemp-derived products meeting the statutory definition of hemp.

242. In reliance upon that statutory framework, hundreds of manufacturers, processors, distributors, wholesalers, laboratories, and thousands of retail businesses invested substantial capital to develop lawful hemp businesses throughout the State of Texas.

243. The Texas hemp-derived consumer-products industry has developed into a substantial component of the Texas economy. According to an August 2026 economic analysis by Whitney Economics, the Texas market generates approximately $5.1 billion in annual business revenue, supports approximately 48,882 Texas jobs paying approximately $1.9 billion in wages, and generates approximately $254.4 million in annual state sales-tax revenue, exclusive of local sales taxes, business taxes, and excise taxes. DSHS data cited in the report further reflect

approximately 14,205 retail locations and 753 consumable-hemp licensees operating within the Texas regulatory framework.[42]

244. The Texas Department of State Health Services ("DSHS") administers the Consumable Hemp Program, which licenses manufacturers and distributors and registers retail hemp sellers operating within the statutory framework enacted by the Legislature.

245. Since implementation of House Bill 1325, numerous Texas businesses have made substantial investments in manufacturing facilities, retail locations, warehouses, laboratory testing, inventory, equipment, employee training, marketing, contractual relationships, and regulatory compliance in reliance upon the statutory framework adopted by the Legislature.

246. Those investments include millions of dollars in commercial leases, inventory, manufacturing equipment, packaging, laboratory testing, compliance systems, payroll, and other capital expenditures undertaken with the expectation that the statutory definition of hemp enacted by the Legislature would govern the legality of their business operations.

247. The hemp industry likewise contributes materially to the Texas economy through business activity, employment, sales tax collections, franchise tax payments, licensing fees, registration fees, and other state and local revenues. DSHS's Consumable Hemp Program is itself funded in part through manufacturer licensing and retail registration fees collected from participants in the industry.

248. Plaintiffs allege that enforcement of the challenged agency actions will substantially contract the lawful marketplace created by House Bill 1325 by prohibiting or severely restricting categories of products that have been lawfully manufactured, transported, distributed, and sold under the statutory framework enacted by the Legislature.

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[42] Beau Whitney, Whitney Economics, *Texas Hemp Update* 1 (Aug. 7, 2026) ("Whitney Report"), attached as Exhibit "E."

249. Plaintiffs further allege that numerous manufacturers, processors, distributors, wholesalers, laboratories, transport companies, and retail businesses will be forced to discontinue operations, significantly reduce operations, terminate employees, or withdraw from the Texas marketplace if the challenged agency actions remain in effect.[43]

250. Plaintiffs will present evidence that the challenged agency actions threaten the continued viability of numerous Texas businesses and will result in substantial losses of employment, capital investment, inventory, goodwill, contractual rights, and tax revenue.[44]

251. The challenged agency actions do not affect all market participants equally. Plaintiffs allege that businesses operating under the statutory hemp framework established by House Bill 1325 bear the overwhelming economic burden of the challenged agency actions, while entities operating under separate statutory and regulatory schemes are not subject to the same commercial restrictions.[45]

252. Texas maintains a separate statutory medical cannabis program known as the Texas Compassionate Use Program ("TCUP"), administered through the Texas Department of Public Safety ("DPS"). Under that program, dispensing organizations operate pursuant to an entirely different statutory framework than the consumable hemp industry created by House Bill 1325.

253. Plaintiffs do not challenge the Legislature's authority to establish or regulate the Texas Compassionate Use Program or to authorize dispensing organizations to operate under that program.

254. Rather, Plaintiffs allege that the practical effect of the challenged agency actions is to substantially impair the competitive marketplace established by House Bill 1325 while preserving the commercial opportunities available under separate statutory programs.

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[43] Whitney Report at 6.
[44] *Id.* at 1, 6.
[45] *Id.* at 6.

255. Plaintiffs further allege that the Legislature never authorized DSHS, through administrative rulemaking, to fundamentally restructure the marketplace created by House Bill 1325 or to alter the competitive relationship between the lawful hemp industry and participants operating under separate legislative enactments.

256. The resulting contraction of the private hemp marketplace was not accomplished through an act of the Texas Legislature, but through the challenged administrative rules that are the subject of this action.

257. Plaintiffs will offer testimony from business owners, economists, industry participants, accountants, and other qualified witnesses, together with financial records, licensing data, tax records, legislative materials, and expert testimony, demonstrating the economic impact of the challenged agency actions upon the Texas hemp industry, the effect of those rules upon lawful market participants, and the resulting injury to Plaintiffs.

COUNT I

VIOLATION OF THE TEXAS ADMINISTRATIVE PROCEDURE ACT (Tex. Gov't Code §§ 2001.003(6), 2001.038 & 2001.042)

258. Plaintiffs incorporate by reference paragraphs 1 through 257 of this Petition as though fully set forth herein, and specifically, paragraphs 53-55 supra.

259. This action is brought pursuant to Section 2001.038 of the Texas Administrative Procedure Act ("APA"), which authorizes a person whose legal rights or privileges are threatened by the application or threatened application of an agency rule to obtain a judicial declaration concerning the validity or applicability of that rule.

260. Plaintiffs' legal rights, privileges, property interests, business operations, contractual relationships, commercial activities, and, in the case of Plaintiff Kocaoglan, individual consumer

and commercial conduct, are presently threatened and adversely affected by the agency actions challenged herein.

261. The agency actions relevant to this Count are limited to: (1) the Post-July Implementation and Enforcement Standard, to the extent it independently operates as a generally applicable and binding rule; and (2) those expressly identified provisions of the March 2026 Chapter 300 Amendments that independently impair Plaintiffs' legal rights. The July 2026 Schedule Reinstatement is referenced as historical context and is not challenged under § 2001.038.

262. Plaintiffs acknowledge *Sky Marketing*'s holding that the Texas Controlled Substances Act, rather than ordinary APA rulemaking, governs modification and publication of the controlled-substance schedules.

263. Plaintiffs therefore do not seek an APA declaration invalidating the Reinstated Definitions, requiring DSHS to repeat the § 481.034 process, or directing DSHS to remove or rewrite Schedule language.

A. Scope of the APA Claim After *Sky Marketing*

264. *Sky Marketing* held that DSHS's October 2021 website announcement was not an APA rule because it purported merely to summarize the schedules, did not amend them, had no independent legal effect, and was not itself enforceable.

265. Plaintiffs do not attempt to relabel the July 2026 Schedule Reinstatement or a nonbinding summary of that reinstatement as an APA rule. If the 2026 statement merely explains the schedules and is not used to determine legal or regulatory consequences, this Count does not reach it.

266. The pleaded 2026 action is different. DSHS announced that products shown to contain more than trace amounts of "tetrahydrocannabinols, including delta-8 THC, may be detained and

referred to law enforcement," and Plaintiffs allege that DSHS personnel presently use that criterion in inspections, detention decisions, referrals, and licensing administration.

267. The statement's scope is not confined to concentrated manufactured delta-8 THC. It addresses tetrahydrocannabinols generally and is alleged to reach naturally occurring THCA and other constituents or product categories not adjudicated in *Sky Marketing*.

268. The relevant question under this Count is whether DSHS has, in actual operation, made the Post-July Implementation and Enforcement Standard a generally applicable and binding criterion with legal consequences apart from the schedules themselves. Plaintiffs allege that it has.

269. Plaintiffs rely on the statement's alleged mandatory application, its use by agency personnel, and the resulting detention, referral, licensing, or other regulatory consequences to establish independent legal effect. Those allegations distinguish the 2026 action from the unenforceable 2021 website summary addressed in *Sky Marketing*.

270. Plaintiffs seek no relief under this Count that would invalidate, suspend, remove, or rewrite the controlled-substance schedules or review the discretionary merits of the Commissioner's § 481.034(g) objection.

B. The 2026 Post-July Detention-and-Referral Criterion

271. The Texas Administrative Procedure Act defines a "rule" to include 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).

272. DSHS has also stated that it intends to amend the consumable-hemp rules pursuant to the APA to incorporate the definition on which its present position depends.

273. That announced plan for future rulemaking supports, but does not alone establish, Plaintiffs' allegation that DSHS is presently applying a substantive criterion not yet incorporated into Chapter 300. The claim ultimately depends on proof of the criterion's current binding operation.

274. To the extent DSHS presently applies the Post-July Implementation and Enforcement Standard as a generally applicable and binding criterion, Plaintiffs allege that it constitutes a rule within § 2001.003(6).

275. To the extent DSHS adopted or implemented that rule without satisfying the notice, publication, public-comment, reasoned-consideration, and other procedures applicable under the APA, the rule is invalid.

276. Plaintiffs' alternative claim against a specific ultra vires application of the statement is pleaded separately in Count II and does not depend upon characterizing the statement as an APA rule.

C. The Court Independently Determines the Governing Law

277. Texas Government Code § 2001.042 requires the Court to decide questions of law and statutory interpretation without deference to an agency's interpretation of law.

278. That independent review does not reopen the scheduling determination resolved in *Sky Marketing*. It applies to the separate question whether the Post-July Implementation and Enforcement Standard is an APA rule and, if so, whether DSHS adopted it through required procedures and within delegated authority.

279. The same independent review applies to expressly identified Chapter 300 provisions because those provisions were adopted as APA rules and are distinct from the Commissioner's § 481.034(g) scheduling action.

280. A rule is invalid if it was not adopted in substantial compliance with required APA procedures or if it exceeds the statutory authority of the agency that adopted it. Plaintiffs invoke those principles only within the narrowed scope stated above.

D. Plaintiffs Are Entitled to Declaratory and Injunctive Relief

281. Plaintiffs' legal rights and privileges are presently threatened by the application and threatened application of the agency actions properly challenged under this Count.

282. Any temporary or permanent relief under this Count should be confined to the named Plaintiffs, the independently operative rule or identified Chapter 300 provision proved invalid or inapplicable, and the minimum relief necessary to protect Plaintiffs' own rights.

COUNT II

ULTRA VIRES ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF

283. Plaintiffs incorporate by reference paragraphs 1 through 282 as though fully set forth herein, and specifically, paragraphs 53-55 supra.

284. This is an ultra vires action against state officials sued solely in their official capacities for prospective declaratory and injunctive relief.

285. Plaintiffs seek no monetary damages and no retrospective relief.

286. Plaintiffs seek only prospective relief preventing the named officials from applying the specifically identified Post-July Implementation and Enforcement Standard, or the Reinstated Definitions, in a manner that exceeds a clear statutory limit under the standard recognized in *Sky Marketing*. Plaintiffs do not seek review of the merits of the Commissioner's scheduling objection or an order rewriting the schedules.

A. Sovereign Immunity Does Not Protect Ultra Vires Conduct.

287. Sovereign immunity does not bar suits against state officials who act without legal authority or who exceed the bounds of authority lawfully delegated to them.

288. Texas law permits prospective equitable relief compelling state officials to comply with statutory and constitutional limitations governing the exercise of executive authority.

289. Plaintiffs allege that the named officials act beyond authority conferred by Texas Health and Safety Code § 481.034 and related statutes only in the specific applications described below.

B. Defendants Possess Only Delegated Authority.

290. Section 481.034(g) grants the Commissioner substantial discretion to object to a federal scheduling change and provides that the resulting decision is final unless altered by statute.

291. *Sky Marketing* held that the Commissioner acted within that authority and complied with the governing procedures in 2021, that House Bill 1325 did not unambiguously decontrol concentrated manufactured delta-8 THC, and that the vendors failed to establish an insoluble statutory conflict.

292. *The Court further held that § 481.034(g) commits the Commissioner's objection decision to agency discretion and is not subject to judicial second-guessing on its merits, so long as the agency acts within the bounds of its statutory authority and applicable procedures.*

293. Plaintiffs accept those holdings and do not ask this Court to reconsider the merits of the Commissioner's objection, determine that the Commissioner should have declined to object, or invalidate the scheduling determination based upon disagreement with the Commissioner's exercise of discretion.

C. Defendants Exceeded Their Statutory Authority.

294. Plaintiffs' ultra vires claim is instead limited to conduct allegedly outside the scheduling decision sustained in *Sky Marketing*: applying the Reinstated Definitions to constituents,

compounds, products, or circumstances materially beyond those adjudicated there; imposing an independently operative post-July criterion carrying legal consequences not supplied by the Reinstated Definitions themselves; and implementing specifically identified Chapter 300 provisions beyond the authority conferred by statute.

295. Plaintiffs do not contend that a product containing concentrated manufactured delta-8 THC is lawful merely because it was manufactured from hemp-derived material or contains no more than 0.3 percent delta-9 THC. With respect to the Reinstated Definitions, Plaintiffs challenge only their application to naturally occurring trace constituents or to other specifically identified cannabinoids, products, or circumstances materially distinct from the concentrated manufactured delta-8 THC addressed in *Sky Marketing*.

296. Plaintiffs separately allege that, following the July 2026 reinstatement, Defendants announced and began applying a criterion under which the presence of more than naturally occurring "trace amounts" of certain tetrahydrocannabinols may independently result in product detention, referral to law enforcement, or other regulatory consequences.

297. Plaintiffs allege that this identified post-July criterion is not merely an abstract explanation of the Reinstated Definitions because Defendants have attached present detention, referral, licensing, or other enforcement consequences to compliance with the criterion and have separately announced an intention to incorporate the underlying definition into Chapter 300 through future rulemaking under the Texas Administrative Procedure Act.

298. If the Court determines that the identified post-July communication merely summarizes the Reinstated Definitions and carries no independent legal effect, Plaintiffs do not seek to invalidate the communication as a separate agency rule. In that event, Plaintiffs seek relief only

against an application of the Reinstated Definitions that exceeds their lawful scope or reaches a product, constituent, or circumstance not controlled by *Sky Marketing.*

299. If, however, Defendants employ the post-July criterion as an independently operative and generally applicable basis for detention, referral, licensing consequences, or other enforcement action, Plaintiffs allege that Defendants may not impose that substantive criterion without statutory authority and compliance with any procedures required by the Texas Administrative Procedure Act.

300. Plaintiffs likewise challenge specifically identified provisions or applications of the March 2026 Chapter 300 Amendments only to the extent those provisions independently exceed DSHS's delegated authority, conflict with controlling statutes, or were adopted or implemented without compliance with requirements applicable to those rules.

301. These claims do not ask the Court to substitute its judgment for the Commissioner's discretionary objection decision. They ask the Court to determine the legal boundaries of the authority conferred upon Defendants and whether the specifically challenged conduct remains within those boundaries.

D. Defendants Continue to Act Beyond Their Authority.

302. Defendants have announced their intention to implement and enforce the Reinstated Definitions and the identified post-July criterion against regulated hemp businesses throughout Texas.

303. Plaintiffs allege that the threatened application of those agency actions presently governs their decisions concerning the acquisition, possession, transportation, distribution, sale, purchase, and use of specifically identified hemp-derived products.

304. That threatened application has caused and continues to cause Plaintiffs substantial compliance costs, disruption of commercial relationships, loss of inventory value, impairment of business goodwill, restriction of consumer and commercial conduct, and exposure to detention, referral, licensing consequences, and other enforcement action.

305. To the extent Defendants implement or enforce the specifically identified agency actions beyond the authority conferred by statute or in violation of an applicable ministerial legal requirement, their continuing conduct is ultra vires.

E. Prospective Relief Is Necessary.

306. Plaintiffs have no adequate remedy at law.

307. Plaintiffs are not required to violate the challenged agency actions and await product detention, license action, administrative sanctions, or criminal referral before seeking prospective relief. *Sky Marketing* itself recognized that regulated hemp businesses had standing and presented a ripe controversy where DSHS's civil licensing and enforcement authority caused concrete economic and reputational injury and forced the businesses to choose between compliance and risking enforcement.

F. Requested Relief.

308. Plaintiffs respectfully request declarations identifying the lawful scope and applicability of the specifically challenged agency actions and determining whether Defendants have exceeded their delegated authority by:

(a) applying the Reinstated Definitions to naturally occurring trace constituents or other specifically identified products or circumstances materially outside the holding of *Sky Marketing*;

(b) imposing the identified post-July criterion as an independently operative basis for detention, referral, licensing consequences, or other enforcement action without statutory authority or required rulemaking; or

(c) implementing specifically identified Chapter 300 provisions beyond the authority conferred by statute.

309. Plaintiffs further request permanent injunctive relief limited to the appropriate Defendants, the Plaintiffs before the Court, and the particular agency actions or applications determined unlawful. Plaintiffs do not seek an injunction against the Commissioner's discretionary objection decision, judicial revision of the controlled-substance schedules, or enforcement against concentrated manufactured delta-8 THC on the theory rejected in *Sky Marketing*.

310. Alternatively, if the Court determines that any requested declaration or injunction is broader than permitted by law, Plaintiffs request the narrowest prospective relief sufficient to prevent the specific ultra vires conduct established while leaving Defendants free to exercise all authority lawfully delegated to them by the Legislature.

COUNT III

VIOLATION OF THE SEPARATION OF POWERS CLAUSE
(Article II, Section 1, Texas Constitution)

311. Plaintiffs incorporate by reference paragraphs 1 through 310 as though fully set forth herein.

312. Article II, Section 1 of the Texas Constitution divides the powers of government into three distinct departments—legislative, executive, and judicial—and prohibits one department

from exercising powers properly attached to another except as expressly permitted by the Constitution.

313. The legislative power of the State of Texas is vested exclusively in the Texas Legislature.

314. Among the Legislature's exclusive powers is the authority to determine public policy, enact statutes, define criminal offenses, classify controlled substances, and establish the legal distinction between lawful and unlawful conduct.

315. Executive agencies exist to administer and enforce laws enacted by the Legislature. They do not possess independent legislative authority.

316. Although the Legislature may delegate limited rulemaking authority to executive agencies, any such delegation is confined to implementing legislative policy and may not be exercised to create new policy, amend statutory enactments, or expand the scope of criminal liability.

317. House Bill 1325 reflects the Legislature's considered policy judgment concerning the legalization and regulation of hemp in Texas.

318. In House Bill 1325, the Legislature expressly defined hemp, established the analytical standard by which hemp is distinguished from marijuana, and excluded qualifying hemp from the statutory definition of marijuana.

319. Those policy determinations were made by the Legislature itself and are embodied in statutory law.

320. Plaintiffs allege that the challenged agency actions do not merely implement those legislative choices.

321. Instead, the challenged agency actions alter the practical operation of the statutory definition enacted by the Legislature by subjecting products that satisfy the statutory definition of hemp to treatment as Schedule I controlled substances.

322. Plaintiffs further allege that the challenged agency actions effectively replace the Legislature's chosen regulatory framework with one adopted by administrative rule.

323. In doing so, Defendants have exercised legislative authority reserved exclusively to the Legislature.

324. Nothing in Chapter 481 of the Texas Health and Safety Code clearly authorizes DSHS to redefine hemp, narrow the statutory exemption enacted by the Legislature, or expand the scope of Schedule I controlled substances beyond that authorized by statute.

325. To construe Chapter 481 as conferring such authority would raise serious constitutional concerns under Article II, Section 1 of the Texas Constitution.

326. Accordingly, Chapter 481 should be construed narrowly to preserve the constitutional allocation of powers and to avoid interpreting the statute as delegating fundamental legislative decisions absent a clear statement from the Legislature.

327. Because the challenged agency actions alter substantive policy choices made by the Legislature rather than merely implementing those choices, Defendants have exercised legislative power in violation of Article II, Section 1 of the Texas Constitution.

328. The separation-of-powers doctrine protects not only the institutional prerogatives of the Legislature but also the liberty interests of persons subject to governmental regulation by ensuring that significant policy decisions are made by the people's elected representatives.

329. Allowing an executive agency to redefine the statutory boundary between lawful hemp and unlawful controlled substances through administrative rulemaking would undermine that constitutional safeguard.

330. Plaintiffs have suffered and continue to suffer concrete and irreparable injury as a direct result of Defendants' unconstitutional exercise of legislative authority.

331. Plaintiffs have no adequate remedy at law.

332. Plaintiffs are entitled to a declaration that, to the extent the specifically identified agency actions or applications proved in this action exceed Defendants' delegated authority by exercising legislative power reserved to the Legislature, those actions violate Article II, Section 1 of the Texas Constitution.

333. Plaintiffs request prospective injunctive relief limited to the particular agency actions or applications determined unlawful and no broader than necessary to remedy the constitutional violation established.

COUNT IV

VIOLATION OF THE DUE COURSE OF LAW CLAUSE
(Article I, § 19, Texas Constitution)

334. Plaintiffs incorporate by reference paragraphs 1 through 333 as though fully set forth herein.

335. Article I, Section 19 of the Texas Constitution provides that no citizen shall be deprived of life, liberty, property, privileges, or immunities except by the due course of the law of the land.

336. The Due Course of Law Clause protects individuals and businesses from arbitrary governmental action and requires that exercises of governmental power bear a real and substantial relationship to authority lawfully conferred by the Legislature.

337. Plaintiffs possess constitutionally protected liberty and property interests in operating lawful businesses, engaging in lawful occupations, entering lawful contracts, acquiring and selling lawful products, and using property in a manner authorized by Texas law.

338. Plaintiffs have invested substantial capital, labor, and goodwill in reliance upon the statutory framework enacted through House Bill 1325 and related Texas statutes governing hemp.

A. Plaintiffs Operate Lawful Businesses.

339. At all relevant times, Plaintiffs have engaged in commercial activities that the Texas Legislature expressly authorized.

340. Plaintiffs have structured their businesses to comply with the statutory definition of hemp enacted by the Legislature.

341. Plaintiffs reasonably relied upon that statutory framework in making long-term business investments and commercial commitments.

B. The Challenged Agency Actions Impose Unauthorized Burdens.

342. Plaintiffs allege that the challenged agency actions impose substantial burdens upon lawful businesses without legislative authorization.

343. Those burdens include uncertainty concerning lawful products, disruption of commercial relationships, increased compliance costs, impairment of inventory value, interference with contractual rights, and exposure to criminal and administrative enforcement inconsistent with the governing statutes.

344. Plaintiffs further allege that these burdens arise not from legislative enactment but from administrative rulemaking that exceeds Defendants' delegated authority.

345. Governmental action that substantially burdens lawful business activity without statutory authorization is arbitrary and inconsistent with Article I, Section 19 of the Texas Constitution.

C. The Rules Lack a Real and Substantial Relationship to Any Lawful Exercise of Delegated Authority.

346. Plaintiffs do not dispute that the State possesses a legitimate interest in regulating controlled substances and protecting public health.

347. Plaintiffs likewise do not challenge the Legislature's authority to regulate hemp or marijuana.

348. Rather, Plaintiffs allege that Defendants have pursued those objectives through means that the Legislature did not authorize.

349. The Legislature established the legal distinction between hemp and marijuana through House Bill 1325.

350. Defendants may not disregard that legislative judgment and replace it with a different regulatory framework under the guise of administrative implementation.

351. Because the challenged agency actions exceed Defendants' statutory authority, they lack the real and substantial relationship to a lawful governmental objective required by Article I, Section 19.

D. The Challenged Agency Actions Arbitrarily Interfere with Lawful Occupations and Property Rights.

352. The challenged agency actions substantially interfere with Plaintiffs' ability to engage in occupations and businesses that the Legislature expressly authorized.[46]

353. They impair Plaintiffs' ability to manufacture, transport, distribute, market, and sell products that satisfy the statutory definition of hemp.

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[46] Hunter Decl. ¶¶ 25–43.

354. They diminish the value of Plaintiffs' inventory, contractual rights, customer relationships, and business goodwill.

355. As a consumer of lawful hemp-derived products, Plaintiff Kocaoglan's legal rights and privileges are directly threatened by the challenged agency actions, which substantially limit his ability to purchase, possess, and use products that the Legislature has authorized to be sold in Texas. The challenged agency actions also reduce consumer choice by eliminating lawful products from the marketplace and restricting access to licensed retailers operating under House Bill 1325.[47]

356. They expose Plaintiffs to the threat of enforcement for conduct the Legislature did not prohibit.

357. Such interference is arbitrary because it rests upon an administrative policy choice rather than a legislative enactment.

E. Plaintiffs Are Entitled to Relief.

358. Plaintiffs have suffered and will continue to suffer irreparable injury to the extent Defendants apply the specifically challenged agency actions beyond their lawful authority to Plaintiffs' protected business, property, and consumer interests.

359. Plaintiffs seek a declaration that the particular agency actions or applications established in this action violate Article I, Section 19 to the extent they arbitrarily burden Plaintiffs' protected interests without lawful statutory authority.

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[47] Kocaoglan Decl. ¶¶ 14, 36, 39–41.

COUNT V

VIOLATION OF THE RETROACTIVE LAWS CLAUSE
(Article I, § 16, Texas Constitution)

360. Plaintiffs incorporate by reference paragraphs 1 through 359 as though fully set forth herein.

361. Article I, Section 16 of the Texas Constitution provides that no retroactive law shall be made.

362. The Retroactive Laws Clause protects settled rights and reasonable investment-backed expectations from substantial impairment by governmental action.

363. While the Legislature may enact prospective regulations governing future conduct, governmental action that substantially impairs vested rights or settled expectations without sufficient constitutional justification violates Article I, Section 16.

A. Plaintiffs Developed Their Businesses in Reliance Upon Existing Law.

364. Following enactment of House Bill 1325, Plaintiffs lawfully entered the Texas hemp industry in reliance upon the statutory framework adopted by the Legislature.[48]

365. Plaintiffs invested substantial financial resources in land, facilities, equipment, inventory, laboratory testing, licenses, regulatory compliance, employees, commercial leases, intellectual property, customer relationships, and business goodwill.[49]

366. Plaintiffs also entered long-term contractual relationships with suppliers, manufacturers, distributors, transportation providers, financial institutions, insurers, and retailers.[50]

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[48] Moreno Decl. ¶¶13–18, 32–43.
[49] Hunter Decl. ¶¶ 9–23, 32–42; Patka Decl. ¶¶ 8–15, 24–39; Moreno Decl. ¶¶13–18, 32–43.
[50] *Id.*

367. These investments were made in reliance upon the statutory definition of hemp enacted by the Legislature.[51]

B. The Challenged Agency Actions Substantially Impair Those Settled Interests.

368. Plaintiffs allege that the challenged agency actions materially alter the legal consequences of investments and commercial activities undertaken in reliance upon the Legislature's statutory framework.[52]

369. Products that Plaintiffs reasonably believed satisfied the statutory definition of hemp are now alleged by Defendants to fall within Schedule I under the challenged agency actions.[53]

370. As a result, Plaintiffs face the loss of inventory, impairment of contractual rights, diminished business goodwill, disruption of commercial relationships, and exposure to administrative and criminal enforcement.[54]

371. Plaintiffs further allege that these consequences arise from administrative rulemaking rather than from any amendment enacted by the Legislature.

C. The Retroactive Burden Is Constitutionally Unreasonable.

372. Plaintiffs do not contend that every regulatory change affecting existing businesses violates Article I, Section 16.

373. Rather, Plaintiffs allege that the challenged agency actions impose severe burdens upon settled business interests by altering the legal consequences of conduct undertaken in reliance upon existing statutory law.

374. Plaintiffs further allege that Defendants lacked statutory authority to impose those burdens through administrative rulemaking.

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[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*

375. Because the challenged agency actions exceed Defendants' delegated authority and substantially impair settled expectations created by statute, their retroactive application is constitutionally unreasonable.

376. Having enacted House Bill 1325 and expressly defined the scope of lawful hemp commerce, only the Texas Legislature may alter that statutory framework or declare previously lawful hemp products unlawful. DSHS may administer the Legislature's enactments, but it may not accomplish through administrative rulemaking what only the Legislature may accomplish through legislation.

D. Plaintiffs Are Entitled to Relief.

377. Plaintiffs have suffered and will continue to suffer irreparable injury to the extent the specifically challenged agency actions unlawfully alter the legal consequences of settled business interests and activities undertaken in reliance upon the statutory framework enacted by House Bill 1325.

378. Plaintiffs seek a declaration that any such application proved to exceed Defendants' statutory authority and to impose constitutionally impermissible retroactive burdens violates Article I, Section 16 of the Texas Constitution.

379. Plaintiffs are entitled to a declaration that the challenged agency actions, as applied to businesses and commercial activities undertaken in reliance upon the statutory framework enacted by House Bill 1325, violate Article I, Section 16 of the Texas Constitution.

<u>**COUNT VI**</u>

VIOLATION OF THE ANTI-MONOPOLY CLAUSE
(Article I, § 26, Texas Constitution)

380. Plaintiffs incorporate by reference paragraphs 1 through 379 of this Petition as though fully set forth herein.

A. The Texas Constitution Prohibits Government-Created Monopolies and Exclusive Economic Privileges.

381. Article I, Section 26 of the Texas Constitution provides:

> "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed."

382. Section 26 is not framed as a mere policy preference in favor of competition, but as a categorical restraint on governmental power. Texas courts accordingly construe that command as restraining governmental interference with competition through a grant that gives one person, or a limited association or class of persons, an exclusive right to buy, sell, make, or use a commodity or to pursue an occupation. [55]

383. The Clause does not invalidate every licensing distinction or regulation with an incidental anticompetitive effect. A distinction supported by a reasonable public-health, safety, or welfare justification may be permissible. But a restriction that creates or maintains an exclusive commercial privilege without a sufficient justification remains subject to Article I, Section 26.[56]

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[55] *Gant v. Bd. of Pilot Comm'rs for Galveston Cnty. Ports*, No. 01-20-00407-CV, 2022 WL 243994, at *5–6 (Tex. App.—Houston [1st Dist.] Jan. 27, 2022, pet. denied) (mem. op.); *City of Brenham v. Brenham Water Co*., 67 Tex. 542, 4 S.W. 143, 153–54 (1887); *Jones v. Carter*, 101 S.W. 514, 516 (Tex. Civ. App. 1907, writ ref'd).

[56] *Gant*, 2022 WL 243994, at *5–8; *Lens Express, Inc. v. Ewald*, 907 S.W.2d 64, 70–71 (Tex. App.—Austin 1995, no writ).

384. Plaintiffs challenge the objective structure, operation, and competitive effect of the challenged agency actions. Plaintiffs do not allege that proof of improper motive, collusion, or private misconduct by a Texas Compassionate Use Program ("TCUP") licensee is required to establish this claim.

385. Plaintiffs also do not contend that the Legislature lacks authority to regulate controlled substances, hemp, or medical cannabis, or to create separate regulatory programs. The constitutional defect alleged here is that DSHS has used agency action to remove a competing commercial channel and thereby create, preserve, or extend an exclusive economic privilege beyond the competitive structure enacted by the Legislature.

386. The validity and applicability of the challenged agency actions, the scope of DSHS's delegated authority, and the constitutional limits on that authority present questions for independent judicial determination under the causes of action and jurisdictional grounds pleaded elsewhere in this Petition, including Texas Government Code Sections 2001.038 and 2001.042 to the extent applicable.

B. The Legislature Created an Open but Regulated Hemp Market and a Separate, Numerically Limited TCUP Channel.

387. Through House Bill 1325, the Legislature authorized private participation in the cultivation, manufacture, processing, testing, transportation, distribution, and retail sale of hemp and consumable hemp products satisfying the statutory definition of hemp. That market is open to persons who satisfy the generally applicable licensing, registration, testing, labeling, and other regulatory requirements imposed by law. [57]

388. Plaintiffs participate, or seek to resume participation, in that consumable-hemp market through the activities and products alleged above. Plaintiffs and other Texas hemp businesses

[57] Act of June 10, 2019, 86th Leg., R.S., ch. 764, 2019 Tex. Gen. Laws 2084 (H.B. 1325); Tex. Agric. Code §§ 121.001, 122.001–.404; Tex. Health & Safety Code ch. 443.

invested in inventory, facilities, leases, equipment, employees, testing, regulatory compliance, customer development, and goodwill in reliance on that statutory market.

389. TCUP is materially different in its entry structure. A person may not operate a TCUP dispensing organization without a DPS license. House Bill 46 directs DPS to issue a total of fifteen licenses, based on a competitive evaluation of applicants, if a sufficient number of qualified applicants exist. The statutory scheme therefore confers a numerically limited right to cultivate, process, manufacture, distribute, and dispense low-THC cannabis.[58]

390. As of August 11, 2026, DPS publicly identified only three active final TCUP dispensing-organization licenses: Fluent, License No. 0004; Texas Original, License No. 0005; and Goodblend, License No. 0006.[59]

391. DPS has announced twelve additional corrected conditional awards. DPS expressly states that those conditional awards do not authorize cultivation, manufacture, distribution, or sale of cannabis products, remain subject to additional due diligence, and do not guarantee issuance of a final operating license. Thus, the public record presently establishes three active final operators, not fifteen active operators.

392. The recent legislative expansion is relevant but does not eliminate the closed-entry feature of TCUP. Entry remains capped, competitively allocated, and unavailable to ordinary market participants unless DPS grants one of the limited licenses.

393. The existing TCUP channel is also highly concentrated. A DPS-commissioned 2024 program evaluation reported that, during the period analyzed, one dispensing organization served 73 percent of TCUP patients and fulfilled 78 percent of prescriptions. The evaluation described

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[58] Tex. Health & Safety Code §§ 487.101, .104(d)–(d-1); Act of June 20, 2025, 89th Leg., R.S., ch. 710, §§ 3, 7, 2025 Tex. Gen. Laws (H.B. 46).

[59] See Tex. Dep't of Pub. Safety, *Licensed Dispensaries* (listing Fluent, License No. 0004; Texas Original, License No. 0005; and Goodblend, License No. 0006), and *DPS Releases Corrected Tabulation for Texas Compassionate Use Program Expansion* (May 8, 2026), attached collectively as Exhibit "G."

the program as highly dependent on one operator and stated that loss of either of the two largest operators would significantly impair statewide patient access.[60]

C. TCUP Licensees and Hemp Businesses Compete in Overlapping Product Markets.

394. The relevant competitive arena includes the Texas market for lawfully sold, non-smoked and non-vaporized psychoactive cannabinoid consumer products offered in gummy, beverage, tincture, and other ingestible forms. Plaintiffs plead, in the alternative, a narrower Texas market for orally consumed THC or intoxicating-cannabinoid gummies and beverages providing approximately five to ten milligrams of THC or a materially similar intoxicating cannabinoid per serving.

395. Plaintiffs do not allege that every hemp product and every TCUP product is chemically identical or perfectly interchangeable. The pertinent facts are that the channels offer materially overlapping product forms, serving doses, routes of administration, consumer effects, and uses, and that actual consumers treat products in the two channels as alternatives or supplements.

396. Current TCUP catalog evidence confirms substantial overlap in non-vaporized product forms. Texas Original offers, among other products, ten-milligram THC gummies, THC beverages, and tinctures. Representative posted prices include $25 for ten ten-milligram THC gummies and $50 for a 300-milligram THC tincture. Goodblend offers, among other products, five-milligram THC gummies and a ten-milligram THC beverage.[61]

397. The overlap is not limited to advertising. A July 10, 2026 batch certificate of analysis for Goodblend's Texas Orange gummies, associated with TCUP License No. 0006, reports

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[60] Tex. Dep't of Pub. Safety, *Compassionate Use Program: Program Evaluation and Recommendations for Sustainability* 12–15, 22–24 (2024), attached as Exhibit "H.:

[61] See TCUP Product Listings and Laboratory Records, attached as Exhibit "I" (containing Texas Original product-catalog excerpts; Goodblend product listings for Texas Orange 5 mg THC Gummies and Grape 10 mg THC Beverage; and the July 10, 2026 certificate of analysis for Goodblend Batch TXSWR-20260710-002).

approximately 5.04 milligrams of THC per gummy, 0.28 percent THC, and passing results for the listed potency and contaminant panels.

398. TCUP has long operated under THC standards materially different from those governing hemp. Immediately before House Bill 46 took effect, Texas defined "low-THC cannabis" using a one-percent-by-weight ceiling, while hemp remained subject to a 0.3-percent delta-9 THC threshold measured on a dry-weight basis. Effective September 1, 2025, House Bill 46 replaced TCUP's concentration ceiling with a dosage-unit standard permitting up to ten milligrams of tetrahydrocannabinols in each dosage unit. A TCUP package or pulmonary-inhalation device may contain as much as one gram of tetrahydrocannabinols in total.[62] Plaintiffs do not challenge those TCUP limits. The distinction is relevant because TCUP licensees already possess materially different formulation latitude in at least some of the product forms in which TCUP and hemp businesses compete.

399. During the same legislative session, the Legislature made a specific and contemporaneous choice concerning cannabinoid vaporization products. Senate Bill 2024 makes it a Class A misdemeanor to market, advertise, sell, offer for sale, or cause the sale of an e-cigarette product containing any cannabinoid, while the statutory definition excludes a prescription medical device, prescription medication, or other prescribed substance unrelated to the cessation of smoking. House Bill 46, enacted during the same session, expressly authorizes a physician to prescribe TCUP cannabis for pulmonary inhalation when medically necessary. Both enactments took effect September 1, 2025.[63] Plaintiffs do not challenge either legislative choice in this count. Their contemporaneous enactment demonstrates that the Legislature knew how to

[62] Tex. Agric. Code § 121.001; Tex. Occ. Code § 169.001(3); Tex. Health & Safety Code § 487.107(c); Act of June 20, 2025, 89th Leg., R.S., ch. 710, §§ 10, 14, 19 (H.B. 46) (replacing the former one-percent-by-weight standard with a ten-milligram-per-dosage-unit standard effective September 1, 2025).
[63] Tex. Health & Safety Code §§ 161.081(1-a)(B), .0876(a)–(c); Tex. Occ. Code § 169.006; Tex. S.B. 2024, 89th Leg., R.S., §§ 1–5 (2025); Tex. H.B. 46, 89th Leg., R.S., §§ 16, 19 (2025).

remove a particular product form from the ordinary cannabinoid market while leaving that method of administration commercially available through the prescribed TCUP channel. The Legislature did not enact a comparable prohibition removing hemp-derived gummies, beverages, tinctures, or other non-vaporized products from the market established by House Bill 1325.

400. Plaintiffs' products and affected inventory include tested consumable-hemp products in one or more of the same non-vaporized commercial forms and serving ranges. As alleged above and as Plaintiffs' labels, certificates of analysis, inventory records, prices, and declarations will show, those products compete for the same Texas consumers and cannabinoid-product spending served by TCUP gummies, beverages, tinctures, and other non-vaporized products.

401. The medical features of TCUP - including physician involvement, registry participation, and qualifying conditions - do not eliminate the competitive relationship. The State's own commissioned evaluation documents that TCUP patients used products from both channels and sometimes replaced prescribed TCUP products with products obtained outside TCUP.

402. The DPS-commissioned evaluation reported that 27.4 percent of responding active TCUP patients used hemp-derived delta-8 THC and 25.3 percent used hemp-derived delta-9 THC in addition to or as an alternative to prescribed low-THC products. It further reported that patients, physicians, and dispensing organizations identified the hemp-derived market as an attractive alternative because of access, convenience, product diversity, onset, and price.[64]

403. The same evaluation reported that 55 percent of responding TCUP patients supplemented prescribed cannabis with products obtained outside a licensed dispensing organization, and 16.7 percent reported that they no longer used prescribed medical cannabis and used only products obtained outside the program.

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[64] Tex. Dep't of Pub. Safety, *Compassionate Use Program: Program Evaluation and Recommendations for Sustainability* 18, 37–41, 61–66 (2024), attached as Exhibit "H."

404. The evaluation also reported that representatives of all three dispensing organizations identified hemp-market competition and associated the growth of hemp-derived products with slower TCUP growth. The public record therefore establishes actual competitive interaction and consumer substitution, not merely a superficial resemblance between products.

405. Plaintiffs plead those findings with their stated limitations. The evaluation described correlation and reported substitution but did not validate individual-level causation for every patient; it also recommended expanding TCUP access and licenses. Those qualifications do not erase the reported switching, supplementation, product overlap, or incumbent recognition of competition.[65]

D. The Challenged Agency Actions Remove the Competing Hemp Channel While the Closed TCUP Channel Continues Selling Overlapping Products.

406. On July 10, 2026, DSHS published a notice in the Texas Register reinstating modifications to the Schedule I definitions of “tetrahydrocannabinols” and “marihuana extract.” DSHS assigned the reinstatement an effective date of July 31, 2026.[66]

407. The reinstated definition of “tetrahydrocannabinols” reaches tetrahydrocannabinols naturally contained in cannabis, synthetic equivalents, and synthetic substances, derivatives, and isomers with similar chemical structure and pharmacological activity, while stating an exception only for “up to 0.3% delta-9-tetrahydrocannabinols in hemp.” The reinstated “marihuana extract” definition similarly accepts hemp extracts containing up to 0.3 percent delta-9 THC on a dry-weight basis, other than separated resin.

[65] Id. at 12–15, 37–41, 61–66. The evaluation expressly describes the evidence as correlational in material respects and recommends expanded TCUP access and licensure.

[66] Tex. Dep’t of State Health Servs., Notice Reinstating Clarifications to the Definitions of Tetrahydrocannabinols and Marihuana Extract to the 2021 Schedule of Controlled Substances, 51 Tex. Reg. 4597 (July 10, 2026) (TRD-202602610), attached as Exhibit “J.”

408. As alleged in detail above, the challenged agency actions and Defendants' announced interpretation and enforcement of them classify or threaten to classify Plaintiffs' statutory-hemp products as controlled substances based on cannabinoid identity, isomerism, derivation, or a measurement methodology different from the statutory delta-9 THC limit.

409. DSHS's current public guidance states that products labeled as containing delta-8 THC, or shown by testing to contain more than trace quantities of tetrahydrocannabinols other than the permitted delta-9 amount, may be detained and referred to law enforcement. That position creates present enforcement exposure and removes affected products from ordinary lawful commerce.[67]

410. The challenged exclusion operates together with the Chapter 300 restrictions alleged above, including DSHS's use of "total THC" concepts, product detention authority, testing and labeling requirements, and substantially increased licensing and registration fees. The combined operation burdens or eliminates the ordinary hemp channel while TCUP licensees continue selling THC-containing products in overlapping forms and doses.

411. DSHS did not create TCUP and does not issue TCUP licenses. But DSHS acts directly on the competing hemp channel. By excluding products that the DPS-commissioned evaluation identifies as substitutes for TCUP products, DSHS protects or extends the competitive privilege of the numerically limited TCUP channel. The alleged injury is therefore caused by DSHS's exclusionary action even though DPS administers TCUP.

412. The public record also establishes governmental notice of the competitive consequences. DPS recommended statutory changes excluding THC isomers and derivatives from consumable-hemp products and expressly identified both vape pens and edibles. As alleged

[67] See Tex. Dep't of State Health Servs., *Consumable Hemp Program* and *Consumable Hemp Products Frequently Asked Questions* (both captured Aug. 10, 2026), attached collectively as Exhibit "K."

above, the Legislature later addressed cannabinoid-vape products through Senate Bill 2024 but did not enact an equivalent prohibition removing non-vaporized consumable-hemp products from the market established by Chapter 443. During the Chapter 300 rulemaking, DSHS received a comment that TCUP remained inaccessible to many Texans because of cost and limited availability; DSHS treated the issue as outside the rulemaking's scope. Plaintiffs rely on those facts as notice and context, not as proof of a conspiracy or improper motive.[68]

E. The Competitive Exclusion Is Not Justified by the Existing Regulatory Distinctions.

413. Plaintiffs recognize the State's legitimate interest in public health and safety and the materially different medical controls governing TCUP. But the consumable-hemp channel is not unregulated. Chapter 443 and Chapter 300 require, among other things, licenses or registrations, accredited-laboratory testing, certificates of analysis, batch records, labeling and packaging, age restrictions, inspections, product detention and destruction, recalls, and administrative enforcement.[69]

414. The State therefore possesses targeted, product-specific tools to regulate potency, contaminants, labeling, packaging, age access, and traceability without categorically eliminating an entire competing channel. Those tools can address the asserted risks directly while preserving lawful competition among persons who satisfy the Legislature's requirements.

415. The Legislature's product-specific treatment of cannabinoid-vape products does not justify the broader exclusion produced by the Challenged Agency Actions. Section 161.0876 addresses e-cigarette products; it does not prohibit compliant hemp-derived gummies, beverages, tinctures, or other non-vaporized consumable-hemp products. TCUP licensees may sell tested

[68] See Tex. Dep't of Pub. Safety, *Agency Strategic Plan for Fiscal Years 2025–2029*, at 65–67, and Tex. Dep't of State Health Servs., 51 Tex. Reg. 1860, 1861 (Mar. 20, 2026), attached collectively as Exhibit "F" (DSHS response treating the TCUP cost-and-access comment as outside the scope of the Chapter 300 rulemaking).
[69] See Tex. Health & Safety Code ch. 443; 25 Tex. Admin. Code §§ 300.201–.206, .301–.306, .401–.406, .501–.506.

THC gummies, beverages, tinctures, and similar products, while tested hemp-channel products in overlapping forms and serving ranges face detention, criminal referral, and market exclusion under Defendants' challenged interpretation. That broader distinction is not tied to a demonstrated difference in product form, unit dose, testing, or contaminant profile.

416. At minimum, whether that exclusion is justified presents a concrete merits question that cannot be resolved by labeling one channel "medical" and the other "hemp" while disregarding the State's own evidence of overlapping products, actual patient substitution, and existing less exclusionary controls.

F. The Challenged Agency Actions Create, Preserve, or Extend an Exclusive Economic Privilege.

417. The TCUP dispensing-organization channel collectively possesses the State-conferred and numerically restricted right to cultivate, process, manufacture, distribute, and dispense THC-containing cannabis products through a protected legal channel. That channel also operates under a dose-based THC formulation standard and possesses lawful commercial access to prescribed cannabinoid pulmonary-inhalation products that is unavailable in the ordinary hemp market. Ordinary hemp businesses cannot enter that channel without obtaining one of the limited DPS licenses.

418. The Challenged Agency Actions remove or materially impair the competing hemp products that the State's own commissioned evaluation identifies as alternatives to TCUP products. They thereby diminish competitive constraints, concentrate lawful commercial opportunity in the closed channel, and maintain or increase the market power conferred by exclusive licensure.

419. That exclusion did not result from superior products, business acumen, or historical accident. It results from governmental action that closes one lawful statutory channel while preserving another channel for a small, state-selected class. The effect falls within the traditional Texas understanding of a government-created exclusive privilege.

420. This claim is distinct from the due-course claim rejected in *Texas Department of State Health Services v. Crown Distributing LLC*. Plaintiffs do not assert an unqualified constitutional right to manufacture any product. They invoke Article I, Section 26's separate prohibition against government-created monopolies and challenge executive action alleged to conflict with the Legislature's statutory definition of hemp and to protect a closed competing channel.[70]

421. Because DSHS lacks authority to restructure the markets created by Chapters 443 and 487 beyond the authority delegated by the Legislature, the Challenged Agency Actions' exclusionary operation creates, preserves, or extends an unjustified exclusive economic privilege in violation of Article I, Section 26.

G. Injury, Causation, and Redressability.

422. With respect to the non-vaporized products at issue under this count, Plaintiffs have suffered and continue to suffer, as a direct result of the Challenged Agency Actions, loss of lawful market access, unsalable or commercially impaired inventory, reduced sales, lost customers, interrupted expansion, contractual and lease obligations, impairment of goodwill, compliance costs, loss of business opportunities, and an immediate and credible threat of detention, referral, and enforcement.

[70] *Tex. Dep't of State Health Servs. v. Crown Distrib. LLC,* 647 S.W.3d 648, 653–58 (Tex. 2022). *Crown* addressed Article I, Section 19 and a legislatively enacted prohibition on manufacturing and processing smokable hemp; it did not decide an Article I, Section 26 challenge to an allegedly unauthorized agency-created competitive exclusion.

423. Those injuries are competitive and particularized. Plaintiffs are excluded from selling affected products through the ordinary hemp channel while the numerically limited TCUP channel remains authorized to sell materially overlapping THC-containing products.

424. The injuries alleged under this count arise from Defendants' exclusion of non-vaporized hemp products under the Challenged Agency Actions, not from the loss of cannabinoid-vape sales independently prohibited by Section 161.0876. Those injuries are traceable to Defendants' interpretation, implementation, and threatened enforcement of the Challenged Agency Actions. They are not dependent on any order requiring DPS to alter TCUP. A declaration of invalidity and prospective non-enforcement against DSHS and the responsible officials would remove the challenged exclusion and restore Plaintiffs' ability to compete with respect to hemp products not otherwise prohibited by statute.

H. Declaratory and Injunctive Relief.

425. An actual and justiciable controversy exists concerning whether the Challenged Agency Actions create, preserve, or extend an unconstitutional monopoly or exclusive economic privilege in violation of Article I, Section 26.

426. Plaintiffs seek a declaration that the identified provisions and applications of the Challenged Agency Actions, as applied to Plaintiffs' specifically identified non-vaporized hemp products and commercial activities, violate Article I, Section 26 and are invalid to that extent. Plaintiffs seek that relief through the procedural vehicles and waivers pleaded elsewhere in this Petition, including Section 2001.038 to the extent applicable and prospective ultra vires relief against the responsible officials.[71]

[71] Tex. Gov't Code §§ 2001.038, .042; *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372–77 (Tex. 2009) (prospective relief against officials acting without legal authority); see also *Gant v. Abbott*, 574 S.W.3d 625, 632–34 (Tex. App.—Austin 2019, no pet.) (addressing jurisdiction and proper defendants in an Article I, Section 26 challenge).

427. Plaintiffs do not seek damages under this count, invalidation of TCUP or Senate Bill 2024, revocation of any TCUP license, or an order compelling DPS to issue or deny any license.

428. Plaintiffs request a permanent injunction prohibiting Defendants, their officers, agents, employees, successors, and persons acting in concert with them from enforcing the specifically identified Challenged Agency Actions against Plaintiffs' non-vaporized products that Plaintiffs establish are lawful on grounds independent of the delta-9-threshold theory rejected in *Sky Marketing*, including products containing naturally occurring hemp constituents or other product categories materially distinct from concentrated manufactured delta-8 THC and not otherwise prohibited by statute, together with such other prospective relief as law and equity permit.

COUNT VII

DECLARATORY JUDGMENT REGARDING THE VALIDITY OF THE CHALLENGED AGENCY ACTIONS (Texas Government Code § 2001.038 and Chapter 37 of the Texas Civil Practice & Remedies Code)

429. Plaintiffs incorporate by reference paragraphs 1 through 428 as though fully set forth herein.

430. This action is brought pursuant to Section 2001.038 of the Texas Government Code, which authorizes a declaratory judgment determining the validity or applicability of an agency rule when the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.

431. Plaintiffs challenge the validity of the agency actions properly challenged under this Count on the ground that those actions exceed the statutory authority delegated to Defendants by the Texas Legislature and conflict with the governing statutes enacted by the Legislature.

432. The Legislature alone possesses the constitutional authority to enact laws defining criminal offenses and determining what substances constitute controlled substances under Texas law, except to the extent it has lawfully delegated limited rulemaking authority to executive agencies.

433. Administrative agencies possess only those powers affirmatively granted by statute, together with those necessarily implied to carry out expressly delegated authority.

434. Any reasonable doubt concerning the existence or scope of administrative authority must be resolved against the exercise of that authority.

435. Although DSHS possesses authority to administer the Texas Controlled Substances Act, that authority does not include the power to amend statutory definitions enacted by the Legislature.

436. House Bill 1325 expressly defines hemp by statute and excludes qualifying hemp from the statutory definition of marijuana.

437. Those legislative determinations constitute substantive policy choices reserved exclusively to the Legislature.

438. Nothing in Chapter 481 of the Texas Health and Safety Code authorizes DSHS to redefine hemp through administrative rulemaking.

439. Nothing in Chapter 481 authorizes DSHS to replace the Legislature's chosen analytical standard with a materially different regulatory standard.

440. Nothing in Chapter 481 authorizes DSHS to narrow the Legislature's statutory exemption for hemp or to expand the scope of Schedule I controlled substances beyond that established by statute.

441. Plaintiffs allege that the agency actions properly challenged under this Count exceed those limitations in the materially distinct circumstances identified throughout this Petition.

442. Specifically, Plaintiffs challenge the application of the Reinstated Definitions to naturally occurring hemp constituents or other specifically identified products, compounds, or circumstances materially outside the concentrated manufactured delta-8 THC determination adjudicated in Sky Marketing, and the use of the Post-July Implementation and Enforcement Standard to impose an independently operative substantive criterion not supplied by statute or validly adopted rule.

443. Plaintiffs do not allege that satisfaction of the statutory delta-9 THC threshold, standing alone, immunizes concentrated manufactured delta-8 THC or every hemp-derived cannabinoid from the controlled-substance schedules.

444. Plaintiffs allege instead that, to the extent the specifically challenged applications conflict with an express statutory exclusion or impose an additional substantive legal criterion beyond Defendants' delegated authority, those applications are unlawful.

445. Administrative rules that conflict with the statutes they purport to implement are invalid as a matter of law.

446. Such action exceeds Defendants' delegated authority and is therefore unlawful under Texas Government Code § 2001.038.

447. Plaintiffs have demonstrated that the challenged agency actions presently interfere with and impair their legal rights and privileges within the meaning of Section 2001.038.[72]

448. An actual and justiciable controversy presently exists between Plaintiffs and Defendants regarding the validity of the challenged agency actions.

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[72] Moreno Decl. ¶¶22–49; Hunter Decl. ¶¶ 9–23, 32–42; Patka Decl. ¶¶ 8–15, 24–39

449. Pursuant to Texas Government Code § 2001.042, this Court must determine independently, and without deference to Defendants' interpretation of the governing statutes, whether the challenged agency actions fall within the authority delegated by the Legislature.

450. Upon conducting that independent review, the Court should declare that the agency actions properly challenged under this Count exceed Defendants' statutory authority, conflict with the governing statutes enacted by the Legislature, and are therefore invalid under Texas Government Code § 2001.038.

IX. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

451. Plaintiffs incorporate by reference paragraphs 1 through 450 as though fully set forth herein, and Plaintiffs' Declarations.[73]

452. Plaintiffs seek a Temporary Restraining Order, Temporary Injunction, and, upon final trial, a Permanent Injunction prohibiting Defendants from implementing or enforcing the specifically challenged agency actions pending final disposition of this action.

A. Plaintiffs Have a Probable Right to Recovery.

453. To obtain temporary injunctive relief, Plaintiffs must demonstrate a probable right to recovery and a probable, imminent, and irreparable injury in the interim.

454. Plaintiffs have established a probable right to recovery because the challenged agency actions conflict with the governing statutes enacted by the Legislature, exceed Defendants' delegated authority, violate the Texas Administrative Procedure Act, and infringe multiple provisions of the Texas Constitution.

B. Plaintiffs Face Probable, Imminent, and Irreparable Injury.

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[73] Plaintiffs incorporate by reference the sworn declarations of William Hunter, Zaid Patka, Jason Moreno, and Trevor Kocaoglan, filed contemporaneously with this Petition and Application, together with the exhibits and other evidence cited herein. Those declarations establish from personal knowledge the Plaintiff-specific facts supporting standing, present and threatened injury, irreparable harm, and the need for temporary injunctive relief.

455. Unless restrained by this Court, Defendants will implement and enforce the challenged agency actions.

456. Enforcement of those rules threatens Plaintiffs with immediate and irreparable injury.[74]

457. Those injuries include, without limitation:[75]

a. disruption of ongoing business operations;

b. loss of customer relationships;

c. destruction of commercial goodwill;

d. impairment of existing contractual rights;

e. cancellation of supply agreements;

f. loss of inventory value;

g. interruption of interstate and intrastate commerce;

h. diversion of management time and resources;

i. substantial compliance expenses;

j. exposure to administrative enforcement;

k. exposure to criminal investigation and prosecution; and

l. the loss of business opportunities that cannot be adequately measured or compensated through monetary damages.

458. Many of these injuries are intangible and incapable of precise calculation.

459. Once customer relationships, business reputation, and market goodwill are lost, they cannot readily be restored by a subsequent award of damages.[76]

C. Plaintiffs Have No Adequate Remedy at Law.

[74] Hunter Decl. ¶¶ 25–43; Patka Decl. ¶¶ 23–41; Moreno Decl. ¶¶31–49; Kocaoglan Decl. ¶¶ 36–41.
[75] *Id.*
[76] *Id.*

460. Monetary damages cannot adequately compensate Plaintiffs for the continuing uncertainty, reputational injury, loss of goodwill, impairment of customer confidence, and disruption of lawful business operations caused by the challenged agency actions.

461. Nor can damages adequately compensate Plaintiffs for the constitutional injuries resulting from enforcement of rules alleged to exceed Defendants' statutory authority.

462. Plaintiff Kocaoglan likewise faces present and irreparable injury distinct from the commercial injuries suffered by the business Plaintiffs. The challenged agency actions presently cause Kocaoglan to refrain from paid hemp consulting and other lawful commercial activity in which he desires and intends to engage and cause him to refrain from purchasing, possessing, and using hemp-derived products that he otherwise would purchase, possess, and use.[77]

463. Those restrictions result from the risk of enforcement under the challenged agency actions. If enforcement were enjoined, Kocaoglan would resume those activities.[78]

464. Requiring Plaintiffs to violate the challenged agency actions and await criminal prosecution, product seizure, license consequences, or administrative sanctions before obtaining judicial review would defeat the purpose of Texas Government Code § 2001.038 and the ultra vires doctrine.

D. The Balance of Equities Favors Injunctive Relief.

465. The balance of equities strongly favors maintaining the status quo pending final adjudication.

466. By contrast, denial of temporary relief would expose Plaintiffs to immediate and substantial injuries that cannot later be undone.[79]

E. The Public Interest.

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[77] Kocaoglan Decl. ¶¶ 36–41.
[78] *Id.*
[79] Hunter Decl. ¶¶ 25–43; Patka Decl. ¶¶ 23–41; Moreno Decl. ¶¶31–49; Kocaoglan Decl. ¶¶ 36–41.

467. The public has a compelling interest in ensuring that executive agencies remain within the authority delegated by the Legislature.

468. The public also has an interest in the consistent, predictable, and lawful administration of Texas statutes governing the hemp industry.

469. Whitney Economics estimates that prohibitions affecting Texas's hemp-derived consumer-products market could result in approximately $3.85 billion in lost business revenue, 36,708 lost jobs, $1.44 billion in reduced wages, and $187.4 million in lost state sales-tax revenue.[80]

470. Preserving the existing statutory framework pending judicial determination of the validity of the challenged agency actions therefore protects not merely Plaintiffs' interests, but substantial employment, fiscal, and economic interests of the State and its citizens.

F. The Relief Requested Here Is Directed to the Distinct Agency Actions Presented in This Case and Need Not Conflict With the THBC Litigation

471. Plaintiffs acknowledge that the court in *Texas Hemp Business Council, et al. v. Texas Department of State Health Services, et al.*, Cause No. D-1-GN-26-002511, has entered interlocutory relief concerning specified provisions of the March 31, 2026 amendments to Chapter 300 of Title 25 of the Texas Administrative Code and that appellate proceedings concerning that relief are pending or have occurred as described above. Plaintiffs do not ask this Court to disregard, modify, supersede, or enter an order inconsistent with any order presently governing the parties or agency actions at issue in that litigation.

472. The principal interim relief requested in this action is directed instead to the subsequent agency actions challenged herein, including Defendants' present interpretation and enforcement

[80] Whitney Report at 1, 6.

of the July 2026 Reinstated Definitions and the Post-July Implementation and Enforcement Standard under which products containing more than naturally occurring "trace amounts" of certain tetrahydrocannabinols may be detained, subjected to regulatory consequences, or referred to law enforcement.

473. Those subsequent actions present a distinct basis for interim relief. Plaintiffs allege that Defendants presently attribute binding regulatory and enforcement consequences to the Post-July Implementation and Enforcement Standard even though DSHS has indicated that it intends to undertake rulemaking under the Texas Administrative Procedure Act to incorporate the definition upon which that standard depends. Plaintiffs therefore seek to preserve the status quo against enforcement of that subsequently announced standard while the Court determines whether Defendants possess statutory authority to impose it and whether it was lawfully adopted.

G. Requested Temporary Relief.

474. Plaintiffs respectfully request that this Court issue a Temporary Restraining Order immediately upon consideration of this Petition.

475. Plaintiffs request that, pending final judgment, the appropriate Defendants and persons bound under Texas Rule of Civil Procedure 683 be restrained from: (1) employing the identified Post-July Implementation and Enforcement Standard as an independently operative basis for detaining Plaintiffs' products, referring Plaintiffs or their products to law enforcement, imposing licensing or administrative consequences, or taking other enforcement action, unless that substantive criterion was authorized by statute and adopted through any procedures required by law; and (2) applying the Reinstated Definitions to naturally occurring trace constituents or to other specifically identified products, compounds, or circumstances that Plaintiffs establish are materially outside the scheduling determination adjudicated in *Sky Marketing*. Plaintiffs do not

request temporary relief against the Reinstated Definitions as applied to concentrated manufactured delta-8 THC on the theory rejected in *Sky Marketing*.

476. To the extent any portion of the foregoing relief implicates a March 2026 Chapter 300 provision presently subject to an operative order in the THBC litigation, Plaintiffs request that the Court tailor the injunction to avoid duplication or inconsistency while preserving effective relief against the distinct July and post-July agency actions challenged herein.

477. Plaintiffs further request that the Court set this matter for trial on the merits at the earliest practicable date and, following trial, enter a Permanent Injunction consistent with the declaratory relief requested herein.

478. The relevant status quo is not a regulatory condition predating the scheduling determination sustained in *Sky Marketing* or the March 31, 2026 Chapter 300 Amendments. For the temporary relief principally sought here, the relevant status quo is the last actual, peaceable, and non-contested condition preceding Defendants' alleged use of the identified post-July criterion as an independently operative basis for detention, referral, licensing consequences, or other enforcement action against Plaintiffs.

479. Plaintiffs do not seek to recreate the injunction reversed in *Sky Marketing*, prohibit enforcement of the Reinstated Definitions against concentrated manufactured delta-8 THC, or obtain duplicative relief concerning matters already before the court in the THBC litigation. They seek relief only from the distinct post-July conduct and materially different applications specifically identified in this Petition.

X. REQUEST FOR PERMANENT INJUNCTION

480. Plaintiffs incorporate by reference paragraphs 1 through 479 as though fully set forth herein.

481. Plaintiffs seek a permanent injunction limited to the specifically identified agency actions, applications, and responsible officials determined unlawful upon final adjudication.

482. Unless permanently enjoined, Defendants will continue employing the specifically challenged agency actions against Plaintiffs, including any independently operative post-July criterion or application determined to exceed Defendants' statutory authority or to have been adopted without procedures required by law.

483. Plaintiffs are likely to succeed on one or more of their claims that the specifically challenged agency actions or applications are invalid, inapplicable, improperly adopted, or beyond Defendants' statutory authority.

484. The continuing threat of product detention, law-enforcement referral, administrative or licensing consequences, interruption of ongoing businesses, and restriction of Kocaoglan's consumer and commercial conduct constitutes irreparable injury to the extent those consequences arise from agency action ultimately determined unlawful.

485. Those injuries cannot be fully remedied through an award of monetary damages because they include continuing restrictions on lawful conduct and the threatened loss of established businesses, customer and supplier relationships, market position, and goodwill. Plaintiffs therefore lack an adequate remedy at law.

486. The equities and public interest favor an injunction confined to agency conduct determined unlawful. Such relief would protect Plaintiffs' rights while leaving Defendants free to exercise all authority lawfully delegated to them by the Legislature.

487. Plaintiffs therefore request that, upon final adjudication, the Court permanently enjoin the appropriate Defendants and persons bound under Texas Rule of Civil Procedure 683 from implementing or enforcing against Plaintiffs each specifically identified agency action or

application determined to be invalid, improperly adopted, inapplicable, or beyond Defendants' statutory authority. Any injunction should identify the restrained conduct with specificity and extend no further than necessary to remedy the violations established.

488. Plaintiffs do not seek to prohibit DSHS from engaging in future rulemaking, exercising authority lawfully delegated by the Legislature, enforcing the Reinstated Definitions against concentrated manufactured delta-8 THC consistent with *Sky Marketing*, or taking enforcement action on an independent and otherwise lawful ground. Plaintiffs seek only to prevent the particular unlawful conduct established in this action.

XI. BOND

489. Plaintiffs acknowledge that Rule 684 of the Texas Rules of Civil Procedure generally requires the posting of security as a condition of temporary injunctive relief.

490. Plaintiffs respectfully request that the Court set bond in a nominal amount because this action seeks to preserve the status quo, challenges governmental action alleged to exceed statutory authority, and does not seek to restrain any proprietary interest of the State.

491. Alternatively, Plaintiffs request that the Court set bond in such amount as the Court determines is fair and equitable under the circumstances.

492. Each cause of action asserted herein is pleaded independently and in the alternative. A determination that one cause of action does not provide a basis for relief shall not be construed as an admission that any other cause of action is unavailable or waived. Plaintiffs expressly preserve each statutory and constitutional ground for relief asserted in this Petition.

XII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer, and that upon final hearing this Court enter judgment as follows:

A. Declare the rights and legal relations of the parties under the Texas statutes governing hemp, controlled substances, and DSHS's regulatory authority;

B. Declare the validity and applicability of the July 2026 Reinstated Definitions only to the extent necessary to determine whether Defendants may apply them to naturally occurring trace constituents or to other specifically identified products, compounds, or circumstances materially outside the scheduling determination adjudicated in *Sky Marketing*;

C. Declare that, if the identified Post-July Implementation and Enforcement Standard constitutes a generally applicable and independently operative "rule" within Texas Government Code § 2001.003(6), it is invalid to the extent it was adopted without statutory authority or without compliance with procedures required by the Texas Administrative Procedure Act;

D. Alternatively, if the Post-July Implementation and Enforcement Standard is merely explanatory and carries no independent legal effect, declare that Defendants may not employ the communication itself as an independent basis for product detention, law-enforcement referral, licensing consequences, or other enforcement action;

E. Declare invalid any March 2026 Chapter 300 provision properly before this Court that exceeds DSHS's statutory authority, conflicts with governing statutes, or otherwise violates Texas law, subject to appropriate coordination with the pending THBC litigation concerning any genuinely overlapping issue;

F. Declare that any licensing or registration fee properly challenged in this action is invalid to the extent it exceeds DSHS's statutory authority or constitutes an unauthorized occupation tax under Article VIII, Section 1(c) of the Texas Constitution;

G. Declare that the appropriate Defendant officials may not implement or enforce the specifically identified agency actions beyond the authority conferred upon them by statute or in violation of an applicable ministerial legal requirement, without inviting judicial review of the merits of the Commissioner's discretionary objection decision under Texas Health and Safety Code § 481.034(g);

H. Enter temporary injunctive relief limited to the Plaintiffs before the Court, the responsible officials, and the particular post-July conduct or materially distinct applications challenged in this action, without restraining enforcement of the Reinstated Definitions against concentrated manufactured delta-8 THC on the theory rejected in *Sky Marketing* or conflicting with any operative order in the THBC litigation;

I. Upon final judgment, permanently enjoin the appropriate Defendants, their officers, agents, employees, successors, and persons acting in active concert or participation with them who receive actual notice of the injunction, from implementing or enforcing against Plaintiffs any specifically identified rule, standard, interpretation, policy, or other agency action determined by the Court to be invalid, inapplicable to Plaintiffs, improperly adopted, or beyond Defendants' statutory authority, including by enforcing the same operative requirement under a different label or administrative form. Nothing in the injunction shall prohibit future agency action authorized by statute and undertaken in compliance with any procedures required by Texas law.

J. Frame any declaratory or injunctive relief concerning March 2026 Chapter 300 provisions so as to avoid conflict with any operative order in *Texas Hemp Business Council, et al. v. Texas Department of State Health Services, et al.*, while preserving Plaintiffs' right to relief concerning distinct subsequent agency actions and plaintiff-specific injuries;

K. If the Court determines that any portion of the declaratory or injunctive relief requested herein exceeds the permissible scope of relief, overlaps impermissibly with related litigation, or otherwise cannot lawfully be granted in the precise form requested, award Plaintiffs the maximum lawful declaratory and injunctive relief necessary to remedy the violations established and protect Plaintiffs' legal rights;

L. Award Plaintiffs taxable court costs to the extent permitted by law; and

M. Grant Plaintiffs all other legal and equitable relief, general or special, to which they may show themselves justly entitled.

Respectfully submitted,

*/s/ David K. Sergi*_____

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Attorneys for Plaintiffs

VERIFICATION OF SS DISTRO USA LLC

STATE OF Texas §

COUNTY OF Ellis County §

BEFORE ME, the undersigned authority, personally appeared **Zaid Patka**, who, being duly sworn, stated:

"My name is Zaid Patka. I am over eighteen years of age, competent to make this verification, and authorized to make it on behalf of Plaintiff SS Distro USA LLC. I have personal knowledge of the factual allegations in the foregoing Petition and Application concerning SS Distro LLC, its business operations, licenses and registrations, products, inventory, commercial relationships, compliance activities, present and threatened injuries, and irreparable harm. Those factual allegations are true and correct to the extent they concern matters within my personal knowledge. My declaration attached as Exhibit A is incorporated herein and provides additional sworn factual support for Plaintiffs' request for temporary injunctive relief."

Zaid

Zaid Patka Mohamed zaid Hanif Patka
Authorized Representative
of SS Distro USA LLC

SUBSCRIBED AND SWORN TO before me on 18th August, 2026.

Dorothy Michel

Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS

Dorothy Michel

ID NUMBER
134720444
COMMISSION EXPIRES
January 18, 2028

VERIFICATION OF TOPPS DISTRO LLC d/b/a KINGPIN KUSH

STATE OF TEXAS §

COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, personally appeared **William Hunter**, who, being duly sworn, stated:

"My name is William Hunter. I am over eighteen years of age, competent to make this verification, and authorized to make it on behalf of Plaintiff Topps Distro d/b/a Kingpin Kush. I have personal knowledge of the factual allegations in the foregoing Petition and Application concerning Topps Distro d/b/a Kingpin Kush, its business operations, licenses and registrations, products, inventory, commercial relationships, compliance activities, present and threatened injuries, and irreparable harm. Those factual allegations are true and correct to the extent they concern matters within my personal knowledge. My declaration attached as Exhibit B is incorporated herein and provides additional sworn factual support for Plaintiffs' request for temporary injunctive relief."

William Hunter
Authorized Representative
of Topps Distro d/b/a Kingpin Kush

SUBSCRIBED AND SWORN TO before me on Aug 19th, 2026.

Notary Public, State of Texas

APRIL SIMS POHOSKI
NOTARY PUBLIC
STATE OF TEXAS
ID 132440250
EXP. 07-17-2028

VERIFICATION OF JASON MORENO

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared **Jason Moreno**, who, being duly sworn, stated:

"My name is Jason Moreno. I am over eighteen years of age, competent to make this verification, and authorized to make it on behalf of MY CITY HEMP. I have personal knowledge of the factual allegations in the foregoing Petition and Application concerning MY CITY HEMP, its business operations, licenses and registrations, products, inventory, commercial relationships, compliance activities, present and threatened injuries, and irreparable harm. Those factual allegations are true and correct to the extent they concern matters within my personal knowledge. My declaration attached as Exhibit C is incorporated herein and provides additional sworn factual support for Plaintiffs' request for temporary injunctive relief."

Jason Moreno
Authorized Representative of
and d/b/a MY CITY HEMP

SUBSCRIBED AND SWORN TO before me on 19 AUG., 2026.

Mahesh N Patel

Notary Public, State of TEXAS

MAHESH N. PATEL
Notary Public, State of Texas
Comm. Expires 11-05-2028
Notary ID 125109069

VERIFICATION OF TREVOR KOCAOGLAN

STATE OF ________ §

COUNTY OF ______ §

BEFORE ME, the undersigned authority, personally appeared **Trevor Kocaoglan**, who, being duly sworn, stated:

"My name is Trevor Kocaoglan. I am over eighteen years of age, of sound mind, competent to make this verification, and have personal knowledge of the matters stated herein.

I have reviewed the factual allegations in the foregoing Original Petition and Application for Temporary Restraining Order and Temporary Injunction that concern me, including allegations concerning my experience in the Texas hemp industry, my prior licensed activities, my current consulting and compliance-related activities, my purchase and use of hemp-derived products, and the present and threatened effects of the challenged agency actions upon my conduct and interests. To the extent those allegations concern matters within my personal knowledge, they are true and correct.

My Declaration attached to the Petition as Exhibit D is incorporated herein and provides additional sworn factual support for my standing, present and threatened injury, irreparable harm, and Plaintiffs' request for temporary injunctive relief."

____

Trevor Kocaoglan

SUBSCRIBED AND SWORN TO before me on ____________, 2026.

____

Notary Public, State of ______

Exhibit A

Declaration of Zaid Patka

SS Distro, LLC

DECLARATION OF ZAID PATKA

I, Zaid Patka, after being duly sworn, state from personal knowledge as follows:

I. Background

1. My name is Zaid Patka.
2. I am over the age of eighteen and competent to testify to the matters stated in this declaration.
3. I make this declaration from my personal knowledge. If called as a witness, I could and would testify competently to the facts stated below.
4. I am a part owner of SS Distro USA, LLC ("SS Distro"), a Texas limited liability company with its principal place of business in Farmers Branch, Texas.
5. I have been involved with SS Distro since approximately January 2022. I serve as owner, and my responsibilities include sales & purchasing and customer service.
6. Through my ownership and management responsibilities, I am familiar with SS Distro's operations, inventory, products, customers, suppliers, regulatory compliance, and business planning.
7. I am authorized to speak on behalf of SS Distro concerning the matters stated in this declaration.

II. SS Distro's Business

8. SS Distro operates a wholesale cash-and-carry business serving licensed hemp businesses throughout Texas. SS Distro purchases hemp and hemp-derived products from manufacturers and suppliers and distributes those products to other businesses for resale. SS Distro does not sell directly to individual consumers.
9. SS Distro sells only to businesses that hold a DSHS Retail Hemp Registration or a DSHS Consumable Hemp Product License. Its customers are therefore businesses that have affirmatively registered with or obtained a license from DSHS and are subject to DSHS oversight.
10. SS Distro has operated in reliance on the statutory framework enacted by the Texas Legislature for hemp and hemp-derived products. It currently operates under Texas Department of State Health Services Wholesaler License Number 1002023.
11. SS Distro has devoted substantial resources to developing and maintaining its business, including its facility, inventory, equipment, licensing and regulatory compliance, employees or contractors, insurance, customer base, supplier relationships, and business goodwill.
12. SS Distro has established relationships with manufacturers, suppliers, retailers, testing laboratories, transportation providers, and other participants in the hemp-product supply chain. Those relationships were developed over time and are essential to the company's ability to operate.

13. SS Distro's business model depends on its ability to maintain a broad selection of hemp-derived products that its licensed business customers can purchase in one location and resell throughout Texas. Customers rely on SS Distro for product availability, consistency, and dependable information about whether products may lawfully be sold.
14. SS Distro has taken substantial steps intended to comply with applicable federal and Texas law. Among other things, SS Distro obtains and reviews Certificates of Analysis, reviews product labels and supporting documentation, monitors regulatory developments, and communicates with suppliers and legal counsel regarding compliance.
15. SS Distro carries hemp-derived beverages, edibles, pre-rolls, flower. Its product selection includes products containing or marketed as containing THCA, THCP, D8, D9, and D10.

III. The Reinstated Definitions and Resulting Confusion

16. On July 31, 2026, DSHS reinstated modified definitions of "tetrahydrocannabinols" and "marihuana extract" in the Texas Schedule of Controlled Substances. I refer to those modified definitions below as the "Reinstated Definitions."
17. The Reinstated Definitions have created immediate and widespread confusion in SS Distro's business. Products that SS Distro and its licensed business customers previously understood to be lawful hemp products based on their source, labeling, and laboratory reports may now be treated as Schedule I controlled substances.
18. The confusion is not limited to one product or one cannabinoid. The Reinstated Definitions affect numerous categories and product lines that have been openly manufactured, distributed, and sold in the Texas hemp market for years.
19. Certificates of Analysis that were previously used to confirm that a product contained no more than 0.3 percent delta-9 tetrahydrocannabinol do not resolve whether DSHS or law enforcement will now treat the product as a controlled substance because it contains another form of tetrahydrocannabinol or a related compound.
20. In practical terms, SS Distro has not received clear, product-by-product guidance identifying which items may still be possessed, transported, distributed, or sold. SS Distro carries products from multiple manufacturers, in multiple forms, and with different cannabinoid profiles. Each product must now be reevaluated under a definition whose scope and enforcement consequences remain uncertain to businesses operating in the market.
21. SS Distro's licensed business customers are facing the same uncertainty. They need immediate and reliable answers about whether they may purchase, stock, transport, display, and sell particular products. SS Distro cannot provide those answers with confidence while the Reinstated Definitions remain in effect and their application remains unclear.
22. This confusion exists among businesses that have already submitted to DSHS's licensing or registration process and that are attempting to comply with DSHS requirements. The fact that regulated businesses throughout the supply chain remain unable to obtain clear answers has made ordinary wholesale transactions extremely difficult.
23. The consequences of making the wrong decision are severe. Continuing to handle an affected product exposes SS Distro, its personnel, and its customers to the possibility of detention or seizure of inventory, referral to law enforcement, and other enforcement action. Stopping

sales avoids some enforcement risk but immediately removes the core products on which SS Distro's business depends.

24. SS Distro was not given a meaningful sell-through period in which to dispose of existing affected inventory through ordinary sales. The company therefore had to confront the legal status and commercial value of a large portion of its inventory immediately.
25. Since the Reinstated Definitions took effect, SS Distro has lost lot of money in terms of standing inventory, people returning the products, cancelled orders and people refusing to pay for the currently banned products that they have purchase products prior to the ban.
26. SS Distro has received questions and expressions of concern from licensed business customers and other commercial partners about what products remain lawful and whether affected products will continue to be available. Standing inventory, people returning the products, cancelled orders and people refusing to pay for the currently banned products that they have purchase products prior to the ban.
27. Management time that would ordinarily be devoted to purchasing, sales, customer development, supplier management, and business growth is instead being consumed by product review, compliance analysis, communications with counsel and commercial partners, and efforts to determine whether the company can continue operating.

IV. Present and Continuing Harm to SS Distro

28. Based on my knowledge of SS Distro's current product catalog and inventory, approximately 90 percent of the products the company carries are affected by the Reinstated Definitions. This estimate is based on a review of the products and product lines carried by the company.
29. The affected products are not incidental or peripheral items. They make up the core of SS Distro's product selection and are a primary reason licensed hemp businesses do business with the company.
30. The small portion of SS Distro's existing product selection that is not affected cannot sustain the present wholesale operation by itself. The remaining products do not provide enough variety or customer demand to support the facility, personnel, licensing, insurance, logistics, and other continuing obligations necessary to operate the business.
31. SS Distro cannot simply replace approximately 90 percent of its products overnight. Locating replacement products requires identifying lawful and commercially viable products, locating dependable suppliers, reviewing testing and labeling, negotiating terms, developing customer demand, and changing purchasing and inventory systems. Even then, there is no assurance that replacement products would generate comparable customer interest.
32. Existing affected inventory has also lost much or all of its ordinary commercial value in Texas. Inventory that cannot safely be sold, transported, or distributed is not useful to a wholesale business, even though SS Distro acquired it in the ordinary course while operating under the Legislature's hemp framework.
33. The uncertainty is already interfering with SS Distro's ability to purchase inventory, accept orders, make commitments to customers, forecast demand, plan future product offerings, and provide dependable information to the retailers it serves.

34. SS Distro's relationships and reputation depend on its ability to maintain inventory and reliably fill customer orders. When SS Distro cannot provide products or clear information about future availability, its licensed business customers must look elsewhere, stop carrying the products, or leave the market. Once those purchasing relationships and shelf placements are lost, they may not return even if the Reinstated Definitions are later invalidated.
35. SS Distro is therefore forced to choose among unacceptable alternatives: continue ordinary operations and face severe enforcement risk; remove the affected products and immediately lose most of its business; or delay decisions while inventory, customers, and goodwill continue to deteriorate. None of these options allows the company to operate normally.

V. Threatened Closure and Irreparable Harm

36. If the Reinstated Definitions remain in effect and are enforced against the products described above, SS Distro will almost certainly be forced to close. This is not a prediction based on a temporary reduction in sales. The Reinstated Definitions remove approximately 90 percent of the company's product selection and eliminate the foundation of its existing business model.
37. Closure would require SS Distro to wind down its facility and operations, address unusable inventory and ongoing business commitments, reduce or eliminate work performed by employees and contractors, and abandon relationships and goodwill developed over the life of the business.
38. The damage from closure could not be fully repaired by a later award of money damages. Customer relationships, supplier relationships, reputation, market position, and goodwill cannot be preserved while the company is unable to operate. Licensed business customers will make other arrangements, suppliers will seek other distributors, and the company's place in the Texas market will be lost.
39. Even if SS Distro later prevailed, reopening would require the company to rebuild its inventory, workforce, supplier network, customer base, and market position. There is no assurance that those relationships or opportunities could be recovered.
40. But for the Reinstated Definitions and the threat of their enforcement, SS Distro would continue its ordinary purchasing, inventory, distribution, sales, and business-planning activities in reliance on the hemp framework enacted by the Texas Legislature.
41. An injunction preventing enforcement of the Reinstated Definitions would allow SS Distro to continue or resume ordinary operations and make commercial commitments without the immediate enforcement risks and business-ending harm described above.

VI. Supporting Records

42. Attached as Exhibit A is a true and correct copy of SS Distro's Texas Wholesaler License.

I swear that the foregoing statements are true and correct.

Executed on ______________________________.

____
Zaid Patka

STATE OF ________ §
COUNTY OF __________________ §

SUBSCRIBED AND SWORN TO before me on ______________________________, 2026, by Zaid Patka.

____

Notary Public, State of ______
My commission expires: __________________

Exhibit B

Declaration of William Hunter

KingPin Kush LLC

DECLARATION OF WILLIAM HUNTER

I, William Hunter, after being duly sworn, state from personal knowledge as follows:

I. Background

1. My name is William Hunter.
2. I am over the age of eighteen and competent to testify to the matters stated in this declaration.
3. I make this declaration from my personal knowledge. If called as a witness, I could and would testify competently to the facts stated below.
4. For approximately two years, I have served as the operating manager for a group of retail hemp stores doing business under the name Kingpin Kush. The group presently has ten actively operating retail locations in Texas. I refer to the Kingpin Kush-branded operations and the related entities for which I serve as operating manager collectively as "Kingpin Kush."
5. My responsibilities include oversight of Kingpin Kush's operations, sales, regulatory compliance, inventory, employees and contractors, customer relationships, leases, expansion projects, and purchases through interstate commerce.
6. I am authorized to speak on behalf of Kingpin Kush concerning the matters stated in this declaration.
7. The Kingpin Kush operations are conducted through related entities that include KINGPIN KUSH LLC and TOPPS DISTRO LLC. TOPPS DISTRO LLC is a Texas limited liability company formed on June 27, 2025. Its Certificate of Formation identifies KINGPIN KUSH LLC as one of its managers and identifies me as its organizer and registered agent.
8. Attached as Exhibit A is a true and correct copy of the Certificate of Formation for TOPPS DISTRO LLC filed with the Texas Secretary of State on June 27, 2025.

II. Kingpin Kush's Texas Business

9. Kingpin Kush operates ten retail hemp stores in Texas. Its management operations are based in San Antonio, Texas, and all of its sales are made to customers in Texas.
10. Kingpin Kush sells a broad range of hemp and hemp-derived products, including flower, pre-rolls, concentrates, beverages, edibles, topicals, CBD products, and other wellness products that customers purchase for relief, relaxation, or mental well-being.
11. Approximately 90 percent of Kingpin Kush's revenue during the preceding twelve months was attributable to hemp-derived products. The affected hemp product lines are therefore central to the business rather than incidental products.
12. Kingpin Kush serves approximately 10,000 Texas customers. Those customer relationships, together with the stores' locations, employees, inventory, suppliers, reputation, and goodwill, have been developed through substantial time and investment.

13. Kingpin Kush does not make sales to customers outside Texas and does not ship products to customers. One hundred percent of its revenue is derived from Texas sales made through its retail operations.
14. Kingpin Kush nevertheless participates in interstate commerce because it purchases products, ingredients, packaging, equipment, and other materials from suppliers located outside Texas. Those items are received, stored, and sold through Kingpin Kush's Texas locations.
15. Kingpin Kush has obtained Consumable Hemp Product Retail Registrations through the Texas Department of State Health Services for its retail operations and monitors the licensing and registration requirements applicable to its locations.
16. Kingpin Kush takes steps intended to comply with federal and Texas law. It purchases from established suppliers, relies on testing performed by manufacturers and third-party laboratories, obtains and reviews Certificates of Analysis, reviews product labels and supporting records, and monitors regulatory developments.
17. Kingpin Kush does not manufacture the products at issue and does not independently test every product upon arrival. It relies primarily on the manufacturers' third-party laboratory testing and the supporting Certificates of Analysis provided with the products.
18. Kingpin Kush holds Texas Sales and Use Taxpayer Number 32100929218 and maintains records of its tax payments, revenue, inventory, payroll, leases, and other business activities.

III. Kingpin Kush's Texas Revenue and Tax Contributions

19. During calendar year 2025, Kingpin Kush remitted approximately $209,373.07 in Texas sales and use taxes and paid approximately $8,442.51 in Texas franchise tax.
20. From January through June 2026, Kingpin Kush remitted approximately $298,221.00 in Texas sales and use taxes, an average of approximately $50,000 per month.
21. From January 1 through July 31, 2026, Kingpin Kush generated approximately $3,632,972.00 in gross revenue. All of that revenue was generated from Kingpin Kush's Texas retail operations.
22. Before the present regulatory disruption, Kingpin Kush's aggregate monthly gross revenue averaged approximately $700,000, and the business operated at an approximate 40 percent profit margin.
23. The financial figures stated above are derived from business and tax records that Kingpin Kush maintains in the ordinary course of its operations and that I routinely review in my role as operating manager.

IV. The Reinstated Definitions and Resulting Confusion

24. On July 31, 2026, the Texas Department of State Health Services reinstated modified definitions of "tetrahydrocannabinols" and "marihuana extract" in the Texas Schedule of Controlled Substances. I refer to those modified definitions below as the "Reinstated Definitions."

25. The Reinstated Definitions have created immediate and widespread confusion across Kingpin Kush's ten stores. Products that Kingpin Kush, its suppliers, employees, and customers previously understood to be lawful hemp products based on their source, labeling, and laboratory reports may now be treated as Schedule I controlled substances.

26. The confusion affects numerous product forms and categories, including flower, pre-rolls, concentrates, beverages, and edibles. It is not limited to a single product or cannabinoid.

27. Certificates of Analysis that were previously used to confirm that a product contained no more than 0.3 percent delta-9 tetrahydrocannabinol do not resolve whether DSHS or law enforcement will now treat the product as a controlled substance because it contains another form of tetrahydrocannabinol or a related compound.

28. Kingpin Kush has not received clear, product-by-product guidance identifying which products may remain in its stores or be lawfully possessed, transported, displayed, sold, reordered, or returned to a supplier. The business must reevaluate products carried across ten locations while the scope and enforcement consequences of the Reinstated Definitions remain uncertain.

29. Employees and customers are asking whether particular products remain lawful and whether those products may continue to be purchased, possessed, transported, and sold. Kingpin Kush cannot answer those questions with confidence while the Reinstated Definitions remain in effect and their application remains unclear.

30. The consequences of making the wrong decision are severe. Continuing to stock or sell a product that is treated as a controlled substance exposes the business, its employees, and its customers to possible detention or seizure of inventory, referral to law enforcement, and other enforcement action. Removing affected products avoids some enforcement risk but immediately eliminates products on which Kingpin Kush's stores depend.

31. The Reinstated Definitions did not provide Kingpin Kush a meaningful opportunity to sell through affected inventory in the ordinary course. The business was required to address the legal status and commercial value of inventory across all ten stores immediately.

V. Present and Continuing Harm to Kingpin Kush

32. Kingpin Kush presently has more than $300,000 in inventory that it cannot sell or cannot sell without unacceptable enforcement risk because of the Reinstated Definitions. That inventory has lost much or all of its ordinary commercial value to the business.

33. Kingpin Kush also has four unfinished retail locations in which it has already invested more than $400,000. The Reinstated Definitions and the resulting uncertainty have interrupted the completion and opening of those locations and placed that investment at risk.

34. Kingpin Kush has aggregate rent obligations of approximately $60,000 per month. Those obligations continue even when affected inventory cannot be sold and sales decline. If locations cannot continue operating or open as planned, Kingpin Kush will still face substantial obligations under existing leases and the cost of terminating or breaching those leases.

35. Customers have requested returns, reduced purchases, and canceled purchases because of the uncertainty and the possible criminal consequences associated with affected products.

36. Kingpin Kush's aggregate sales are already approximately 50 percent below ordinary levels. A reduction of that magnitude, when applied to a business that previously averaged approximately $700,000 in monthly gross revenue, threatens millions of dollars in annual revenue.

37. Before the present disruption, Kingpin Kush employed or retained approximately 50 employees and contractors. It has reduced that workforce to approximately 20 employees and contractors, a reduction of 30 people, or approximately 60 percent.

38. The loss of sales and inventory, continuing rent obligations, unfinished expansion projects, and workforce reductions are already impairing Kingpin Kush's ability to purchase inventory, pay operating expenses, maintain staffing, complete new locations, and plan for the future.

39. The harm is not limited to a temporary reduction in revenue. If the Reinstated Definitions remain in effect, Kingpin Kush faces the loss of existing stores, unfinished locations, employees, customer relationships, supplier relationships, market position, and goodwill developed over the life of the business.

40. Customer relationships and goodwill cannot be preserved while Kingpin Kush is unable to provide the products customers seek or dependable information about whether those products may lawfully be purchased and possessed. Customers will make other arrangements, stop purchasing the products, or leave the market, and those relationships may not return even if the Reinstated Definitions are later invalidated.

41. Kingpin Kush is therefore forced to choose among unacceptable alternatives: continue ordinary operations and face severe enforcement risk; remove affected products and immediately lose substantial revenue; or delay decisions while inventory, leases, expansion investments, employees, customers, and goodwill continue to deteriorate.

42. But for the Reinstated Definitions and the threat of their enforcement, Kingpin Kush would continue its ordinary purchasing, inventory, retail sales, staffing, leasing, expansion, and business-planning activities in reliance on the hemp framework enacted by the Texas Legislature.

43. An injunction preventing enforcement of the Reinstated Definitions would allow Kingpin Kush to continue or resume those activities without the immediate enforcement risks and potentially business-ending harm described above.

I swear that the foregoing statements are true and correct.

Executed on August 10th, 2026, at San Antonio, Texas, Texas.

William Hunter

STATE OF TEXAS §
COUNTY OF Bexar §

SUBSCRIBED AND SWORN TO before me on August 10th, 2026, by William Hunter.

Notary Public, State of Texas
My commission expires: 7/17/2028

APRIL SIMS POHOSKI
NOTARY PUBLIC
STATE OF TEXAS
ID. 132440250
EXP. 07-17-2028

Exhibit C

Declaration of Jason Moreno

My City Hemp

DECLARATION OF JASON MORENO

I, Jason Moreno, after being duly sworn, state from personal knowledge as follows:

I. Background

1. My name is Jason Moreno.
2. I am over the age of eighteen and competent to testify to the matters stated in this declaration.
3. I make this declaration from my personal knowledge. If called as a witness, I could and would testify competently to the facts stated below.
4. I am the operating manager of J & I Distributing, which operates a hemp business under the name My City Hemp (collectively, "My City Hemp"). My City Hemp is not organized as a limited liability company. It operates one retail location in Webster, Texas, and its principal place of business is in Webster.
5. I have held this position since My City Hemp opened approximately two years ago.
6. My responsibilities include oversight of My City Hemp's operations, retail and wholesale sales, regulatory compliance, inventory, employees, customer relationships, and interstate commerce activities.
7. I am authorized to speak on behalf of My City Hemp concerning the matters stated in this declaration.

II. My City Hemp's Business

8. My City Hemp operates a single-location retail hemp shop in Webster. It sells hemp and hemp-derived products directly to adult consumers and also sells products wholesale to retailers and other business customers.
9. Before the present regulatory uncertainty substantially reduced customer purchasing, wholesale sales represented the majority of My City Hemp's business. My City Hemp maintained approximately 32 Texas wholesale accounts, distributors, and major retail customers.
10. My City Hemp also regularly purchases products through interstate commerce and makes sales to customers outside Texas. Its current out-of-state sales are concentrated principally in Ohio and Florida after regulatory changes in other states caused My City Hemp to reduce the number of states it serves.
11. My City Hemp carries a range of hemp-derived products, including flower, edibles, gummies, CBD products, beverages, and other products sold within the federal and Texas hemp framework.
12. The product categories most directly affected by the Reinstated Definitions include THCA flower, delta-8 products, and THCP products. THCA flower has historically been My City Hemp's principal product line.

13. My City Hemp holds a Consumable Hemp Product Retail Registration and a Consumable Hemp Product License issued by the Texas Department of State Health Services ("DSHS"), as well as a hemp license issued by the Texas Department of Agriculture.
14. My City Hemp has operated in reliance on the statutory framework enacted by the Texas Legislature for hemp and hemp-derived products.
15. My City Hemp has devoted substantial resources to developing and maintaining its business, including its retail location, inventory, fixtures and equipment, regulatory compliance, employees, customer base, supplier relationships, reputation, and business goodwill.
16. My City Hemp has established relationships with manufacturers, distributors, testing laboratories, shipping providers, retail consumers, wholesale customers, and other participants in the hemp-product supply chain. Those relationships were developed over time and are essential to the business.
17. My City Hemp takes steps intended to comply with applicable federal and Texas law. Among other things, it relies on product testing performed by manufacturers and third-party laboratories, maintains and reviews Certificates of Analysis, reviews product labeling and supporting documentation, and monitors regulatory developments.
18. From December 1, 2025, through July 31, 2026, a substantial portion of My City Hemp's sales involved customers outside Texas. I estimate that approximately 40 percent of its sales during that period were interstate.
19. My City Hemp's monthly sales fluctuated sharply during this period of repeated regulatory uncertainty. Monthly sales were $96,294.51 in December 2025, fell as low as $17,578.99 in April 2026, and were $26,874.46 in July 2026.
20. My City Hemp made approximately $192,144.19 in Texas sales from December 2025 through July 2026. Based on the business's recent sales pattern and current conditions, I expect the Reinstated Definitions to cause approximately $83,000 in lost Texas sales.
21. My City Hemp maintains records supporting its sales and other financial information in QuickBooks.

III. The Reinstated Definitions and Resulting Confusion

22. On July 31, 2026, DSHS reinstated modified definitions of "tetrahydrocannabinols" and "marihuana extract" in the Texas Schedule of Controlled Substances. I refer to those modified definitions below as the "Reinstated Definitions."
23. The Reinstated Definitions have created immediate and widespread confusion in My City Hemp's business. Products that My City Hemp and its customers previously understood to be lawful hemp products based on their source, labeling, and laboratory reports may now be treated as Schedule I controlled substances.
24. The confusion is not limited to one product or one cannabinoid. The Reinstated Definitions affect numerous categories and product lines that have been openly manufactured, distributed, and sold in the Texas hemp market for years.
25. Certificates of Analysis that were previously used to confirm that a product contained no more than 0.3 percent delta-9 tetrahydrocannabinol do not resolve whether DSHS or law

enforcement will now treat the product as a controlled substance because it contains another form of tetrahydrocannabinol or a related compound.

26. In practical terms, My City Hemp has not received clear, product-by-product guidance identifying which items may remain in the store, be possessed, transported, displayed, sold, reordered, or shipped to customers. The business carries products from multiple suppliers, in multiple forms, and with different cannabinoid profiles. Each product must now be reevaluated under definitions whose scope and enforcement consequences remain uncertain to businesses operating in the market.
27. My City Hemp's retail consumers, wholesale customers, suppliers, and employees are facing the same uncertainty. They want immediate answers about whether particular products remain lawful and whether those products may continue to be purchased, possessed, stocked, transported, and sold. My City Hemp cannot provide those answers with confidence while the Reinstated Definitions remain in effect and their application remains unclear.
28. Confusion has been compounded by outdated or inaccurate media and social-media reports suggesting that prior restrictions have ended or that the Texas hemp market has returned to normal. Customers repeatedly ask when removed products will return, and some believe that all products are lawful again based on those reports. My City Hemp must explain that the legal status remains uncertain.
29. The wholesale customers that historically accounted for the majority of My City Hemp's business are also waiting to see what will happen and have largely stopped purchasing affected products. Their uncertainty has caused a substantial and immediate reduction in wholesale business.
30. My City Hemp cannot avoid the problem merely because a substantial portion of its sales have been interstate. The products are purchased, received, stored, handled, and shipped from the Texas store. The Reinstated Definitions therefore create uncertainty and enforcement risk even when the ultimate customer is outside Texas.
31. The consequences of making the wrong decision are severe. Continuing to stock or sell an affected product exposes My City Hemp, its personnel, and its customers to the possibility of detention or seizure of inventory, referral to law enforcement, and other enforcement action. Stopping sales avoids some enforcement risk but immediately removes the core products on which the business depends.
32. My City Hemp was not given a meaningful sell-through period in which to dispose of existing affected inventory through ordinary retail or wholesale sales. The business therefore had to confront the legal status and commercial value of a substantial portion of its inventory immediately.
33. Since the Reinstated Definitions took effect, My City Hemp has removed virtually every product from its shelves except a limited selection of beverages and gummies. It previously carried approximately 50 different stock-keeping units, or SKUs, but currently carries only nine.
34. My City Hemp has also canceled virtually all purchase orders and has handled significant product returns and return requests resulting from the uncertainty.

35. Management time that would ordinarily be devoted to sales, purchasing, employees, customer service, and business growth is instead being consumed by product review, compliance analysis, communications with counsel, customers, and suppliers, and efforts to determine whether and how the business can continue operating.

IV. Present and Continuing Harm to My City Hemp

36. Approximately 100 percent of My City Hemp's revenue is attributable to hemp-derived products because hemp products are all that the business sells. Approximately 90 percent of the products and product lines it previously carried are affected or placed in substantial legal uncertainty by the Reinstated Definitions.
37. The affected products are not incidental or peripheral items. They were the core of My City Hemp's product selection and customer demand. Reducing the business from approximately 50 SKUs to nine has eliminated most of the products that brought retail consumers and wholesale customers to My City Hemp.
38. Existing affected inventory has lost much or all of its ordinary commercial value in Texas. Inventory that cannot safely remain on the shelf, be sold, transported, or shipped is not useful to a retail or wholesale business, even though My City Hemp acquired it in the ordinary course while operating under the Legislature's hemp framework.
39. The uncertainty is already interfering with My City Hemp's ability to purchase inventory, plan product offerings, forecast demand, schedule employees, make commitments to suppliers, and give dependable information to customers.
40. My City Hemp had four employees before the present regulatory uncertainty forced it to terminate one employee. The business has therefore reduced its workforce by 25 percent and now operates with three employees.
41. The anticipated loss of approximately $83,000 in Texas sales would be a material loss for a single-location business. That loss, combined with stranded inventory, diminished customer demand, and the continuing costs of operating the store, threatens My City Hemp's ability to remain open. I have already had to contribute my own personal funds to keep the business operating.
42. My City Hemp's relationships and reputation depend on maintaining products customers seek and giving dependable information about those products. If My City Hemp cannot provide products or reliable information about future availability, customers will purchase elsewhere, stop buying the products, or leave the market. Those relationships may not return even if the Reinstated Definitions are later invalidated.
43. My City Hemp is therefore forced to choose among unacceptable alternatives: continue ordinary operations and face severe enforcement risk; remove affected products and immediately lose substantial sales; or delay decisions while inventory, customers, and goodwill continue to deteriorate. None of these options allows the business to operate normally.

V. Threatened Closure and Irreparable Harm

44. If the Reinstated Definitions remain in effect and are enforced against My City Hemp's core products, the resulting loss of sales and inventory places the business at serious and

immediate risk of closure. The impact is not limited to a temporary decline in sales; it threatens the foundation of My City Hemp's existing business model.

45. Closure would require My City Hemp to wind down its only retail location, address unusable inventory and continuing business commitments, eliminate the jobs associated with the business, and abandon customer and supplier relationships and goodwill developed over the life of the business.

46. The damage from closure could not be fully repaired by a later award of money damages. Customer relationships, supplier relationships, reputation, market position, and goodwill cannot be preserved while the business is unable to operate. Customers will make other arrangements, suppliers will seek other outlets, and My City Hemp's place in the market will be lost.

47. Even if My City Hemp later prevailed, reopening would require the business to rebuild its inventory, workforce, supplier network, customer base, and market position. There is no assurance that those relationships or opportunities could be recovered.

48. But for the Reinstated Definitions and the threat of their enforcement, My City Hemp would continue its ordinary purchasing, inventory, retail sales, wholesale sales, interstate sales, staffing, and business-planning activities in reliance on the hemp framework enacted by the Texas Legislature.

49. An injunction preventing enforcement of the Reinstated Definitions would allow My City Hemp to continue or resume ordinary operations without the immediate enforcement risks and potentially business-ending harm described above.

I swear that the foregoing statements are true and correct.

Executed on 8-7-26, at Houston, Texas.

Jason Moreno

STATE OF TEXAS §
COUNTY OF HARRIS §

SUBSCRIBED AND SWORN TO before me on 7 AUGUST, 2026, by Jason Moreno.

Notary Public, State of Texas
My commission expires: NOV. 05, 2028

MAHESH N. PATEL
Notary Public, State of Texas
Comm. Expires 11-05-2028
Notary ID 125109069

Exhibit D

Declaration of Trevor Kocaoglan

DECLARATION OF TREVOR KOCAOGLAN

I, Trevor Kocaoglan, after being duly sworn, state from personal knowledge as follows:

I. Background

1. My name is Trevor Kocaoglan.
2. I am over the age of eighteen and competent to testify to the matters stated in this declaration.
3. I make this declaration from my personal knowledge. If called as a witness, I could and would testify competently to the facts stated below.
4. I reside in Combes, Texas, in the Rio Grande Valley.
5. I have been a licensed first responder for more than sixteen years. In 2019, I left full-time work in emergency medical services to devote myself to the developing Texas hemp industry.
6. My interest in hemp and cannabinoid products began when those products helped my father while he battled cancer on three occasions. That experience led me to spend years studying hemp and cannabis, cultivation methods, cannabinoid products, laboratory testing, and regulatory compliance.
7. In 2018, I attended an early Texas hemp-industry seminar with my uncle, who was then serving as a mayor in the Rio Grande Valley. I attended to learn how I could help build a responsible hemp industry and serve people in my region.

II. Hemp-Industry Experience

8. After Texas authorized hemp cultivation, I became one of the State's early licensed hemp farmers. I was also licensed to cultivate hemp at the location where I conducted retail operations.
9. I operated under the name RioCBDRGV as a sole proprietor. Through RioCBDRGV, I engaged in hemp cultivation, retail operations, consulting, compliance education, and assistance to other farmers and businesses.
10. In 2019, I became involved with one of the first Texas hemp coalitions and represented the Rio Grande Valley. In that role, I participated in one of the early hemp grows in Alamo, Texas, and worked with farmers, retailers, and other industry participants. My coalition work was unpaid and intended to help the industry and the people it served.
11. I have also worked with Jay McGuire and the Texas Hemp Federation on hemp compliance and education. I have frequently provided education and assistance without charge.
12. From approximately 2021 through 2023, I assisted at least four new hemp farmers in my county. I helped them obtain licenses, locate genetics represented as compliant, and oversee their grows for approximately three months. I also advised them about testing, Certificates of Analysis, and regulatory compliance.
13. In 2022, I charged a $750 fee for consulting services. I performed that work under the RioCBDRGV name as a sole proprietor.

14. For more than five years, I regularly purchased products represented and documented as compliant hemp products from a consistent supplier. Those products included CBD and CBG products, delta-8 products, THCA products, pain creams and other topicals, CBD tinctures, delta-8 gummies, and related hemp-derived products. Invoices from that supplier document many of those purchases.

15. My work required me to review licenses, product documentation, laboratory reports, and Certificates of Analysis. I understood those records to be important tools for distinguishing lawful hemp from illegal marijuana and for demonstrating compliance with Texas's hemp laws.

16. My training has been practical and continuous. It includes years of self-directed study, cultivation experience, compliance work, collaboration with other industry participants, the 2018 seminar, and continuing efforts to keep current with changes in hemp law, testing, genetics, and cultivation practices.

17. As a result of the increasing regulatory uncertainty and economic conditions affecting the Texas hemp industry, I ultimately ceased operating my hemp business and returned to full-time employment in emergency medical services, where I presently serve as a supervisor. I did not leave the hemp industry because I lost interest in the business or no longer wished to participate in lawful hemp commerce. Customers continue to contact me seeking products, information, and assistance, and I remain interested in participating commercially in the Texas hemp industry. I would consider resuming paid consulting, cultivation, retail, or other lawful hemp-related activities if I could do so under a sufficiently clear regulatory framework without an unreasonable risk that products I understand to be lawful hemp will nevertheless subject me to enforcement action.

III. The 2023 Search and Its Effect on My Work

18. In 2023, a shipment of hemp products associated with my business was detained after the products were apparently mistaken for illegal cannabis products.

19. I was instructed to retrieve the shipment. When I arrived, I spent approximately two hours explaining the distinction between hemp and marijuana, the requirements of the Texas hemp program, the role of Certificates of Analysis, and the licenses under which I operated.

20. My business and my mother's residence were then searched by law enforcement at approximately the same time. During the incident, I presented licenses, product documentation, compliance records, and information concerning the products.

21. Based on what I personally observed and the communications I had with officials during the incident, I believed there was substantial confusion about how Texas hemp law applied to the products and records I presented.

22. The searches caused me to fear that I or another participant in the hemp industry could be subjected to a similar search or enforcement action even when attempting to follow the licensing, testing, and documentation requirements that we understood to apply.

23. I stopped offering paid consulting services in 2023 because I feared being subjected to another search or raid. Since then, I have continued to provide education and compliance assistance without charge because I do not want another farmer or business owner to experience what I experienced.

24. The 2023 incident occurred before the challenged rules at issue in this lawsuit. I do not claim that the later rules caused the searches. I describe the incident because it explains why uncertainty in Texas hemp law has a concrete effect on my conduct and why I take the threat of enforcement seriously.

IV. The Reinstated Definitions and Resulting Confusion

25. On July 31, 2026, the Texas Department of State Health Services reinstated modified definitions of "tetrahydrocannabinols" and "marihuana extract" in the Texas Schedule of Controlled Substances. I refer to those modified definitions below as the "Reinstated Definitions."

26. The Reinstated Definitions have created additional confusion for Texas hemp farmers, retailers, consultants, and consumers. Products that industry participants previously understood to be lawful hemp based on their source, licenses, labeling, and laboratory reports may now be treated as Schedule I controlled substances.

27. That uncertainty directly concerns product categories with which I have substantial experience, including products labeled as delta-8 and THCA. A Certificate of Analysis showing no more than 0.3 percent delta-9 tetrahydrocannabinol no longer answers whether DSHS or law enforcement will treat the product as a controlled substance because it contains another tetrahydrocannabinol or related compound.

28. The Reinstated Definitions do not give me a clear, product-by-product answer about which hemp products may be cultivated, purchased, possessed, transported, displayed, or sold without risking enforcement. The uncertainty is especially serious for farmers and small businesses that have invested in licenses, genetics, inventory, equipment, and testing in reliance on Texas's hemp framework.

29. My experience is that confusion among regulators or law enforcement cannot always be resolved simply by producing a license, an invoice, or a Certificate of Analysis. The Reinstated Definitions make that problem worse by creating new uncertainty about whether documents that were previously used to show compliance will be accepted or considered sufficient.

30. Farmers and businesses continue to seek my guidance about how to operate lawfully. I cannot give them dependable answers when the same product may be treated as lawful hemp under one understanding of Texas law and as a controlled substance under another.

31. I am not willing to tell another person that it is safe to cultivate, possess, transport, or sell a product when the Reinstated Definitions leave a material risk that the product will be treated as a controlled substance. I therefore must limit and qualify the education and consulting assistance I provide.

V. Present and Continuing Harm

32. I continue to provide free hemp education and compliance assistance through my own efforts under the RioCBDRGV name. I do so because the continuing confusion creates a real risk that farmers, retailers, or consumers will make decisions without understanding the possible consequences.

33. The Reinstated Definitions intensify the same uncertainty and enforcement concerns that caused me to stop paid consulting in 2023. They make it more difficult for me to provide useful compliance guidance and reinforce my decision not to resume paid consulting or cultivation while the risk remains unclear.

34. The effect on me is not based solely on disagreement with government policy. It is based on my own experience with a detained shipment and simultaneous searches, the work I have performed for farmers and businesses, the product categories I have cultivated or handled, and the compliance questions I continue to receive.

35. If the Reinstated Definitions remain in effect, I expect farmers and businesses to continue facing uncertainty about whether licensed and tested hemp products can be cultivated, possessed, transported, and sold without enforcement risk. That uncertainty will continue to impair my ability to give dependable guidance and to participate more fully in the Texas hemp industry.

36. The harm to me is ongoing. Farmers and businesses continue to seek my guidance, and products of the types I previously purchased remain products I would otherwise purchase and use, but I restrict my own conduct because of the Reinstated Definitions.

37. Although I returned to full-time employment in emergency medical services, I have continued my involvement in the Texas hemp industry and would resume paid hemp consulting and other lawful commercial hemp activities if I could do so without the uncertainty and enforcement risks created by the Reinstated Definitions.

38. I presently desire and intend to provide paid consulting concerning hemp cultivation, product compliance, Certificates of Analysis, licensing, and regulatory requirements. Those engagements would require me to advise clients about products and conduct affected by the Reinstated Definitions. I would accept paid consulting work in those areas if the Reinstated Definitions were not being enforced.

39. I also presently desire and intend to purchase, possess, and use hemp-derived products of the same types I previously purchased, including delta-8 gummies, THCA products, CBD tinctures, and CBD and CBG topicals, when those products satisfy the statutory definition of hemp enacted by the Texas Legislature. The Reinstated Definitions have caused me to refrain from purchasing or possessing certain such products because I cannot determine whether DSHS or law enforcement will nevertheless treat them as controlled substances.

40. My decision to refrain from those consulting, commercial, purchasing, possession, and use activities is based on the risk of enforcement under the Reinstated Definitions and not merely on disagreement with State policy.

41. If enforcement of the Reinstated Definitions were enjoined, I would resume those activities, including paid consulting and the purchase, possession, and use of hemp-derived products that satisfy the statutory definition of hemp.

I swear that the foregoing statements are true and correct.

Executed on ______________________________, at ______________________________, Texas.

____
Trevor Kocaoglan

STATE OF TEXAS §
COUNTY OF _______________ §

SUBSCRIBED AND SWORN TO before me on _________________________, 2026, by Trevor Kocaoglan.

____
Notary Public, State of Texas
My commission expires: _______________

Exhibit E

Beau Whitney / Whitney Economics

Texas Hemp Update
(Aug. 7, 2026)

Whitney Economics – Texas Hemp Update

Beau Whitney, Chief Economist
August 7, 2026

Summary

The Texas hemp market is one of the largest hemp markets in the country for hemp-derived consumer products. The Texas hemp market is estimated to generate $5.1 billion in business revenue, employ 48,882 workers receiving $1.9 billion in wages.

It is estimates that the state of Texas receives approximately $254.4 million in sales tax revenue, an estimate that does not include revenues from local sales taxes, business taxes or any type of excise taxes. In a recent national hemp survey, Texas ranked in the top five states as a supplier of hemp products in other states.

In a recent survey, Texas hemp operators 97.4% of all operators indicated that if bans or prohibitions related to hemp-derived consumer products, they would be forced to reduce labor. 75.1% indicated they would be forced out of business or move out of the state.

Based on the results from the statewide survey, if bans or prohibitions were enacted in Texas, there would be a significant negative economic impact.

Lost Revenue:	$3.85 Billion
Job Losses:	36,708 lost jobs (out of 48,802)
Reduced Wages:	$1.44 Billion
Lost Sales Tax Revenues:	$187.4 Million

In addition to the loss in revenues for the state, the state will have increased expenditures to cover the cost of increased unemployment insurance and the cost of employees losing their health care.

The loss of state revenues and increased state expenditures compounds the negative economic impact that a hemp-derived consumer product ban would have on the state.

Overview

- Hemp-derived consumer products ascended rapidly in the U.S. economy. The products contain hemp derived cannabinoids, some with intoxicating effects, some without.
- At an estimated $43 billion in total market value nationally, the U.S. hemp industry has a similar Total Addressable Market Value to The A.I. Processing industry ($45 billion in 2023)
- The rapid growth is being compared to the rapid growth of the AI processor market in the sense that market growth is outpacing the regulatory framework currently in place.

WHITNEY ECONOMICS

- Many legal and legislative changes to the regulatory landscape are centered around prohibitions and restrictions of THC content, however, the economic harms associated with these policies are not understood or documented.
- Hemp related bans are creating negative externalities that far outweigh the assumed benefit related to public safety.
- The hemp industry has long requested sensible regulations to address public safety concerns, however industry stakeholders do not feel that bans are necessary to achieve public policy objectives.
- It is not clear why legislatures have not adopted these policies as an interim solution to assess the public safety impacts.
- Without clear guidance on a regulatory framework, either at the state or federal levels, bans are being implemented that will lead to a significant economic collapse of the market.
- These bans will also negatively impact state economies, but not only reducing tax revenues, but displace thousands of workers, thereby increasing unemployment compensation expenditures as well as health care expenditures.

The Evolution of Hemp in the U.S., Texas

The growth of the hemp-derived consumer product sector has accelerated significantly since the passage of the 2018 Farm Act. Also known as the 2018 farm bill, the legislation passed by congress essentially decoupled hemp from marijuana, particularly when it came to the drug designation under the Controlled Substances Act (CSA), The decoupling, in effect, essentially designated hemp as an agricultural crop and opened the door for the expansion and commercialization of hemp products, allowed for interstate commerce, created opportunities in multiple sectors including agriculture, automotive, construction, semiconductors, textiles, animal feed, food for human consumption and nutraceutical types of products. This new opportunity also opened the door to investment.

2018 Farm Bill Opened Up Opportunities for Hemp in the U.S.

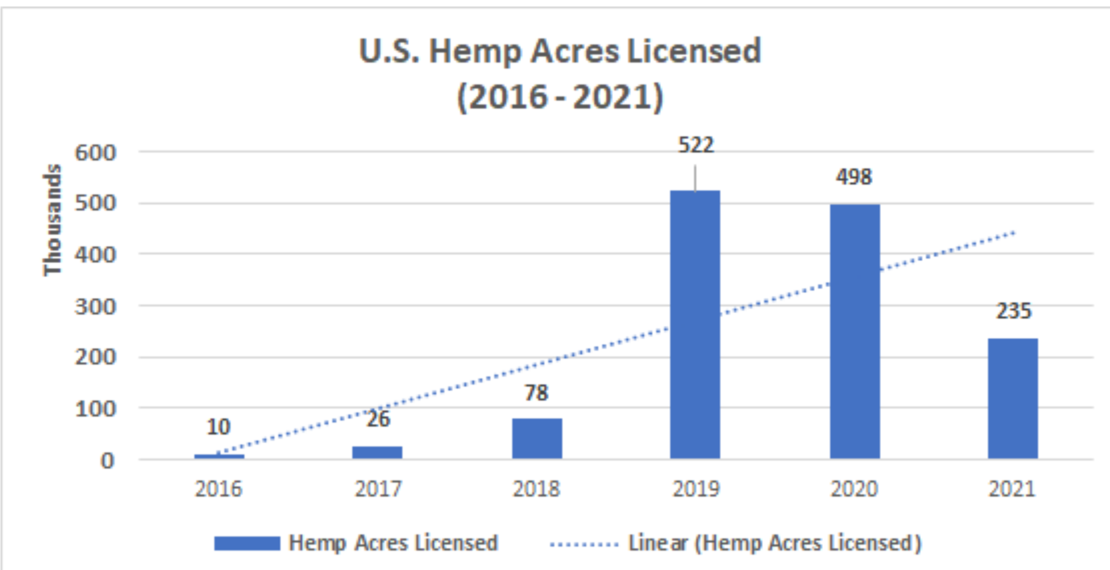
Given the 2018 Farm Bill was an agricultural piece of legislation, the regulatory focus began and ended at the farm gate. Jurisdiction for agricultural output was bestowed upon the USDA, with the intention that the FDA would provide guidance on food, drugs and supplements. However, the FDA did not provide such guidance, only stating that since a marijuana product containing CBD was designated as a drug, then any product derived from hemp would also be considered a drug. This remains a legal debate, but this lack of deployment at the hemp product level of a federal regulatory structure created significant economic impacts as well. With the lack of a federal framework, states have stepped in to establish their own set of rules and regulations.

State by State Policy Differences Increased Risk and Uncertainty

It is notable that prior to 2018, prior legislation in the form of the 2014 Farm Bill established state pilot programs to examine opportunities in hemp. Each state developed their own individual framework for their program. It too enabled the opportunity for interstate commerce, however with each state having its own set of rules, including the definition of hemp, this created problems for companies wishing to conduct interstate commerce. With different rules and definitions from state to state these policies also introduced legal risks and uncertainty. In some cases, a trucker transporting legal hemp in one state to another state would be arrested in a third state for drug trafficking because of these rule differences. This issue was supposed to be permanently fixed in the 2018 version of the Farm Bill.

Farm Bill Reform Drove a Surge in Acres Licensed

During the period from 2014 – 2018, prices for CBD, a non-intoxicating compound derived from hemp and other plants, was in excess of $40,000 per kilo. Demand was greater than the supply coming form the state pilot programs. When the market opened up nationally, there was a surge in acres licensed. The surge increased acreage licensed by 565% from 2018 to 2019. This increase acreage from 78k acres to over 522k acres. Unfortunately, there was not enough infrastructure to support both the consumer demand and the manufacturing supply.

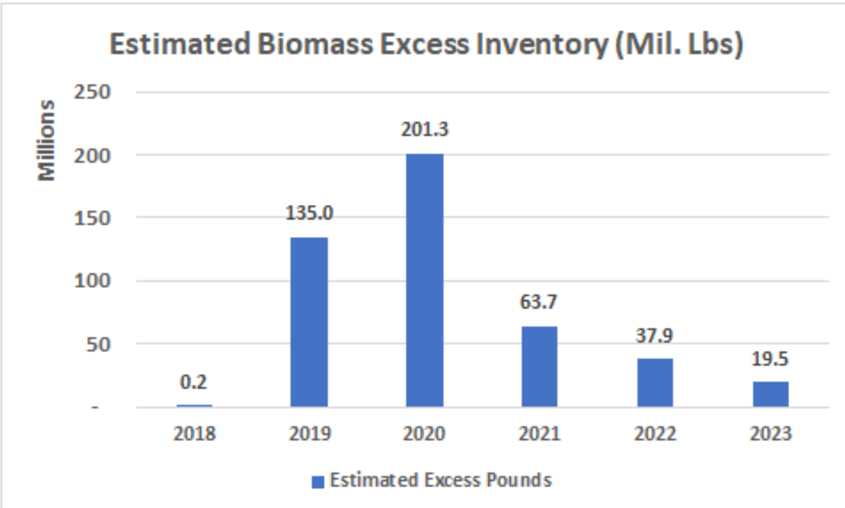


Source: Vote Hemp (2016 – 2018), Whitney Economics (2019 – 2021)

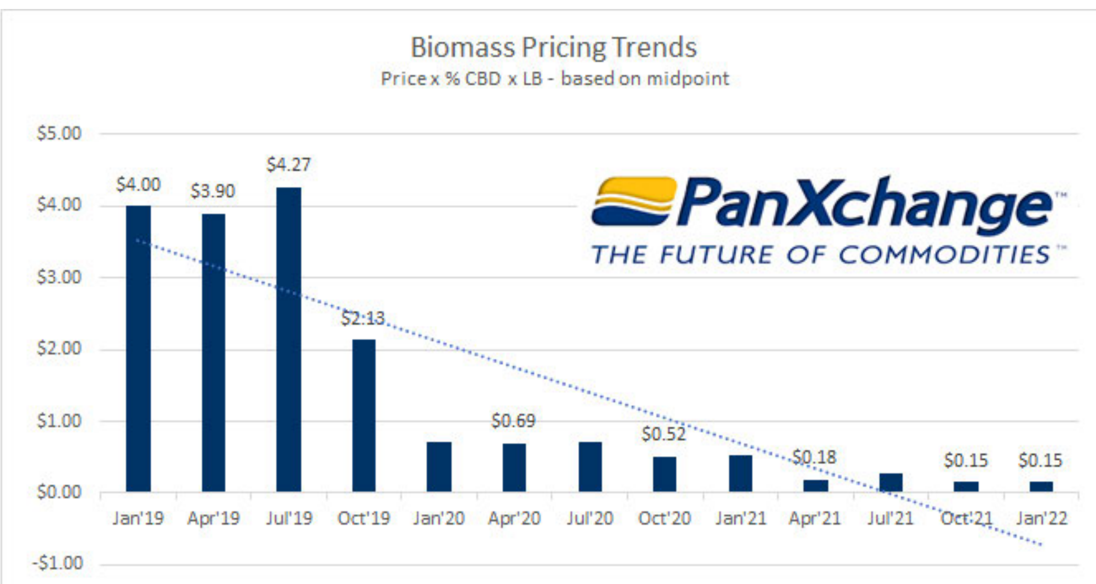
After the initial surge in acres in 2019, that surge was again replicated by other states, acreage began to abate after the increase in supply resulted in sharp declines in cultivation output.

Surge in Supply Drove Excesses, Forced Innovations

For perspective, the surge in acreage resulted in more supply than capacity. The demand was in place, but it could not be met due to the lack of infrastructure. With the lack of infrastructure, excess inventories accumulated and actually grew in 2019 and again in 2020. The below chart examines the raw biomass, however excess CBD oil was also an issue and an estimated 1.6 million kg of excess inventory accumulated by 2021.



The result of this excessive inventory position was a significant price decline for both biomass and processed oil. IN some instances, prices fell below the cost of cultivation production. Given hemp is federally legal, farmers exited the market and pivoted to other commercial crops like corn, soy or wheat. This option would not be available to hemp farmers if hemp is put back on the CSA scheduling.



With so many hemp operators underwater financially and holding excessive inventory positions, farmers, processors and product manufacturers all had to find a way to monetize this inventory. Even if they sold the inventories at a loss, at least there would be some revenue. This led to a period of increased innovation. Sarting in 2020 and 2021, there was a surge in innovative products. From gummies to vapes, tinctures to flower, products began to hit the market. As a result, the demand for hemp-derived products increased.

Innovations Drive Product Deployments, Increased Market Demand
One of the innovations that occurred and accelerated during this period was the conversion of CBD, a non-intoxicating compound, into various forms of THC, an intoxicating compound. Given the policy at the time was that anything derived from hemp is considered hemp throughout the value-chain, intoxicating hemp-derive products soon proliferated across the country.

Data Limited on Early Revenues, no Baseline Prior to 2023
With the lack of North American Industry Classification System codes (NAICS) associated with the hemp industry, tracking the flow of goods and services related to hemp cannot be done through traditional national databases like using the U.S. Census or the Bureau of Labor Statistics (BLS). As a result, very little data exists related to the growth of the hemp-derived consumer products market. A national survey was conducted in 2023 by Whitney Economics as this report established a baseline for the total addressable market for hemp-derived products.

Results from 2023 Survey Indicate a $28.4 Billion Total Addressable Market (TAM)
The 2023 survey received responses from operators in 45 states. It tracked total revenues, the number of operators, jobs, wages and potential state tax revenues. It also noted that uncertainty remained in the market due to the lack of a federal regulatory structure. Based on survey responses the size of the U.S. hemp derived market was $28.4 billion.

Preliminary 2026 Survey Findings Show an Increase in the Value of the U.S. Hemp Market
Preliminary (non-public) survey results from a 2026 national survey indicates that the U.S. Hemp TAM has increased from $28.4 billion to between $34.0 and $43.5 billion. This was mainly due to an increase in hemp-oriented businesses and an increase in the average revenue to retailer.

The Texas Market Has Benefitted from the Growth of the Hemp Market
The state of Texas has also benefitted from the growth and expansion of the hemp-derived consumer products market. The initial 2023 National Survey estimate the Texas hemp-derived market generated $2.0 billion in revenue. A series of state surveys have shown a steady increase in the revenues, jobs, wages and state sales tax potential.

Year	Revenue	Jobs	Wages	Sales Tax Potential
2023 National Survey	$2,048,272,920	23,706	$951,648,075	$128,017,058
2025 State Survey	$4,146,988,189	46,392	$1,783,172,204	$248,819,291
2026 State Survey	$4,119,194,123	48,882	$1,902,470,753	$257,449,633

The State of Texas has also Increased the number of Hemp Derived Operators and Permittees[1]
Since initial tracking began in 2022, the state of Texas has continued to add both licenses and permits related to hemp businesses. The most recent update from Texas DSHS indicates that there are over 14,200 retail permits issues, nearly doubling the number quoted in April.

[1] Current Licensees and Registrants | Texas DSHS

Year	Registrations	Physical Locations	Consumable Hemp Licenses
2022	3,059	5,072	606
2023	2,913	4,079	588
2024	4,266	7,550	694
Apr-26		7,262	757
Aug-26		14,205	753

The Impact of Bans and Prohibitions on Texas

In a survey of Texas state hemp operators conducted in April 2026, the impact of both national and state bans was significant. 74.1% of respondents indicated that they would either go out of business or move out of the state if bans or prohibitions were implemented.

Sector	Statewide Losses	Out of Business	Move Out of State	Percent of Licensees
Retailers	5,287	4,587	701	72.8%
Wholesalers	128	82	46	64.1%
Manufacturers	523	405	118	93.9%
Total --->	**5,939**	**5,074**	**865**	

A More Recent Survey Has Similar Results on Business Failures and Job Losses

A more recent survey in July'26 had similar results with 75.2% going out of business or moving. However, an additional 15.1% of respondents indicated that they would be forced to lay off workers. In fact, in the July survey, when asked if bans or prohibitions were enacted 97.4% of Texan respondents indicated that their company would have a workforce reduction.

A Negative Economic Impact Resulting from Bans and Prohibitions

Based on the results from the statewide survey, if bans or prohibitions were enacted in Texas, there would be a significant negative economic impact.

Lost Revenue: $3.85 Billion
Job Losses: 36,708 lost jobs (out of 48,802)
Reduced Wages: $1.44 Billion
Lost Sales Tax Revenues: $187.4 Million

Impact of Restrictions or Bans	Retail	Wholesale	Manufacturing	Total
Revenue Impact	($2,999,062,388)	($131,979,487)	($720,678,761)	($3,851,720,636)
Lost Sales Tax Potential	($187,441,399)			($187,441,399)
Employment	(28,964)	(1,728)	(6,017)	(36,708)
Wages	($1,074,193,468)	($81,170,242)	($282,238,015)	($1,437,601,725)
Business Failures / Relocations	(5,287)	(128)	(523)	(5,939)

In addition to the loss in revenues for the state, the state will have increased expenditures to cover the cost of increased unemployment insurance and the cost of employees losing their health care.

The loss of state revenues and increased state expenditures compounds the negative economic impact that a hemp-derived consumer product ban would have on the state.

Beau Whitney
Whitney Economics
503-724-3084

The U.S. hemp acreage licensed has declined steadily since 2019. The period from 2019 – 2023 was influence by market pricing, while the 2024 – 2026 decline was a result of regulatory and legal uncertainty. In a survey of cultivators in Q4’2025, roughly 50% of those farmers indicated that they would not be planting in 2026. Acres dedicated to hemp are now lower than they were prior to the passage of the 2018 farm bill.

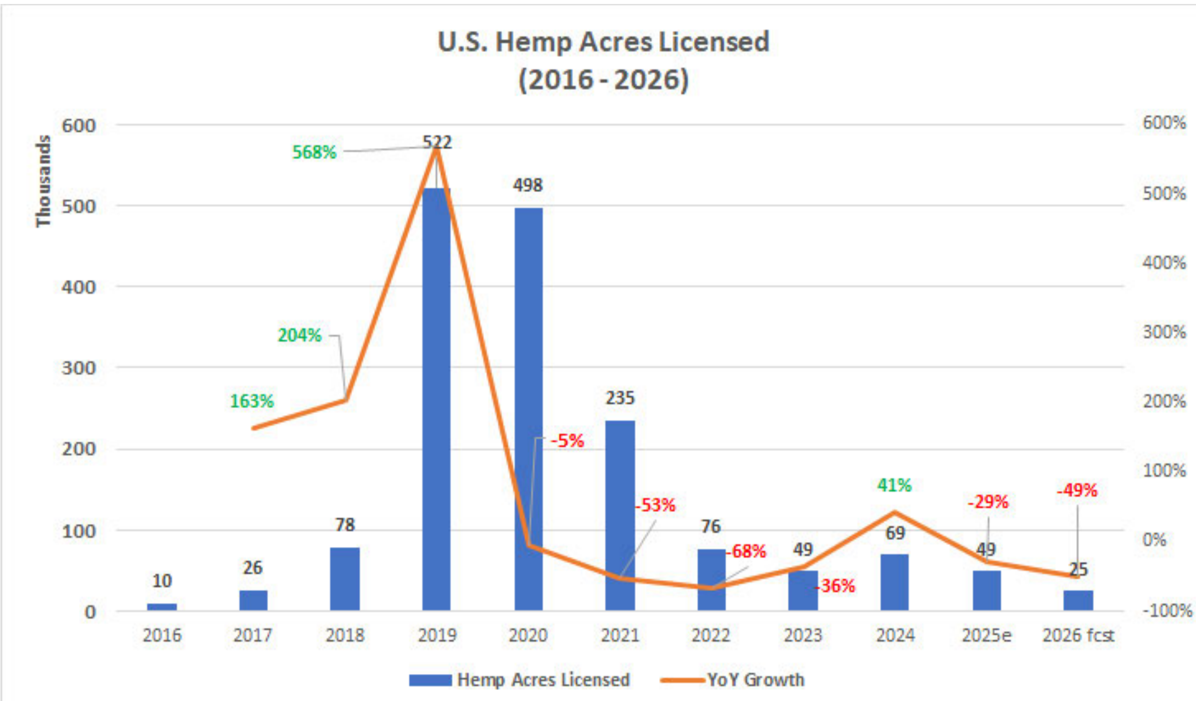


Exhibit F

DPS Agency Strategic Plan for Fiscal Years 2025–2029 (relevant excerpts) and DSHS Texas Register material

51 Tex. Reg. 1860, 1861 (Mar. 20, 2026)
— documents relating to TCUP access/competition and DSHS's response during Chapter 300 rulemaking

Division: Crime Laboratory

REDUNDANCIES AND IMPEDIMENTS (REPEAT SECTION AS NECESSARY FOR EACH IDENTIFIED REDUNDANCY AND IMPEDIMENT)	
SERVICE, STATUTE, RULE, OR REGULATION (PROVIDE SPECIFIC CITATION IF APPLICABLE)	Health and Safety Code 443.001 Regarding consumable hemp product definition
DESCRIBE WHY THE SERVICE, STATUTE, RULE, OR REGULATION IS RESULTING IN INEFFICIENT OR INEFFECTIVE AGENCY OPERATIONS	Definition is broad: Current: (1) "Consumable hemp product" means food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.
PROVIDE AGENCY RECOMMENDATION FOR MODIFICATION OR ELIMINATION	Revise as follows: (1) "Consumable hemp product" means a food, as defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a weight basis. This product is not allowed to have any isomer or derivative of tetrahydrocannabinol, as defined by section 481.103, Health and Safety Code.
DESCRIBE THE ESTIMATED COST SAVINGS OR OTHER BENEFIT ASSOCIATED WITH RECOMMENDED CHANGE	This definition prevents decriminalization of THC-containing consumable products such as vape pens and edibles. It does decriminalize THC-containing cosmetics as they do not result in detectable levels of human intoxication
NATURAL DISASTER-RELATED REDUNDANCIES AND IMPEDIMENTS (IF APPLICABLE)	

Division: Crime Laboratory

REDUNDANCIES AND IMPEDIMENTS (REPEAT SECTION AS NECESSARY FOR EACH IDENTIFIED REDUNDANCY AND IMPEDIMENT)	
SERVICE, STATUTE, RULE, OR REGULATION (PROVIDE SPECIFIC CITATION IF APPLICABLE)	Health and Safety Code 443.151 Regarding testing of consumable hemp products
DESCRIBE WHY THE SERVICE, STATUTE, RULE, OR REGULATION IS RESULTING IN INEFFICIENT OR INEFFECTIVE AGENCY OPERATIONS	Definition is broad: Current: (e) consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product: (1) has been tested in accordance with: Subsections (b) and (c); or (B)Subsection (d); and (2)does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.
PROVIDE AGENCY RECOMMENDATION FOR MODIFICATION OR ELIMINATION	Revise as follows: (e) consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product: (1) has been tested in accordance with: Subsections (b) and (c); or (B)Subsection (d); and (2) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent by weight and (3) no other isomers or derivatives of tetrahydrocannabinol, as defined by section 481.103, Health and Safety Code.
DESCRIBE THE ESTIMATED COST SAVINGS OR OTHER BENEFIT ASSOCIATED WITH RECOMMENDED CHANGE	The revision aligns the 0.3% by weight definition with other sections of HSC and Agriculture Code; it also addresses delta-9 and delta-8 issues.
NATURAL DISASTER-RELATED REDUNDANCIES AND IMPEDIMENTS (IF APPLICABLE)	

Division: Crime Laboratory

REDUNDANCIES AND IMPEDIMENTS (REPEAT SECTION AS NECESSARY FOR EACH IDENTIFIED REDUNDANCY AND IMPEDIMENT)	
SERVICE, STATUTE, RULE, OR REGULATION (PROVIDE SPECIFIC CITATION IF APPLICABLE)	Health and Safety Code 443.152 Regarding provisions related to testing of consumable hemp products
DESCRIBE WHY THE SERVICE, STATUTE, RULE, OR REGULATION IS RESULTING IN INEFFICIENT OR INEFFECTIVE AGENCY OPERATIONS	Definition is broad: Current: (a)consumable hemp product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent may not be sold at retail or otherwise introduced into commerce in this state (b)A person licensed under Chapter 122, Agriculture Code, shall provide to a license holder who is processing hemp harvested by the person or otherwise using that hemp to manufacture a consumable hemp product the results of a test conducted under that chapter, if available, as proof that the delta-9 tetrahydrocannabinol concentration of the hemp does not exceed 0.3 percent, including for purposes of Section 443.151(b)(1).
PROVIDE AGENCY RECOMMENDATION FOR MODIFICATION OR ELIMINATION	Revise as follows: (a)consumable hemp product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent by weight or the presence of any other isomers or derivatives of tetrahydrocannabinol, as defined by section 481.103, Health and Safety Code may not be sold at retail or otherwise introduced into commerce in this state. (b)A person licensed under Chapter 122, Agriculture Code, shall provide to a license holder who is processing hemp harvested by the person or otherwise using that hemp to manufacture a consumable hemp product the results of a test conducted under that chapter, if available, as proof that the delta-9 tetrahydrocannabinol concentration of the hemp does not exceed 0.3 percent by weight and no other isomers or derivatives of tetrahydrocannabinol, as defined by section 481.103, Health and Safety Code, are present, including for purposes of Section 443.151(b)(1).
DESCRIBE THE ESTIMATED COST SAVINGS OR OTHER BENEFIT ASSOCIATED WITH RECOMMENDED CHANGE	The revision aligns the 0.3% by weight definition with other sections of HSC and Agriculture Code; it also addresses delta-9 and delta-8 issues.
NATURAL DISASTER-RELATED REDUNDANCIES AND IMPEDIMENTS (IF APPLICABLE)	

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 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.18

The Texas State Securities Board adopts an amendment to §115.18, Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7469). The amended rule will not be republished.

The amendment implements House Bill 5629 and Senate Bill 1818 (89th Legislature, Regular Session (2025)) which amend state law relating to occupational licensing and recognition of out-of-state occupational licenses for military service members, military veterans, and military spouses (collectively, "military applicants"). The changes further expedite and simplify the process for military applicants who seek occupational licenses in Texas.

Several changes are made to §115.18 to align with state law requirements. The section is amended to remove certain refund and waiver conditions imposed on military applicants. The time limits for Agency staff to issue registrations or recognitions for military applicants are reduced. The section's provisions relating to recognition of out-of-state licenses are amended to change the documentation requirements and extend the duration of recognition periods for military service members and spouses. A publishing error is corrected, and other changes are made for clarity and consistency.

Subsection (a) is amended to change the definitions for "current registration" and "good standing" to align with amended Texas Occupations Code §55.0042.

Subsection (b)(2) is amended to require Registration staff to register military applicants who have requested expedited review to be registered within five business days of their request for expedited review.

Previously, military applicants who were new to the industry (i.e., those who have not been previously registered in another state) were not eligible for refunds or waivers of initial registration fees or fees for the Texas securities law examination. Subsection (c), which concerns waivers and refunds of fees, is amended to remove those qualifying conditions set forth in (c)(1)(A) and (B). This change slightly increases the number of military applicants who are eligible for and would benefit from the waivers and refund provisions in this section.

The caption for subsection (h) is amended to re-insert the missing word "of" after the word "Recognition" that was recently removed from the official rule text due to a publishing error. Paragraph (1) of subsection (h) is amended to pluralize the word "procedure" for consistency and clarity.

Paragraph (2) of subsection (h) is amended to add language to extend the duration of the recognition period of a military spouse (which is for as long as the military spouse is located in Texas), and to state the duration of the recognition period of a former military spouse (which is for as long as the former military spouse is located in Texas but only until the third anniversary of the recognition date). The three-year limit on the duration of the recognition period for military service members and spouses residing in Texas in the previous rule is removed. This change extends the duration of the "free" recognition period for eligible military applicants who are recognized under this subsection, which consequently results in the waiver or refund of the applicants' annual renewal fees owed during the duration of this recognition period.

Paragraph (4) of subsection (h) concerning Option 2, is amended to align with amended Occupations Code §55.0041, which removed certain requirements for recognition, including a requirement for Registration staff to verify out-of-state licensure good standing, and replaced them with different requirements, including a new requirement for the applicant to submit a notarized affidavit as to licensure good standing status. As a result of this change to Occupations Code §55.0041, the applicant may incur a small economic cost to obtain the required notarization.

Paragraph (4)(C)(ii) of subsection (h) is amended to reduce the number of days that action must be taken on a request for recognition from 30 days to 10 business days.

Paragraph (4)(D) of subsection (h) is amended to make conforming amendments to the renewal of the recognition status.

Finally, new paragraph (4)(E) of subsection (h) is added for clarity and consistency with subsection (b), which relates to expedited review of applications. The new paragraph clarifies that individuals shall be recognized despite having pending or deficient items and would address how deficiencies are to be treated and resolved.

The rule is consistent with and conforms to the applicable military occupational licensing requirements under state law.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment is also adopted under Chapter 55 of the Texas Occupations Code, as amended by HB 5629, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants, and as amended by SB 1818, which requires state agencies to promptly issue recognitions and licenses to military applicants.

The adoption affects the following sections of the Texas Securities Act, Texas Government Code Chapter 4004, Subchapters B through F, and §§4006.001, 4006.057, and 4007.105.

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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Cristi Ramón Ochoa
Deputy Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.18

The Texas State Securities Board adopts an amendment to §116.18, Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7472). The amended rule will not be republished.

The amendment implements House Bill 5629 and Senate Bill 1818 (89th Legislature, Regular Session (2025)) which amend state law relating to occupational licensing and recognition of out-of-state occupational licenses for military service members, military veterans, and military spouses (collectively, "military applicants"). The changes further expedite and simplify the process for military applicants who seek occupational licenses in Texas.

Several changes are made to §116.18 to align with state law requirements. The section is amended to remove certain refund and waiver conditions imposed on military applicants. The time limits for Agency staff to issue registrations or recognitions for military applicants are reduced. The section's provisions relating to recognition of out-of-state licenses are amended to change the documentation requirements and extend the duration of recognition periods for military service members and spouses. Other changes are made for clarity and consistency.

Subsection (a) is amended to change the definitions for "current registration" and "good standing" to align with amended Texas Occupations Code §55.0042.

Subsection (b)(2) is amended to require Registration staff to register military applicants who have requested expedited review to be registered within five business days of their request for expedited review.

Previously, military applicants who were new to the industry (i.e., those who have not been previously registered in another state) were not eligible for refunds or waivers of initial registration fees or fees for the Texas securities law examination. Subsection (c), which concerns waivers and refunds of fees, is amended to remove those qualifying conditions set forth in (c)(1)(A) and (B). This change slightly increases the number of military applicants who are eligible for and would benefit from the waivers and refund provisions in this section.

Paragraph (1) of subsection (h) is amended to pluralize the word "procedure" for consistency and clarity.

Paragraph (2) of subsection (h) is amended to add language to extend the duration of the recognition period of a military spouse (which is for as long as the military spouse is located in Texas), and to state the duration of the recognition period of a former military spouse (which is for as long as the former military spouse is located in Texas but only until the third anniversary of the recognition date). The three-year limit on the duration of the recognition period for military service members and spouses residing in Texas in the previous rule is removed. This change extends the duration of the "free" recognition period for eligible military applicants who are recognized under this subsection, which consequently results in the waiver or refund of the applicants' annual renewal fees owed during the duration of this recognition period.

Paragraph (4) of subsection (h) concerning Option 2, is amended to align with amended Occupations Code §55.0041, which removed certain requirements for recognition, including a requirement for Registration staff to verify out-of-state licensure good standing, and replaced them with different requirements, including a new requirement for the applicant to submit a notarized affidavit as to licensure good standing status. As a result of this change to Occupations Code §55.0041, the applicant may incur a small economic cost to obtain the required notarization.

Paragraph (4)(C)(ii) of subsection (h) is amended to reduce the number of days that action must be taken on a request for recognition from 30 days to 10 business days.

Paragraph (4)(D) of subsection (h) is amended to make conforming amendments to the renewal of the recognition status.

Finally, new paragraph (4)(E) of subsection (h) is added for clarity and consistency with subsection (b), which relates to expedited review of applications. The new paragraph clarifies that individuals shall be recognized despite having pending or deficient items and would address how deficiencies are to be treated and resolved.

The rule is consistent with and conforms to the applicable military occupational licensing requirements under state law.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment is also adopted under Chapter 55 of the Texas Occupations Code, as amended by HB 5629, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants, and as amended by SB 1818, which requires state agencies to promptly issue recognitions and licenses to military applicants.

The adoption affects the following sections of the Texas Securities Act, Texas Government Code Chapter 4004, Subchapters B through F, and §§4006.001, 4006.057, and 4007.105.

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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CHAPTER 133. FORMS

7 TAC §133.19, §133.23

The Texas State Securities Board adopts the repeal of two rules, concerning forms adopted by reference. Specifically, the State Securities Board adopts the repeal of §133.19, a form concerning Waiver or Refund Request by a Military Applicant; and §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration Pursuant to Occupations Code §55.0041, without changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7475). The repealed rules will not be republished.

The repealed forms have been replaced with new forms being concurrently adopted to correspond with amendments to §115.18 and §116.18, which have been concurrently adopted to implement House Bill 5629 and Senate Bill 1818 (89th Legislature, Regular Session (2025)) which amended state law relating to occupational licensing and recognition of out-of-state occupational licenses for military service members, military veterans, and military spouses (collectively, "military applicants"). The changes further expedited and simplified the process for military applicants who seek occupational licenses in Texas.

The two existing forms have been eliminated so they can be replaced with two new forms that comply with statutory requirements. Concurrent with this adopted repeal is the adoption of new forms §133.19 and §133.23.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The repeals are also adopted under Chapter 55 of the Texas Occupations Code, as amended by HB 5629, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants, and as amended by SB 1818, which requires state agencies to promptly issue recognitions and licenses to military applicants.

The repeals affect the following sections of the Texas Securities Act, Texas Government Code Chapter 4004, Subchapters B through F, and §§4006.001, 4006.057, and 4007.105.

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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7 TAC §133.19, §133.23

The Texas State Securities Board adopts two new rules, concerning forms adopted by reference, without changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7476). Specifically, the Texas State Securities Board adopts new §133.19, which adopts by reference a form concerning Waiver or Refund Request by a Military Applicant; and new §133.23, which adopts by reference a form concerning Request for Recognition of Out-Of-State License or Registration Pursuant to Occupations Code §55.0041. The new rules will not be republished.

The new sections adopt by reference forms that reflect amendments to §115.18 and §116.18, which have been concurrently adopted to implement House Bill 5629 and Senate Bill 1818 (89th Legislature, Regular Session (2025)) which amended state law relating to occupational licensing and recognition of out-of-state occupational licenses for military service members, military veterans, and military spouses (collectively, "military applicants"). The changes further expedite and simplify the process for military applicants who seek occupational licenses in Texas.

New Form 133.19 performs the same function as the existing form, but certain requirements for waiver or refund eligibility are removed to implement the requirements of Occupations Code §55.009 as amended by HB 5629.

New Form 133.23 performs the same function as the existing form but requires the applicant to provide a notarized affidavit as to the applicant's good standing status in another jurisdiction as well as to require military orders, in lieu of providing proof of Texas residency and a military identification card, and, as applicable, a marriage license.

Eligible military applicants can complete the forms adopted by reference to either obtain a waiver or refund or to practice securities business in Texas without being registered. Concurrent with this adoption is the repeal of existing forms §133.19 and §133.23.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The new rules are also adopted under Chapter 55 of the Texas Occupations Code, as amended by HB 5629, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants, and as amended by SB 1818, which requires state agencies to promptly issue recognitions and licenses to military applicants.

The new rules affect the following sections of the Texas Securities Act, Texas Government Code Chapter 4004, Subchapters B through F, and §§4006.001, 4006.057, and 4007.105.

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

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §6.204

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §6.204 Use of Funds, which applies to the Community Services Block Grant Program (CSBG) with changes to the proposed text as published in the December 26, 2025 issue of the *Texas Register* (50 TexReg 8450). The rule will be republished. The purpose of the amendment is to specify how households receiving benefits through CSBG will have those benefits determined based on the household members' legal status. 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries outlines the requirement that all Single Family, Community Affairs and Homelessness program's subrecipients of the Department must confirm legal alien status for program participants in order to receive assistance. This is to ensure that an alien who is not a qualified alien does not receive a federal public benefit.

While §1.410 provides for the requirement to perform a review for alien status for program participants, it does not specify how each distinct Department program will calculate benefits based on those determinations, because each program is different enough in its eligible activities that such applicability needs to be tailored to the specific programs. The changes in this rule provide that necessary specificity for the CSBG Program.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: how benefits will be determined in a specific Department program as it relates to alien status and the implementation of 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

2. The amendment may require additional work that may create new employee positions, but those costs are federal eligibly reimbursable expenses under the applicable program grants. The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but clarifying an existing regulation.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law and to the extent applicable to state programs, brings state programs into consistency with federal law.

7. The amendment increases the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities other than to the extent that such entities receive federal funds to operate Department programs subject to the rule. There may be several hundred entities in the state at any given time receiving funds for such programs. The added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal funds the entity is receiving for the applicable programs. No entities will bear any unreimbursable expenses to comply.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed section would be a rule that provides clarity in implementing

10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. There may be limited economic costs to individuals required to comply with the amended section; a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. Comment was received from six commenters: 1) Texas Appleseed, 2) El Paso Center for Children, 3) Texas Representative Mary E. Gonzalez, 4) Texas Housers, 5) Texas Council on Family Violence, and 6) Texas Homeless Network.

Comment Requesting for Rule to be Withdrawn.

Multiple commenters requested that the rule be withdrawn.

Commenters (1), (3), (4) and (6) point out that the US Department of Housing and Urban Development (HUD) has indicated that further guidance will be released from both HUD and Department of Homeland Security (DHS) and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released.

Commenters (3), (4) and (6) note that the rules will undermine access to critical housing and homelessness services under the guise of immigration compliance and that application of these policies to the affected programs is unnecessary, burdensome and harmful to Texans in need. Commenter (4) observes that such policies would also negatively impact public health.

Commenter (1) notes that HUD had not yet issued an economic impact analysis of its guidance, and that in recent guidance the US Department of Health and Human Service (USHHS) did consider its redefining of a federal public benefit to be an economically significant regulatory action. Commenter (1) notes that they believe the amount estimated by USHHS ($100 million nationally) is likely unrealistic and the cost would be higher. They question how TDHCA determined that there would be no economic impacts in the preambles to the rule. In their comment they describe several areas of potential costs including the costs to the households to obtain the required documentation, and the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule.

Commenters (1), (3), (4) and (6) are also concerned that the delays that will exist by having to obtain specific documentation will mean that households may be denied assistance, particularly with homeless assistance programs that are designed to address urgent and time-sensitive needs and in emergency rental assistance where a delay can result in an eviction. Commenter (4) expands on the issue of delays estimating that such verifications could take an average of 17 federal workdays.

Commenter (1) also notes that even when PRWORA was initially passed in 1996, it took several years to pass applicable rules and set up verification systems; state and local governments needed time to roll this out. They note that state and local governments should not be expected to produce verification systems that comply with regulations that do not yet exist. Commenters (3) and (4) note the administrative burden being placed on local governments, nonprofits and program operators that lack infrastructure and staffing to implement the processes.

Commenter (4) notes that according to the National Housing Law Project a benefit granting agency that improperly applies PRWORA's verification requirements could be subject to discrimination claims. They note that to their knowledge Texas is so far the only state to update rules ahead of additional guidance needed for implementation.

All of these reasons above support why commenters are requesting that the adoption of this rule be deferred until further federal guidance has been issued.

Staff Response: Staff does not recommend withdrawing or deferring the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. While we do expect federal agencies may release further detail, we have already been directed through 2025 federal funding agreements and guidance to ensure the applicability of PRWORA. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly become compliant with that guidance. The TDHCA rule changes are specific enough to reflect our adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. Further, per the HUD notice of November 26, 2025, states are not relieved from the requirements to ensure that all relevant programs are in compliance with PWRORA. HUD places the burden on TDHCA to ensure compliance with PWRORA, even before "new guidelines" are issued by HUD. No change is recommended to the rule in response to this comment.

As it relates to the economic impact, TDHCA has revised this preamble to provide greater specificity on this issue. It should be noted that Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law. Further, as it relates to the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule, the added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal or state funds the entity is receiving for the applicable programs. No entities will bear any non-reimbursable expenses to comply.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (4), (5) and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They request that In line with recent changes made to 10 TAC §1.410 in response to public comment, the final version of these proposed rules must explicitly exempt verification requirements for populations covered by VAWA or FVPSA to protect survivors of family violence in accordance with federal law.

Commenter (5) notes that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenters (5) and (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (5) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees "ensure that no person is denied services because of actual or perceived immigration status."

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Staff Response: Consistent with the changes made in 10 TAC §1.410 TDHCA will specify in the amended rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Exception for Nonprofits.

Commenter (5) requests that exemptions for nonprofit providers should be made because survivors routinely seek supportive nonprofit services and their information should be protected.

Staff Response: The exemption for VAWA or FVPSA covered populations will be applicable to partially address this issue. Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients- because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute.

Administrators that are nonprofit entities- including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment. No change is recommended to the rule in response to this comment.

Request for Operational Guidance.

Commenter (2) requested that TDHCA provide detailed implementation guidance prior to enforcement, clearly describing what constitutes emergency situations, that requirements be aligned with federal ESG or HUD guidance. Commenter (2) requests additional clarification be made in the rule regarding the practical implementation and administrative requirements particularly for vulnerable households.

Commenter (2) asks that the amendment address Intake and eligibility workflows, including Coordinated Entry processes; Program participant file requirements and documentation standards; timeliness of assistance delivery; staff training and administrative capacity; data collection, privacy, and record retention obligations; what types of documents are acceptable; what documentation requirement will be applicable to victims of domestic trafficking or are former foster children who were never provided with copies of their birth certificates or other forms of identification; how mixed-status households should be handle; whether self-attestation will be allowed in limited or emergency circumstances; and how eligibility determinations should be documented for monitoring purposes.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide guidance as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. Federal guidance provides for what constitutes an emergency situation, but TDHCA will provide in materials, web posts, and training more granular guidance on this as well. TDHCA will also provide on its website and to subrecipients what types of documents are acceptable, what forms should be used for documenting the process has been followed, and how mixed-status households should be handled. Other than the exceptions that will be allowable for emergency assistance (federally excepted), and for populations excepted in the rule that are protected under VAWA or FVPSA, self-attestations will not be allowed. As for some of the other requested guidance, TDHCA will not guide - or limit - how any particular subrecipient decides to adjust their operations or processes to implement these requirements. For instance it is up to each subrecipient to decide how it will integrate this policy into intake and eligibility workflows and the coordinated entry process. No change is recommended to the rule in response to this comment.

Request for Phased Implementation.

Commenter (2) requests that a phased implementation period be provided after final adoption. They also requested additional funding to absorb the labor costs for additional administrative burden.

Staff Response: TDHCA is unable to phase the implementation of this rule. Upon its adoption, subrecipients will be required to implement and adhere to this rule. Current subrecipients may use their administrative funds under the awards they receive to cover the costs of implementing this rule, which are fully eligible costs. No change is recommended to the rule in response to this comment.

Concern for Barriers to Access.

Commenter (2) noted that they are concerned that the proposed changes could create barriers for individuals who are otherwise eligible for services but face challenges obtaining documentation due to homelessness, disability, trauma, or language barriers. They encourage TDHCA to include safeguards that ensure: Non-discriminatory intake practices and clear communication to participants about eligibility requirements.

Staff Response: All subrecipients have the ability to institute non-discriminatory intake practices, and provide clear communication to participants about eligibility requirements. No change is recommended to the rule in response to this comment.

Appeals.

Commenter (4) notes that the rule says appeals will be addressed through each program's rules, but they did not see that the rules address the need for an appeals process specific to legal status verification.

Staff Response: Staff will add to the rule a requirement that each subrecipient must offer an opportunity for a household to appeal a legal status determination consistent with the appeals policy they utilize for other household eligibility appeals processes.

Training and Technical Assistance.

Commenter (2) requested that TDHCA offer technical assistance and written FAQs for subrecipients, and that TDHCA clearly outline monitoring expectations related to §1.410 compliance.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide training and technical assistance, including monitoring expectations, as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. No change is recommended to the rule in response to this comment.

Conditional Assistance.

Commenter (2) requests that in light of delays that are experienced in seeking documentation from households, TDHCA allow conditional or temporary assistance while documentation is obtained.

Staff Response: Benefits under these rules are not permitted to be provided to persons without PRWORA eligibility, including temporary or conditional assistance. No change is recommended to the rule in response to this comment.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§6.204. Use of Funds and Requirements for Establishing Household Eligibility.

(a) CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Contract System. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, Shelter, clothing, etc.

(b) Eligible Entity shall determine Household income eligibility in compliance with §6.4 of this chapter (relating to Income Determination). The Household income eligibility level must be at or below 125% of the federal poverty level in effect at the time the customer makes an application for services.

(c) U.S. Citizen, U.S. National or Qualified Alien. Only U.S. Citizens, U.S. Nationals and Qualified Aliens are eligible to receive CSBG benefits. In accordance with §1.410(f) of this Part (relating to Determination of Alien Status for Program Beneficiaries), Eligible Entities must document U.S. Citizen, U.S. National, and Qualified Alien status for each household member using the Department approved form. Populations that are documented by the Administrator as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance. Administrators must include in their operational processes a means by which a household may appeal a determination of their eligibility under this subsection. Qualified Alien status must also be verified and documented using SAVE. Household eligibility shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Calculate Household size for determining eligibility or benefits to exclude all Unqualified Aliens.

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 6, 2026.

TRD-202601117
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 26, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 475-3959

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CHAPTER 7. HOMELESSNESS PROGRAMS
SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §7.28

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §7.28 Program Participant Eligibility and Program Participant Files, which applies to the Homeless Housing and Services Program (HHSP) with changes to the text previously published in the December 26, 2025 issue of the *Texas Register* (50 TexReg 8451). The rule will be republished. The purpose of the amendment is to specify how households receiving benefits through HHSP will have those benefits determined based on the household members' legal status. 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries outlines the requirement that all Single Family, Community Affairs and Homelessness programs subrecipients of the Department must confirm legal alien status for program participants in order to receive assistance. This is to ensure that an alien who is not a qualified alien does not receive a federal public benefit.

While §1.410 provides for the requirement to perform a review for alien status for program participants, it does not specify how each distinct Department program will calculate benefits based on those determinations, because each program is different enough in its eligible activities that such applicability needs to be tailored to the specific programs. The changes in this action provide that necessary specificity for the HHSP Program.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: how benefits will be determined in a specific Department program as it relates to alien status and the implementation of 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

2. The amendment may require additional work that may create new employee positions, but those costs are federal eligibly reimbursable expenses under the applicable program grants. The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but clarifying an existing regulation.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law and to the extent applicable to state programs, brings state programs into consistency with federal law.

7. The amendment increases the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities other than to the extent that such entities receive federal funds to operate Department programs subject to the rule. There may be several hundred entities in the state at any given time receiving funds for such programs. The added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal funds the entity is receiving for the applicable programs. No entities will bear any unreimbursable expenses to comply.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed section would be a rule that provides clarity in implementing

10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. There may be limited economic costs to individuals required to comply with the amended section; a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. Comment was received from six commenters: 1) Texas Appleseed, 2) El Paso Center for Children, 3) Texas Representative Mary E. Gonzalez, 4) Texas Housers, 5) Texas Council on Family Violence, and 6) Texas Homeless Network.

Comment Requesting for Rule to be Withdrawn.

Multiple commenters requested that the rule be withdrawn.

Commenters (1), (3), (4) and (6) point out that the US Department of Housing and Urban Development (HUD) has indicated that further guidance will be released from both HUD and Department of Homeland Security (DHS) and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released.

Commenters (3), (4) and (6) note that the rules will undermine access to critical housing and homelessness services under the guise of immigration compliance and that application of these policies to the affected programs is unnecessary, burdensome and harmful to Texans in need. Commenter (4) observes that such policies would also negatively impact public health.

Commenter (1) notes that HUD had not yet issued an economic impact analysis of its guidance, and that in recent guidance the US Department of Health and Human Service (USHHS) did consider its redefining of a federal public benefit to be an economically significant regulatory action. Commenter (1) notes that they believe the amount estimated by USHHS ($100 million nationally) is likely unrealistic and the cost would be higher. They question how TDHCA determined that there would be no economic impacts in the preambles to the rule. In their comment they describe several areas of potential costs including the costs to the households to obtain the required documentation, and the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule.

Commenters (1), (3), (4) and (6) are also concerned that the delays that will exist by having to obtain specific documentation will mean that households may be denied assistance, particularly with homeless assistance programs that are designed to address urgent and time-sensitive needs and in emergency rental assistance where a delay can result in an eviction. Commenter (4) expands on the issue of delays estimating that such verifications could take an average of 17 federal workdays.

Commenter (1) also notes that even when PRWORA was initially passed in 1996, it took several years to pass applicable rules and set up verification systems; state and local governments needed time to roll this out. They note that state and local governments should not be expected to produce verification systems that comply with regulations that do not yet exist. Commenters (3) and (4) note the administrative burden being placed on local governments, nonprofits and program operators that lack infrastructure and staffing to implement the processes.

Commenter (4) notes that according to the National Housing Law Project a benefit granting agency that improperly applies PRWORA's verification requirements could be subject to discrimination claims. They note that to their knowledge Texas is so far the only state to update rules ahead of additional guidance needed for implementation.

All of these reasons above support why commenters are requesting that the adoption of this rule be deferred until further federal guidance has been issued.

Staff Response: Staff does not recommend withdrawing or deferring the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. While we do expect federal agencies may release further detail, we have already been directed through 2025 federal funding agreements and guidance to ensure the applicability of PRWORA. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly become compliant with that guidance. The TDHCA rule changes are specific enough to reflect our adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. Further, per the HUD notice of November 26, 2025, states are not relieved from the requirements to ensure that all relevant programs are in compliance with PWRORA. HUD places the burden on TDHCA to ensure compliance with PWRORA, even before "new guidelines" are issued by HUD. No change is recommended to the rule in response to this comment.

As it relates to the economic impact, TDHCA has revised this preamble to provide greater specificity on this issue. It should be noted that Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law. Further, as it relates to the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule, the added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal or state funds the entity is receiving for the applicable programs. No entities will bear any non-reimbursable expenses to comply.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (4), (5) and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They request that In line with recent changes made to 10 TAC §1.410 in response to public comment, the final version of these proposed rules must explicitly exempt verification requirements for populations covered by VAWA or FVPSA to protect survivors of family violence in accordance with federal law.

Commenter (5) notes that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenters (5) and (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (5) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees "ensure that no person is denied services because of actual or perceived immigration status."

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Staff Response: Consistent with the changes made in 10 TAC §1.410 TDHCA will specify in the amended rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Exception for Nonprofits.

Commenter (5) requests that exemptions for nonprofit providers should be made because survivors routinely seek supportive nonprofit services and their information should be protected.

Staff Response: The exemption for VAWA or FVPSA covered populations will be applicable to partially address this issue. Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients- because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute.

Administrators that are nonprofit entities - including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment. No change is recommended to the rule in response to this comment.

Request for Operational Guidance.

Commenter (2) requested that TDHCA provide detailed implementation guidance prior to enforcement, clearly describing what constitutes emergency situations, that requirements be aligned with federal ESG or HUD guidance. Commenter (2) requests additional clarification be made in the rule regarding the practical implementation and administrative requirements particularly for vulnerable households.

Commenter (2) asks that the amendment address Intake and eligibility workflows, including Coordinated Entry processes; Program participant file requirements and documentation standards; timeliness of assistance delivery; staff training and administrative capacity; data collection, privacy, and record retention obligations; what types of documents are acceptable; what documentation requirement will be applicable to victims of domestic trafficking or are former foster children who were never provided with copies of their birth certificates or other forms of identification; how mixed-status households should be handle; whether self-attestation will be allowed in limited or emergency circumstances; and how eligibility determinations should be documented for monitoring purposes.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide guidance as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. Federal guidance provides for what constitutes an emergency situation, but TDHCA will provide in materials, web posts, and training more granular guidance on this as well. TDHCA will also provide on its website and to subrecipients what types of documents are acceptable, what forms should be used for documenting the process has been followed, and how mixed-status households should be handled. Other than the exceptions that will be allowable for emergency assistance (federally excepted), and for populations excepted in the rule that are protected under VAWA or FVPSA, self-attestations will not be allowed. As for some of the other requested guidance, TDHCA will not guide - or limit - how any particular subrecipient decides to adjust their operations or processes to implement these requirements. For instance it is up to each subrecipient to decide how it will integrate this policy into intake and eligibility workflows and the coordinated entry process. No change is recommended to the rule in response to this comment.

Request for Phased Implementation.

Commenter (2) requests that a phased implementation period be provided after final adoption. They also requested additional funding to absorb the labor costs for additional administrative burden.

Staff Response: TDHCA is unable to phase the implementation of this rule. Upon its adoption, subrecipients will be required to implement and adhere to this rule. Current subrecipients may use their administrative funds under the awards they receive to cover the costs of implementing this rule, which are fully eligible costs. No change is recommended to the rule in response to this comment.

Concern for Barriers to Access.

Commenter (2) noted that they are concerned that the proposed changes could create barriers for individuals who are otherwise eligible for services but face challenges obtaining documentation due to homelessness, disability, trauma, or language barriers. They encourage TDHCA to include safeguards that ensure: Non-discriminatory intake practices and clear communication to participants about eligibility requirements.

Staff Response: All subrecipients have the ability to institute non-discriminatory intake practices, and provide clear communication to participants about eligibility requirements. No change is recommended to the rule in response to this comment.

Appeals.

Commenter (4) notes that the rule says appeals will be addressed through each program's rules, but they did not see that the rules address the need for an appeals process specific to legal status verification.

Staff Response: Staff will add to the rule a requirement that each subrecipient must offer an opportunity for a household to appeal a legal status determination consistent with the appeals policy they utilize for other household eligibility appeals processes.

Training and Technical Assistance.

Commenter (2) requested that TDHCA offer technical assistance and written FAQs for subrecipients, and that TDHCA clearly outline monitoring expectations related to §1.410 compliance.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide training and technical assistance, including monitoring expectations, as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. No change is recommended to the rule in response to this comment.

Conditional Assistance.

Commenter (2) requests that in light of delays that are experienced in seeking documentation from households, TDHCA allow conditional or temporary assistance while documentation is obtained.

Staff Response: Benefits under these rules are not permitted to be provided to persons without PRWORA eligibility, including temporary or conditional assistance. No change is recommended to the rule in response to this comment.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§7.28. Program Participant Eligibility and Program Participant Files.

(a) A Program Participant must satisfy the eligibility requirements by meeting the appropriate definition of Homeless or At-risk of Homelessness in this Chapter, relating to Homelessness Programs, including but not limited to applicable income requirements.

(b) A Program Participant who is Homeless qualifies for emergency shelter, Transitional Living Activities, case management, essential services, and homeless assistance.

(c) A Program Participant who is At-risk of Homelessness qualifies for case management, essential services, and homeless prevention.

(d) The Subrecipient shall establish income limits that do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152 in its written policies and procedures, and may adopt the income limit calculation method and procedures in HUD Handbook 4350 to satisfy this requirement.

(e) Recertification. Recertification is required for Program Participants receiving homelessness prevention and homelessness assistance within 12 months of the assistance start date. Subrecipient's written policies may require more frequent recertification. At a minimum, recertification includes that Program Participants receiving homelessness prevention or homelessness assistance:

(1) meet the income eligibility requirements as established by the Subrecipient, if such limits are implemented in the Subrecipient's policies and procedures and required to be reviewed at Recertification; and

(2) lack sufficient resources and support networks necessary to retain housing without assistance.

(f) Break in service. The Subrecipient must document eligibility before providing services after a break in service. A break in service occurs when a previously assisted household has exited the program and is no longer receiving services through Homeless Programs.

Upon reentry into HHSP, the Household is required to complete a new intake application and provide updated source documentation, if applicable. The Subrecipient would not need to document further eligibility for HHSP if the Program Participant is currently receiving assistance through ESG.

(g) Program participant files. Subrecipient or their Subgrantees shall maintain Program Participant files, for non-emergency activities providing direct subsidy to or on behalf of a Program Participant that contain the following:

(1) an Intake Application, including the signature or legally identifying mark of all adult Household members certifying the validity of information provided, an area to identify the staff person completing the intake application, and the language as required by Tex. Gov't Code §434.212;

(2) certification from the Applicant that they meet the definition of Homeless or At-risk of Homelessness. The certification must include the Program Participant's signature or legally identifying mark;

(3) documentation of income eligibility, if applicable, which may include a DIS if documentation is unobtainable;

(4) documentation of annual recertification, as applicable, including income eligibility determination and verification that the Program Participant lacks sufficient resources and supports networks necessary to retain housing without assistance;

(5) documentation of determination of ineligibility for assistance when assistance is denied. Documentation must include the reason for the determination of ineligibility;

(6) copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by Program Participants;

(7) documentation of the monthly allowance for utilities used to determine compliance with the rent restriction;

(8) documentation that the Dwelling Unit for Program Participants receiving rental assistance complies with the Housing Standards in this Chapter, relating to Homelessness Programs; and

(9) documentation of U.S. Citizen, U.S. National, or Qualified Alien status for each household member receiving direct assistance, including:

(A) verification of eligible immigration or citizenship status consistent with §1.410 of this title;

(B) any determinations of ineligibility or mixed Household status; and

(C) records of proration calculations applied under subsection (h)(2) of this section, if applicable.

(h) Implementation of HHSP activities involving direct assistance to Program Participants is subject to §1.410 of this title, relating to Determination of Alien Status for Program Beneficiaries.

(1) Each Household member receiving direct assistance under Homeless Prevention or Homeless Assistance must be verified for eligibility in accordance with §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) prior to receiving assistance.

(2) Direct assistance may be prorated utilizing a fraction based on Household eligibility, calculated by multiplying the full benefit amount by a fraction in which the numerator is the number of eligible Household members, and the denominator is the total number of Household members.

(3) Activities that do not provide direct housing or financial assistance, such as Emergency Shelter, case management, and Street Outreach, and in-kind disaster relief are not subject to paragraphs (1) and (2) of this subsection.

(4) Populations that are documented by the Administrator as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance.

(5) Administrators must include in their operational processes a means by which a household may appeal a determination of their eligibility under this subsection.

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

Filed with the Office of the Secretary of State on March 6, 2026.

TRD-202601118
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 26, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §7.44

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §7.44 Program Participant Eligibility and Program Participant Files, which applies to the Emergency Solutions Grant Program (ESG) with changes to the text previously published in the December 26, 2025 issue of the *Texas Register* (50 TexReg 8453). The rule will be republished. The purpose of the amendment is to specify how households receiving benefits through ESG will have those benefits determined based on the household members' legal status. 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries outlines the requirement that all Single Family, Community Affairs and Homelessness programs subrecipients of the Department must confirm legal alien status for program participants in order to receive assistance. This is to ensure that an alien who is not a qualified alien does not receive a federal public benefit.

While §1.410 provides for the requirement to perform a review for alien status for program participants, it does not specify how each distinct Department program will calculate benefits based on those determinations, because each program is different enough in its eligible activities that such applicability needs to be tailored to the specific programs. The changes in this action provide that necessary specificity for the ESG Program.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: how benefits will be determined in a specific Department program as it relates to alien status and the implementation of 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

2. The amendment may require additional work that may create new employee positions, but those costs are federal eligibly reimbursable expenses under the applicable program grants. The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but clarifying an existing regulation.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law and to the extent applicable to state programs, brings state programs into consistency with federal law.

7. The amendment increases the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities other than to the extent that such entities receive federal funds to operate Department programs subject to the rule. There may be several hundred entities in the state at any given time receiving funds for such programs. The added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal funds the entity is receiving for the applicable programs. No entities will bear any unreimbursable expenses to comply.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed section would be a rule that provides clarity in implementing

10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. There may be limited economic costs to individuals required to comply with the amended section; a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. Comment was received from six commenters: 1) Texas Appleseed, 2) El Paso Center for Children, 3) Texas Representative Mary E. Gonzalez, 4) Texas Housers, 5) Texas Council on Family Violence, and 6) Texas Homeless Network.

Comment Requesting for Rule to be Withdrawn.

Multiple commenters requested that the rule be withdrawn.

Commenters (1), (3), (4) and (6) point out that the US Department of Housing and Urban Development (HUD) has indicated that further guidance will be released from both HUD and Department of Homeland Security (DHS) and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released.

Commenters (3), (4) and (6) note that the rules will undermine access to critical housing and homelessness services under the guise of immigration compliance and that application of these policies to the affected programs is unnecessary, burdensome and harmful to Texans in need. Commenter (4) observes that such policies would also negatively impact public health.

Commenter (1) notes that HUD had not yet issued an economic impact analysis of its guidance, and that in recent guidance the US Department of Health and Human Service (USHHS) did consider its redefining of a federal public benefit to be an economically significant regulatory action. Commenter (1) notes that they believe the amount estimated by USHHS ($100 million nationally) is likely unrealistic and the cost would be higher. They question how TDHCA determined that there would be no economic impacts in the preambles to the rule. In their comment they describe several areas of potential costs including the costs to the households to obtain the required documentation, and the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule.

Commenters (1), (3), (4) and (6) are also concerned that the delays that will exist by having to obtain specific documentation will mean that households may be denied assistance, particularly with homeless assistance programs that are designed to address urgent and time-sensitive needs and in emergency rental assistance where a delay can result in an eviction. Commenter (4) expands on the issue of delays estimating that such verifications could take an average of 17 federal workdays.

Commenter (1) also notes that even when PRWORA was initially passed in 1996, it took several years to pass applicable rules and set up verification systems; state and local governments needed time to roll this out. They note that state and local governments should not be expected to produce verification systems that comply with regulations that do not yet exist. Commenters (3) and (4) note the administrative burden being placed on local governments, nonprofits and program operators that lack infrastructure and staffing to implement the processes.

Commenter (4) notes that according to the National Housing Law Project a benefit granting agency that improperly applies PRWORA's verification requirements could be subject to discrimination claims. They note that to their knowledge Texas is so far the only state to update rules ahead of additional guidance needed for implementation.

All of these reasons above support why commenters are requesting that the adoption of this rule be deferred until further federal guidance has been issued.

Staff Response: Staff does not recommend withdrawing or deferring the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. While we do expect federal agencies may release further detail, we have already been directed through 2025 federal funding agreements and guidance to ensure the applicability of PRWORA. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly become compliant with that guidance. The TDHCA rule changes are specific enough to reflect our adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. Further, per the HUD notice of November 26, 2025, states are not relieved from the requirements to ensure that all relevant programs are in compliance with PWRORA. HUD places the burden on TDHCA to ensure compliance with PWRORA, even before "new guidelines" are issued by HUD. No change is recommended to the rule in response to this comment.

As it relates to the economic impact, TDHCA has revised this preamble to provide greater specificity on this issue. It should be noted that Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law. Further, as it relates to the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule, the added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal or state funds the entity is receiving for the applicable programs. No entities will bear any non-reimbursable expenses to comply.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (4), (5) and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They request that In line with recent changes made to 10 TAC §1.410 in response to public comment, the final version of these proposed rules must explicitly exempt verification requirements for populations covered by VAWA or FVPSA to protect survivors of family violence in accordance with federal law.

Commenter (5) notes that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenters (5) and (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (5) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees "ensure that no person is denied services because of actual or perceived immigration status."

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family

Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Staff Response: Consistent with the changes made in 10 TAC §1.410 TDHCA will specify in the amended rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Exception for Nonprofits.

Commenter (5) requests that exemptions for nonprofit providers should be made because survivors routinely seek supportive nonprofit services and their information should be protected.

Staff Response: The exemption for VAWA or FVPSA covered populations will be applicable to partially address this issue. Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients- because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute.

Administrators that are nonprofit entities- including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment. No change is recommended to the rule in response to this comment.

Request for Operational Guidance.

Commenter (2) requested that TDHCA provide detailed implementation guidance prior to enforcement, clearly describing what constitutes emergency situations, that requirements be aligned with federal ESG or HUD guidance. Commenter (2) requests additional clarification be made in the rule regarding the practical implementation and administrative requirements particularly for vulnerable households.

Commenter (2) asks that the amendment address Intake and eligibility workflows, including Coordinated Entry processes; Program participant file requirements and documentation standards; timeliness of assistance delivery; staff training and administrative capacity; data collection, privacy, and record retention obligations; what types of documents are acceptable; what documentation requirement will be applicable to victims of domestic trafficking or are former foster children who were never provided with copies of their birth certificates or other forms of identification; how mixed-status households should be handle; whether self-attestation will be allowed in limited or emergency circumstances; and how eligibility determinations should be documented for monitoring purposes.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide guidance as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. Federal guidance provides for what constitutes an emergency situation, but TDHCA will provide in materials, web posts, and training more granular guidance on this as well. TDHCA will also provide on its website and to subrecipients what types of documents are acceptable, what forms should be used for documenting the process has been followed, and how mixed-status households should be handled. Other than the exceptions that will be allowable for emergency assistance (federally excepted), and for populations excepted in the rule that are protected under VAWA or FVPSA, self-attestations will not be allowed. As for some of the other requested guidance, TDHCA will not guide - or limit - how any particular subrecipient decides to adjust their operations or processes to implement these requirements. For instance it is up to each subrecipient to decide how it will integrate this policy into intake and eligibility workflows and the coordinated entry process. No change is recommended to the rule in response to this comment.

Request for Phased Implementation.

Commenter (2) requests that a phased implementation period be provided after final adoption. They also requested additional funding to absorb the labor costs for additional administrative burden.

Staff Response: TDHCA is unable to phase the implementation of this rule. Upon its adoption, subrecipients will be required to implement and adhere to this rule. Current subrecipients may use their administrative funds under the awards they receive to cover the costs of implementing this rule, which are fully eligible costs. No change is recommended to the rule in response to this comment.

Concern for Barriers to Access.

Commenter (2) noted that they are concerned that the proposed changes could create barriers for individuals who are otherwise eligible for services but face challenges obtaining documentation due to homelessness, disability, trauma, or language barriers. They encourage TDHCA to include safeguards that ensure: Non-discriminatory intake practices and clear communication to participants about eligibility requirements.

Staff Response: All subrecipients have the ability to institute non-discriminatory intake practices, and provide clear communication to participants about eligibility requirements. No change is recommended to the rule in response to this comment.

Appeals.

Commenter (4) notes that the rule says appeals will be addressed through each program's rules, but they did not see that the rules address the need for an appeals process specific to legal status verification.

Staff Response: Staff will add to the rule a requirement that each subrecipient must offer an opportunity for a household to appeal a legal status determination consistent with the appeals policy they utilize for other household eligibility appeals processes.

Training and Technical Assistance.

Commenter (2) requested that TDHCA offer technical assistance and written FAQs for subrecipients, and that TDHCA clearly outline monitoring expectations related to §1.410 compliance.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide training and technical assistance, including monitoring expectations, as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. No change is recommended to the rule in response to this comment.

Conditional Assistance.

Commenter (2) requests that in light of delays that are experienced in seeking documentation from households, TDHCA allow conditional or temporary assistance while documentation is obtained.

Staff Response: Benefits under these rules are not permitted to be provided to persons without PRWORA eligibility, including temporary or conditional assistance. No change is recommended to the rule in response to this comment.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§7.44. Program Participant Eligibility and Program Participant Files.

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements. The Applicant must retain income documentation for Program Participants receiving homelessness prevention and Program Participants receiving rapid re-housing that require annual Recertification. Program Participant income eligibility must be calculated and documented in accordance with the Requirements of HUD Handbook 4350, except that the Department's DIS form may be utilized if income cannot be documented in accordance with 24 CFR §576.500(e)(4). A DIS must be completed and signed by Program Participants whom are subject to income eligibility determination.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).

(e) Implementation of ESG activities involving direct assistance to Program Participants is subject to §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries).

(1) Each Household member receiving direct assistance (including Homelessness Prevention or Rapid Re-Housing upon annual recertification) must be verified for eligibility in accordance with §1.410 of this Part prior to receiving assistance.

(2) Direct assistance may be prorated utilizing a fraction based on Household eligibility, calculated by multiplying the full benefit amount by a fraction in which the numerator is the number of eligible Household members, and the denominator is the total number of Household members.

(3) Activities that do not provide direct housing or financial assistance, such as Emergency Shelter, case management, and Street Outreach, and in-kind disaster assistance are not subject to paragraphs (1) and (2) of this subsection.

(4) Populations that are documented by the Administrator as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance.

(5) Administrators must include in their operational processes a means by which a household may appeal a determination of their eligibility under this subsection.

(f) The Subrecipient must document the U.S. Citizen, U.S. National, or Qualified Alien status for each Household member receiving non-PWORA exempt direct assistance including:

(1) verification of eligible immigration or citizenship status consistent with §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries);

(2) any determinations of ineligibility or mixed Household status; and

(3) records of proration calculations applied under paragraph (e)(2) of this subsection, if applicable.

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 6, 2026.

TRD-202601119
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 26, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES
SUBCHAPTER J. HOUSING FINANCE CORPORATION COMPLIANCE MONITORING

10 TAC §§10.1201 - 10.1207

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Subchapter J, Housing Finance Corporation Compliance Monitoring §§10.1201 - 10.1207 with changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8455). The rules will be republished. The purpose of the new rules, in compliance with Tex. Gov't Code §2306.053, is to implement the requirements of HB 21 (89th Regular Legislature), which tasks the Department with the compliance monitoring oversight of all Housing Finance Corporation (HFC) multifamily residential developments. The new rules provide guidance on auditing and reporting requirements for HFC multifamily residential developments that are required to be audited no later than June 1, 2026, and the results reviewed and published by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule adopted for action because it is necessary to implement the requirements of new legislation, HB 21.

The Department has analyzed this new rulemaking, and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule is in effect:

1. The adopted new rule does not create or eliminate a government program but clearly outlines the audit report and monitoring requirements for Responsible Parties of Housing Finance Corporations and their Sponsors.

2. The adopted new rule will change the number of employees of the Department. The enactment of HB 21 included an appropriation for one full time employee for fiscal year 2026 to perform work associated with implementation of HB 21 and this rule.

3. The adopted new rule will require additional future legislative appropriations. The new rule is in effect because the Texas Legislature in its 89th Regular Session passed House Bill 21. The Department was appropriated an additional $228,228 per year of the biennium from General Revenue funds to implement the provisions of the legislation and received one new FTE. It is expected that the appropriation would continue in subsequent biennia to continue implementing the provisions.

4. The adopted new rule will increase fees paid to the Department. Each HFC multifamily residential development must submit an annual service fee in the amount of $35 per restricted unit, limited to the file sample size; the minimum fee shall not be less than $500.

5. The adopted new rule is creating a new regulation in order to implement the requirements of HB 21.

6. The adopted new rule will not limit or repeal an existing regulation but can be considered to "expand" the existing regulations on this activity because the adopted new rule is necessary to ensure compliance with HB 21 and for the Department to establish rules.

7. The adopted new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The adopted new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities because these rules apply to all Housing Finance Corporation multifamily residential developments effective May 28, 2025.

3. The Department has determined that because these rules apply only to Housing Finance Corporation multifamily residential developments there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the adopted new rule creates provisions for a new procedure for monitoring Housing Finance Corporation multifamily residential developments that are generally exempt from ad valorem taxation. There will be economic cost to these developments required to comply with the new rule because a fee will be collected by the Department to perform compliance monitoring on Housing Finance Corporations multifamily residential developments. In addition, HFCs will be required to hire third party auditors to complete the annual audits.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that no impact is expected on a statewide basis, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be to provide a new procedure of monitoring Housing Finance Corporations multifamily residential developments that are generally exempt from ad valorem taxation.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does have some foreseeable implications related to costs or revenues of the state or local government. The Department was appropriated an additional $228,228 per year of the biennium from General Revenue funds to implement the provisions of the legislation and received one new FTE.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 26, 2025, through January 26, 2026. Comment was received from 10 commenters. Comments regarding the proposed new rules were accepted in writing by mail and e-mail with comments received from:

1. Megan Cano, President, Texas Affiliation of Affordable Housing Providers (TAAHP); Chris Newton, Executive Vice President, Texas Apartment Association (TAA) and Benjamin Davis, Presi-

dent, Texas Chapter of National Association of Housing and Redevelopment Officials (TXNAHRO).

2. Deletta Dean, Director, Austin Housing

3. Gary Gates, State Representative, House District 28

4. Paige Mebane, Director, Coats Rose

5. Celine M Williams, President, Celine M. Willams Services

6. Cynthia L. Bast, Partner, BakerHostetler

7. Braxton Parsons, Senior Vice President, Hilltop Securities Inc.

8. Matt Vara, Mesa Assurance

9. Dianna Grey, Executive Director, Strategic Housing Finance Corporation of Travis County

10. Timothy Clark, President, Riverside Dwell, LP

Purpose and Applicability

Rule Section §10.1201

COMMENT SUMMARY: Commenter 9 appreciates confirmation that Housing Finance Corporation (HFC) multifamily residential developments with Low Income Housing Tax Credit (LIHTC) are excluded from this rule in accordance with HB 21. Commenter 2 seeks confirmation that an HFC ground lease when the borrower is not claiming a tax exemption under Chapter 394, Local Government Code is not subject to an Audit or Rent Reduction calculation. In addition, Commenter 2 states that Permanent Supportive Housing (PSH) that are not financed with Low Income Housing Tax Credits (LIHTC) that receive a partial tax exemption should be exempt from reporting since these developments serve chronically homeless individuals.

STAFF RESPONSE: Staff confirmed that HFC multifamily residential developments that are allocated LIHTC with a current Land Use Restriction Agreement (LURA) are exempt from reporting under statute and this rule. The rule cannot be revised in response to Commenter 2's requests because in accordance with HB 21, Section 394.9026(a)(10)(b) the only exception for a HFC multifamily residential development not to report that it is benefiting from a tax exemption under Chapter 394, Local Government Code, is a development that is a recipient of a LIHTC allocation. A Development not claiming an exemption is not required to report.

DEFINITIONS

Rule Section §10.1202(1)

COMMENT SUMMARY: Commenter 6 suggests the following words be deleted "or compliance expert" in the definition. They believe this is redundant since the definition of an Auditor includes a compliance expert.

STAFF RESPONSE: The Department accepted the recommendation and has removed the words "or compliance expert" from this section.

Rule Section §10.1202(2)

COMMENT SUMMARY: Commenters 1, 4 and 5 request the same modification to the definition of "Auditor" by striking the following words from the definition "a business entity that primarily performs audits and." Commenters 1, 4 and 5 state that statute is written in a manner that speaks to individual auditors as opposed to business entities. They believe that the Department is exceeding what is in statute by adding this clause. The commenters discussed the implication of this clause on the rotational requirements relating to using new independent auditors and Commenters 1 and 5 expressed concern that limiting audit firms would result in challenges for HFC Users to find auditors which could result in a cost increase due to the limited supply of auditors. Commenter 5 also recommends the term "Auditor" should be the same definition that is in the Public Facilities Corporation (PFC) rule.

STAFF RESPONSE: Staff has removed the words "a business entity that primarily performs audits and" from the Auditor definition.

Rule Section §10.1202(8) and (14)

COMMENT SUMMARY: Commenter 3 indicates there is a conflict in language regarding ownership structure between §10.1202(8) and §10.1202(14). It is suggested that definition (14) for "Multifamily Residential Development" should be revised to align with definition (8) for "Housing Finance Corporation User" and the statutory language of HB 21. Commenter 2 supports the language in the proposed rule that multiple developments meeting the requirements stipulated in §10.1202(14) will be considered as one singular Multifamily Residential Development.

STAFF RESPONSE: In response to Commenter 3, staff has revised the definition of Multifamily Residential Development in §10.1202(14) by removing "owned by a Housing Finance Corporation," from the. Staff appreciates Commenter 2's support.

Rule Section §10.1202(11)

COMMENT SUMMARY: Commenter 5 recommends clarifying that the "average annual Rent" be a point in time average of each Unit Type and not a 12-month average of every single unit.

STAFF RESPONSE: The Department did not implement the recommendation as it deviates from the definition of Maximum Market Rent in HB 21, which states, "the average annual rent charged."

Rule Section §10.1202(15)

COMMENT SUMMARY: Commenter 7 suggests removing the word "partnership" from the definition as it could cause confusion.

STAFF RESPONSE: Staff has removed the word "partnership" from the definition of Regulatory Agreement.

Rule Section §10.1202(16)

COMMENT SUMMARY: Commenter 3 indicates how rent is defined deviates from HB 21 in two material ways. First, pest control fees are not excluded in HB 21 and should be counted towards max rent. Additionally, fees for utilities are recurring and should be included in the definition of rent. Commenter 5 recommends clarifying that recurring fees for utilities include trash and should not be included in the rent calculation. Commenter 1 and 4, like Commenter 5 recommends adding "trash" as one of the exceptions to max rent. Commenter 7 suggests a phrasing change to clarify that any fees that are optional, may be excluded from rent.

STAFF RESPONSE: Staff has accepted Commenter 3 recommendation since it aligns with the definition of "Rent" in HB 21. Staff did not accept the proposed changes suggested by Commenters 1, 4 and 5 since "trash" is specifically not excluded in the definition of rent in HB 21. Staff also did not implement phrasing changes suggested by Commenter 7 as it deviates from the text in HB 21.

Reporting Requirements

Rule Section §10.1203(1)(B)

COMMENT SUMMARY: Commenter 3 does not agree that the Department should allow an extension up to 120 days for audit submissions and believes the extension time is excessive. Commenter 3 suggests that the Department should only allow a maximum of 60 days. Commenter 4 suggests that requiring all extension requests be submitted by May 1 of each reporting year is likely to place an undue burden on HFC Users.

STAFF RESPONSE: The Department has accepted Commenter 3's suggestion to shorten the extension timeframe from 120 days to 60 days. Staff disagrees with Commenter 4 that the May 1 deadline is an undue burden, because Audit Reports are due by June 1 and HFC Users should be able to determine by May 1, if an extension is needed.

Rule Section §10.1203(1)(C)

COMMENT SUMMARY: Commenter 1 stated that the documents listed as required to be submitted with the first Audit Report may not be available for HFC multifamily residential developments that were initiated prior to HB 21. Commenter 1 also submitted a redline version of the rule with suggested proposed changes. Commenter 7 made similar suggestions to differentiate what documents were due with the first Audit Report.

STAFF RESPONSE: Staff has incorporated the formatting changes and the suggested language changes with the exception of the Commenter's suggested removal of this sentence, "These items being submitted are the responsibility of the HFC User; if the Auditor indicates in their Audit Report that the HFC User has not provided the documents required in this subparagraph, a compliance finding will be issued." Staff is not deleting this sentence because it is the HFC User's responsibility to comply with HB 21 and the HFC rules.

Rule Section §10.1203(1)(D)

COMMENT SUMMARY: Commenters 1 and 4 both suggested adding the exact same language to clarify when the first Audit Report is due for submission from a Development that is acquired prior to May 28, 2025, and is refinanced etc.

STAFF RESPONSE: Staff included the suggested additional language in Section 10.1203(1)(D)(iii) to add clarity on when a Development must submit their first annual Audit Report if that Development was refinanced, had a conveyance of fee or leasehold title, or was a sale or transfer of a majority of the beneficial ownership interest in a Development.

Rule Section §10.1203(3)(A)

COMMENT SUMMARY: Commenter 5 recommends that the reporting year not be required to include the full prior year, and that flexibility be added for HFC developments that are in lease up or in the process of implementing regulatory requirements. They suggest that the end date of December 31 be a recommendation, rather than a requirement.

STAFF RESPONSE: Staff did not accept the recommendation because having a reporting year end date of December 31, and which covers the full prior year, provides guidance and uniformity in Audit Reports.

Rule Section §10.1203(4)

COMMENT SUMMARY: Commenter 1 recommends that the compliance fee structure and amount of the fee be changed from $20 per Restricted Unit to $35 per Restricted Unit and be limited to the file sample size. Commenter 5 agrees with Commenter 1, that the annual compliance fee structure be limited to file sample size. Commenter 5 also suggested the fee amount be $20 per Restricted Unit.

STAFF RESPONSE: As suggested, staff has increased the fee amount per Restricted Unit, while now limiting the fee amount calculation to the sample size of units. Staff also included Commenter 5 recommendation of limiting the fee amount to the sample size but did not include the recommendation of $20 per Restricted Unit because staff accepted all of Commenter 1's suggested changes for the fee amount to be increased but limited to sample size only.

Rule Section §10.1203(5)

COMMENT SUMMARY: Commenter 3 recommends replacing the current phrase "A copy of the summary notice" with "A copy of the summary of the Audit Report" for clarity. Additionally, the reference to providing notice to "the Development" should be removed and only refer to "Responsible Parties" as it is more appropriate and aligns with HB 21.

STAFF RESPONSE: The Department has implemented the changes.

Rule Section §10.1203(6)(A) and (B)

COMMENT SUMMARY: Commenter 3 indicates there is a material divergence from HB 21. The proposed rule improperly expands noncompliance to Section 394.9026. Per Commenter 3, Section 9026(d) of HB 21 only directs the agency to provide an option for corrective action for a finding of noncompliance with Section 394.9026(c). Commenter 6 requests that 10.1203(6)(B) follow statute and defined terms and replace "appropriate appraisal district" with "Chief Appraiser" since it is not required by statute. Commenter 4 suggests adding an additional 60-day extension to the 180-day statutorily required corrective action period outlined in HB 21.

STAFF RESPONSE: Staff accepted Commenter 3 suggestions and has implemented the changes to the rule. Staff also accepted Commenter 6's revision. Staff did not incorporate Commenter 4's recommendation as it deviates from HB 21 statutory requirements and the Department does not have the authority to provide an extension for corrective action beyond 180 days.

Rule Section §10.1204(1)

COMMENT SUMMARY: Commenters 2 and 10, recommend expanding the language to clarify that bridge, or short-term (less than 5 years), would not be considered a refinancing. Commenter 9 appreciates that inclusion having already been in the rule. Commenter 7 provided an example of when a Development is refinanced and when the first Audit Report would be initially due.

STAFF RESPONSE: The Department appreciates the support from Commenters 2, 9 and 10 on the language. The current published rule included the suggestions outlined by the Commenters; it is possible that Commenters 2 and 10 were referring to the previous published version. The Department accepted the example provided by Commenter 7 and has implemented the changes.

Rule Section §10.1204(2)

COMMENT SUMMARY: Commenter 1 recommends adding the word, "Restricted" to Unit, to make clear that the number of files selected for review by the Auditor is limited to the number of Restricted Units, including when a Development is leasing up.

STAFF RESPONSE: The Department has implemented the change in the rule.

Rule Section §10.1204(3)(B)

COMMENT SUMMARY: Commenter 3 recommends that the Department require photographic documentation that restricted units have comparable finishes, equipment and access and that a written certification alone is insufficient. Commenter 10 recommended that "Units" be capitalized when referring to "Restricted Units" in the rule. Commentor 10 also suggested the following language be deleted, "significant variations in floor plans and square footage will be considered non-compliance" due to circumstances where Developments with live-work units with commercial space are utilized by residents who operate a business, and their income exceeds the affordable thresholds. These live-work units are part of the "non-income restricted" units on the Development and no comparable floorplans exist in the Restricted Units.

STAFF RESPONSE: As suggested by Commenter 3, staff added photographic evidence as an additional requirement in the rule. Staff did not accept Commenter 10's suggested revisions because the requirement that the income- restricted residential units in the development have the same unit finishes, equipment and access to community amenities and programs as residential units that are not income-restricted is required in HB 21.

Rule Section §10.1204(3)(C)

COMMENT SUMMARY: Commenter 10 recommends revising this section to: "Unit Types shall be allocated proportionally across each income restricted category." They recommend this to allow for minor discretion necessary due to rounding and instances where Unit Types cannot be exactly spread across multiple categories.

STAFF RESPONSE: Staff has not made the recommended revisions to comply most closely with HB 21.

Rule Section §10.1204(3)(D)

COMMENT SUMMARY: Commenter 5 recommends the "Department- approved Income Certification form" required in the rule also include the "Verification of Income" form as referenced in most HFC Regulatory Agreements.

STAFF RESPONSE: Staff declines to include the "Verification of Income" form as the form does not reflect the current statutory or rule requirements to verify and document a restricted household's income and assets.

Rule Section §10.1204(3)(D)(i)

COMMENT SUMMARY: Commenter 6 expressed appreciation for the next available unit example in the rule, but also suggested including that the HFC User can charge the household the rent at their applicable income designation. Commenter 7 suggests that very few HFCs have rents at the 160 percent level and including 160% in the example may result in additional HFC Users seeking to pursue this higher limit.

STAFF RESPONSE: Staff has accepted Commenter 6 addition to the example to make clear that households may be charged rent at their current income designation. Staff also accepted the suggestion by Commenter 7 to change the income and rent designation from 160 percent to 120 percent in the example.

Rule Section §10.1204(3)(F)

COMMENT SUMMARY: Commenter 3 requests that the website disclosure should be on the home page of the Development's website, to prevent the disclosure from being buried elsewhere and difficult to find.

STAFF RESPONSE: The rule has been revised to reference the home page of the Development's website.

Rule Section §10.1204(3)(K)(i)

COMMENT SUMMARY: Commenter 1 suggests adding "imputed person per bedroom adjustment" language to clarify the rent limit calculation and removing "adjustment for family." Commenter 3 suggest that the current language relating to adjustments for family size improperly directs an Auditor to defer to regulatory agreements when determining rent limits, rather than actual operating practices.

STAFF RESPONSE: The Department declined to make these requested revisions from Commenters 1 and 3. The Department has provided technical clarity to HFC Users and Auditors on the definition of Rent that are used in practice when adjustment for family size is unclear. Commenter 1's recommendation of using "imputed persons per bedroom" in lieu of "adjustment for family size" deviates from HB 21 and is not revised.

Rule Section §10.1204(3)(L)

COMMENT SUMMARY: Commenter 1 requested that clarifying language be added to identify that it is the HFC User that is responsible for determining the Rent Reduction comparison.

STAFF RESPONSE: Staff included the clarifying language.

Rule Section §10.1204(3)(L)(i)

COMMENT SUMMARY: Commenter 1 is requesting a change to the Rent Reduction calculation language, to use "average of the Rent charged" instead of "annual Rent charged". Commenter 3 suggests that the allowable methodologies to determine Maximum Market Rent in a development that is one-hundred percent restricted are too broad and provide excessive discretion to the HFC User. Commenter 3 also recommends adding specific parameters to the rule for the market study and leasing survey methods, for example, it was suggested that Class C properties should not be compared to Class A properties and that Fair Market Rents are not suitable to use for small areas because they are not sufficiently localized.

STAFF RESPONSE: The Department did not accept Commenter 1 recommendation to include the term, "average the rent charged as of December 31" as statute does not allow for an average when calculating the difference between the annual Rent charged for each restricted unit and the estimated annual Maximum Market Rent that could be charged. While staff agrees that added specificity could be beneficial in the methodologies for estimating Maximum Market Rent, the suggestions by Commenter 3 likewise add ambiguity; some of the suggested terms, like Class C and Class A properties are not defined terms. Additionally, to add greater specificity at this point in the rulemaking process would not have allowed the public to make comment on those additions. Staff will proceed with the rule as is, but with the understanding that as the rule is implemented and Audit Reports are received, it will evaluate actual report submissions of HFC Developments that are one hundred percent restricted to identify the challenges in estimating Maximum Market Rents and if any additional parameters will be needed.

Rule Section §10.1204(3)(L)(i)(I)

COMMENT SUMMARY: Commenters 1 and 4 submitted the exact same comments and they are requesting to add new language regarding the timing of submission of the first annual Audit Report and Rent Reduction calculation for Developments that were acquired prior to May 28, 2025, which undergo refinancing etc.

STAFF RESPONSE: The Department has included the new language in the rule to add clarity to the timing of reporting requirements.

Rule Section §10.1204(3)(L)(ii)(II)

COMMENT SUMMARY: Commenters 2 and 9 appreciate that the rule addresses the treatment of voucher holders for purposes of the Rent Reduction calculation. Commenter 3 suggests that only including the tenant paid portion of rent for a voucher holder in the Rent Reduction Calculation is problematic because this would allow federal subsidies to be counted toward the requirement that 50% of property tax savings be used to lower rents and shifts responsibility for funding rent reductions from the User to the federal government.

STAFF RESPONSE: The Department staff acknowledges Commenters 2 and 9 in support of how voucher holder rent is used to calculate the rent reduction. Regarding Commenter 3's concern, staff would like to clarify that not including the voucher holder's rental assistance amount and only including the voucher holders tenant paid portion of rent results in a deeper rent saving for households. Excluding the voucher holder's rental assistance amount means it will not be counted toward the Development's 50% property tax saving calculation. For example, if a voucher holder tenant pays $300 per month toward their rent and the rental assistance payment of rent is $1,000, then the rental assistance payment of $1,000 per month would be excluded for purposes of calculating the Rent Reduction.

Rule Section §10.1204(3)(L)(i)(II)(-b-)

COMMENT SUMMARY: Commenter 3 suggested replacing the word "charged" with "that would be charged."

STAFF RESPONSE: Staff has made the recommended revision.

Rule Section §10.1204(3)(L)(i)(III)

COMMENT SUMMARY: Commenter 1 and Commenter 3 suggested adding clarifying language to align with statute when there are multiple taxing jurisdictions.

STAFF RESPONSE: Staff accepted the suggestion as it adds clarity to the rule.

Rule Section §10.1204(3)(L)(ii)(II)

COMMENT SUMMARY: Commenter 10 suggests deleting the first sentence of this section because the first sentence is repetitive and possibly conflicting with the definition of Rent Reduction.

STAFF RESPONSE: Staff did not incorporate this change into the rule. The sentence adds clarity, and the action required to complete the public benefit calculation.

Rule Section §10.1204(3)(L)(ii)(II)(-a-)

COMMENT SUMMARY: Commenter 5 suggests, the average rent charged for market rate units, and the average rent for restricted units should be used to reflect an accurate public benefit test. Commenter 5 indicates the maximum permitted rent for restricted units may be much higher than the average restricted rent the development is actually charging. Using the permitted rent instead of the average rent charged for restricted units may inflate the rents and not accurately reflect the Rent Reduction calculation. Commenter 10 recommends replacing "maximum permitted Rent" with "advertised rent" because the language penalizes a property that offers an advertised rent below what is permitted in the Regulatory Agreement. Commenter 10 also suggests the current language as drafted would be punitive and discourages affordability. Commenter 8 suggests that the first public benefit test calculation be based on when the exemption was received and not when the Development was acquired by the HFC. For example, a Development acquired in December 2024 but lacks the exemption would not have to complete the public benefit determination until 2026.

STAFF RESPONSE: The Department declines comments from Commenters 5 and 10, as HB 21 specifies that the public benefit calculation is on charged rent. The rent that could be charged on a vacant Restricted Unit is the permitted rent limit. In response to Commenter 8, staff has added an additional example to the rule in §10.1204(3)(L)(ii)(I)(-c-) regarding when a HFC development is acquired and when the HFC User must report.

Rule Section §10.1204(3)(L)(ii)(IV)(-a-)

COMMENT SUMMARY: Commenter 3 would like clear guardrails added for the escalation factor to remove unnecessary discretion.

STAFF RESPONSE: The Department appreciates Commenter 3's concerns regarding the calculation of escalation factors; however, the Department believes that most appraisal districts publish or will provide the necessary values that HFC Users needs to complete the public benefit calculation. The Department will also post the Public Benefit Test Owner Certification form along with the Summary, to ensure transparency of its review of all aspects of the submitted Audit Reports. The Department will review all 2026 Audit Reports and based on submissions may initiate new rule making to provide more specific parameters in establishing escalation factor amounts.

Rule Section §10.1204(3)(L)(ii)(IV)(-b-) and (-c-)

COMMENT SUMMARY: Commenter 3 would like the language to prioritize the use of officially published appraisal district values when determining property tax appraisals and only reserve alternative methods for cases in which no published appraisal district valuation is provided.

STAFF RESPONSE: Staff updated the rule to reflect these changes.

Income and Rent Calculations

Rule Section §10.1205(5)

COMMENT SUMMARY: Commenter 8 requests that in lieu of verifying income and assets, that HFC Users be allowed to use the "Verification of Income" statement. If not fully approved, at least allow the form to be used for the 2025 tax year because collection of the full verification of income from an in-place tenant would be very challenging for Sponsors.

STAFF RESPONSE: The Department did not accept the suggested change as the "Verification of Income" statement referred to in some HFC Regulatory Agreements does not verify, or document required income and assets to demonstrate a household eligible for a Restricted Unit.

STATUTORY AUTHORITY. The new rules are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

§10.1201. Purpose and Applicability.

The purpose of this Subchapter is to:

(1) Establish rules governing Developments owned or sponsored by a Housing Finance Corporation (HFC) that are subject to Sections 394.9026 and 394.9027 of the Texas Local Government Code.

(2) Enable the Department to communicate with Responsible Parties and persons with an interest in the Development, regarding the results of the Audit Report.

(3) Establish qualifications for Auditors and reporting standards and formats.

(4) Implement compliance requirements, tenant protections, and affirmative marketing requirements, as required by Sections 394.9026 and 394.9027 of the Texas Local Government Code.

(5) This rule is not applicable to a Development that is a recipient of Federal Low Income Housing Tax Credits. For purposes of this rule, a recipient of Federal Low Income Housing Tax Credits is any Development or HFC User that has received a Commitment Notice, or Determination Notice for an allocation of Federal Low Income Housing Tax Credits from the Department. During the time the Development is under construction or Rehabilitation, it will be considered to be a recipient of Housing Tax Credits, unless more than five years have passed since the Commitment Notice or Determination Notice was issued and the Development Owner has not yet entered into the Land Use Restriction Agreement. Upon conclusion of the construction or Rehabilitation, the Development must have an executed Land Use Restriction Agreement (LURA) with the Department that covers all the Residential Units. Then, the Development is considered to be a recipient of Federal Low Income Housing Tax Credits for the term of the LURA between the Department and the Development Owner.

§10.1202. Definitions.

The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in the subchapter shall have the meaning defined in Chapter 2306 of the Texas Government Code, Chapter 394, Texas Local Government Code, and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Audit Report--A report required by Section 394.9027 of Texas Local Government Code completed by an Auditor in a manner and format prescribed by the Department.

(2) Auditor--An individual who is an independent auditor or a compliance expert with an established history of providing similar audits on housing compliance matters, meeting the criteria established herein.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) Chief Appraiser--The chief appraiser of any appraisal district in which a Development is located.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437(f)).

(7) Housing Finance Corporation (HFC)--A public, nonprofit corporation created under Chapter 394, of the Texas Local Government Code. This includes an instrumentality created by the HFC.

(8) Housing Finance Corporation User or HFC User--A Housing Finance Corporation; or for a Multifamily Residential Development that is not owned directly by a Housing Finance Corporation, a public-private partnership entity or a developer or other person or entity that has an ownership interest or a leasehold or other possessory interest in a Multifamily Residential Development financed or supported by a Housing Finance Corporation.

(9) HUD--The United States Department of Housing and Urban Development.

(10) Lower Income Housing Unit--A residential unit reserved for occupancy by an individual or family earning not more than 60 percent of the area median income, adjusted for family size.

(11) Maximum Market Rent--With respect to a particular Restricted Unit Type, the average annual Rent charged for all non-income-restricted units in the Development having the same or substantially similar floor plan as the Restricted Unit Type.

(12) Middle Income Housing Unit--A residential unit reserved for occupancy by an individual or family earning not more than 100 percent of the area median income, adjusted for family size.

(13) Moderate Income Housing Unit--A residential unit reserved for occupancy by an individual or family earning not more than 80 percent of the area median income, adjusted for family size.

(14) Multifamily Residential Development--(also called Development) Any residential development consisting of four or more residential units intended for occupancy as rentals, regardless of whether the units are attached or detached. If multiple Developments are owned by the same HFC with the same HFC User under one single-purpose ownership entity, are within the same jurisdictional boundaries pursuant to Section 394.031 of the Texas Local Government Code, and are bound under one Regulatory Agreement, it will be considered as one singular Multifamily Residential Development.

(15) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, Deed Restriction, or any similar restrictive instrument that is recorded in the real property records of the county in which the Development is located or an agreement between the HFC and HFC User which is not recorded in the real property records.

(16) Rent--Any recurring fee or charge a tenant is required to pay as a condition of occupancy, including a fee or charge for the use of a common area, amenity, or facility reasonably associated with the residential rental property. The term does not include fees for services or amenities that are optional for a tenant, such as pet fees and fees for storage or covered parking. For Developments acquired prior to May 28, 2025, starting with reporting year 2026, the Development must comply with this rent definition.

(17) Rent Reduction--The projected difference between the annual Rent charged for a Restricted Unit and the Maximum Market Rent that could be charged for that same unit without the income restrictions.

(18) Responsible Parties--The Housing Finance Corporation that owns or is associated with the Development, the Housing Fi-

nance Corporation User of the Development, the Texas Comptroller, and the governing body of the Sponsor.

(19) Restricted Unit--A residential unit in a Multifamily Residential Development that is reserved for or occupied by a household meeting certain income limitations established in the Regulatory Agreement, in accordance with Section 394.9026(c)(1) of Texas Local Government Code, with Rent for such unit restricted as set forth in these rules. Restricted Units may float in a Development and need not be permanently fixed.

(20) Sponsor--A municipality, county or collection of municipalities and counties that causes a corporation to be created to act in accordance with Chapter 394, of the Texas Local Government Code.

(21) Substantially Similar Floor Plan--Means a Unit Type.

(22) Tax Year--Is a calendar year. For the purposes of all provisions within the rule, the terms "Tax Year" and "Calendar Year" shall have the same meaning and shall be interchangeable.

(23) Unit Type--Means the type of unit determined by the number of bedrooms.

(24) Very Low Income Housing Unit--A residential unit reserved for occupancy by an individual or family earning not more than 50 percent of the area median income, adjusted for family size.

§10.1203. Reporting Requirements.

The following reporting requirements apply to all Housing Finance Corporation (HFC) Multifamily Residential Developments claiming an ad valorem tax exemption under Section 394.905 of the Texas Local Government Code and to which Sections 394.9026 and 394.9027 of Texas Local Government Code apply, regardless of when approved or acquired.

(1) All Multifamily Residential Developments owned by an HFC as defined by this subchapter must submit an Audit Report as described in this paragraph.

(A) No later than June 1 of each year, with approved extensions as described in subparagraph (B) of this paragraph each HFC User must submit to the Department an Audit Report from an Auditor, obtained at the expense of the HFC User. The Audit Report determines whether the Multifamily Residential Development was in compliance with Sections 394.9026 and 394.9027 of the Texas Local Government Code for the immediately preceding Tax Year.

(B) Audit Report extension requests must be submitted to hfc@tdhca.texas.gov no later than May 1 of each reporting year. The request for an extension must include an explanation of the reason and the requested submission date, not to exceed 60 days from the June 1 reporting deadline. Within seven calendar days of receiving the request, the Department will respond to the request and issue a determination of approval or denial for an extension.

(C) Prior to submission of the first Audit Report for a Development, the HFC User must provide the Auditor with a copy of the following:

(i) Underwriting assessment as published on the HFC website and as conducted pursuant to Section 394.905(b)(3) of Texas Local Government Code, if applicable;

(ii) Resolution or order required by Section 394.031(d) and Section 394.037(a-1)(2), if applicable;

(iii) Board meeting minutes, public hearing transcript or adopted resolution, or other document evidencing approval of the Development, if applicable;

(iv) Regulatory Agreement; and

(v) A one-time exemption application submitted to the Texas Comptroller's office.

(vi) The Auditor will include these with the first Audit Report. These items being submitted are the responsibility of the HFC User; if the Auditor indicates in their Audit Report that the HFC User has not provided the documents required in this subparagraph, a compliance finding will be issued.

(D) The first Audit Report for a Development must be submitted no later than June 1 of the Tax Year following:

(i) The date of acquisition by the HFC for an occupied Development; or

(ii) The date a newly constructed Development first becomes occupied by one or more tenants.

(iii) For a Development acquired prior to May 28, 2025, the first Audit Report must be submitted no later than June 1, 2026.

(2) A Multifamily Residential Development is not entitled to an ad valorem tax exemption for any Tax Year in which the HFC User has not timely submitted the full Audit Report by the deadline, with approved extensions as required by Section 394.9027 of the Texas Local Government Code.

(3) All Audit Reports must comply with subparagraphs (A) to (C) of this paragraph:

(A) be for at least the full prior reporting year ending December 31 and include a rent roll for the same period.

(B) include contact information for all Responsible Parties.

(C) be completed and submitted in the Department prescribed manner.

(4) The HFC User must submit an annual service fee to the Department by June 1 of each year of the greater of $35 per Restricted Unit that is included in the sample described in §10.1204(2) of this subchapter or $500 for Developments subject to an Audit Report. This fee shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. This fee, when received in connection with an Audit Report, is earned and is not subject to refund.

(5) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website including a detailed description of any noncompliance with this rule found by the Auditor and indication that such notice does not constitute a final determination. A copy of the summary of the Audit Report will also be provided to all Responsible Parties.

(6) If noncompliance is identified by the Auditor in the Audit Report, no later than 120 days after receipt of the Audit Report by the Department, the Department will issue a monitoring report notice and make it available on the website. A copy of the monitoring report will also be provided to all Responsible Parties.

(A) The monitoring report will include a detailed description of any noncompliance with Section 394.9026(c) and at least one option for corrective action to resolve the noncompliance. The HFC User will be given 180 days from the issuance of the monitoring report notice to correct the noncompliance. At the end of the 180 days, the Department will post a final report on its website.

(B) If there is any noncompliance with Section 394.9026(c) that is not corrected within the 180-day corrective action period, the Department will notify the Responsible Parties, and Chief

Appraiser, and the Texas Comptroller in writing and recommend a loss of ad valorem tax exemption under Section 394.905 Texas Local Government Code respective to the Tax Year being Audited.

(7) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules. HFC Users may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the HFC User must engage a new Auditor for the submission of at least two annual Audit Reports before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted though the Departments File Serve System. To obtain access to this system the HFC User or Auditor must request access by emailing hfc@tdhca.texas.gov.

§10.1204. Audit Requirements.

Multifamily Residential Developments must comply with the Audit Report requirements identified in this section:

(1) If the Multifamily Residential Development was acquired prior to May 28, 2025, the Development must comply with all requirements by January 1, 2026, with the exception of paragraphs (3)(B), (3)(C), (3)(J), (3)(K) and (3)(L) of this section, which must be met no later than the end of the 10th Tax Year following May 28, 2025, or the end of the first Tax Year following a Tax Year in which the Development was refinanced, fee or leasehold title was conveyed or a sale or transfer of a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User occurred. For example, 1204(1): If a Development is refinanced on July 15, 2027, the tax year would be 2027, and the second tax year after refinance would be 2028; so the previous Audit Report requirements would be due on June 1, 2028. The above would no longer be exempt for Tax Year 2028 and should be included in the Audit Report submitted June 1, 2029. For purposes of this rule, refinancing of construction loans, whether by virtue of conversion from construction phase to permanent phase or replacement of construction, bridge, or short-term (less than 5 years) financing with permanent financing, will not be considered a refinancing.

(2) The Auditor must use the Department's HFC monitoring forms made available on the website. The review performed by the Auditor may be completed either onsite or electronically. Original records must be made available to the Auditor. The file sample used by the Auditor must contain at least 20% of the total number of Restricted Units for the Development, but no more than a total of fifty (50) household files. The selection of Restricted Units should include at least 75% of households that are newly moved into the Development, but also include at least 10% of households that have recertified, or if 10% of households have not recertified, then units that have recertified. For Developments that are leasing up and not yet fully occupied the percentages reflected in this paragraph should be applied to all occupied Restricted Units.

(3) The Auditor will ensure Development meets the following requirements and will identify any deficiencies in the Audit Report:

(A) The HFC User will provide the Auditor with supporting documentation that the Auditor will submit with the Audit that:

(i) confirms that the Multifamily Residential Development is within its jurisdictional boundaries pursuant to Section 394.031 of the Texas Local Government Code such as a GIS boundary map, recorded legal description, local-government resolution, or other source approved by TDHCA.

(ii) confirms that a Multifamily Residential Development that is outside of the Sponsor's jurisdiction has been approved in accordance with Section 394.031(d) of Texas Local Government Code. For a Development not located within the Sponsor's jurisdictional boundaries, that was acquired on or before September 1, 2025, this requirement does not apply until January 1, 2027, after which this documentation must be submitted.

(B) The Restricted Units in the Development have the same unit finishes and equipment and access to community amenities and programs as residential units that are not income restricted. Minor variations in floorplans, colors, and design are acceptable deviations and will not be noted as noncompliance; significant variations in floor plans and square footage will be considered noncompliance. The Auditor may rely on a written certification and photographic evidence from the HFC User to support that a Development has equitable finishes, equipment and access to amenities and programs. Such certification must be submitted with the Audit Report.

(C) The percentage of Restricted Units in each Unit Type and each category of income restriction in the Development must be the same or greater percentage as the percentage of each Unit Type of units that are reserved in the Development as a whole.

(D) Occupants of Restricted Units are required to recertify the income of the household using a Department-approved Income Certification form at lease renewal. If a household exceeds the income limit at annual income recertification, the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code will be implemented in the following manner:

(i) Where the household's income exceeds the AMI as designated, the household can be redesignated to the next AMI level in the Regulatory Agreement. The next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1204(2): Development Regulatory Agreement includes units at 80% and 120%, Unit 101, a one-bedroom Unit Type, is designated as 80%. At the annual income recertification, the household income was determined to exceed 80% AMI but was less than 120% AMI. The unit should be redesignated as 120% at the time the determination is made and the next available one-bedroom Unit Type in the Development must be reserved for and occupied by an 80% household. At the time of determination that the unit should be 120%, with proper notification, the household rent may increase to the new rent designation.

(ii) Where the household's income exceeds the AMI as designated and the household is designated at the highest AMI in the Regulatory Agreement, the next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1204(3): Development Regulatory Agreement includes units at 80% and 120%. Unit 201, a two-bedroom Unit Type is designated as 120%. At the annual income recertification, household income was determined to exceed 120% AMI, the highest AMI in the Regulatory Agreement. The next two-bedroom Unit Type in the Development, must be reserved for and occupied by a 120% household. Unit 201 retains the 120% status until such time that the Available Unit Rule, as described here, is complied with or violated.

(E) The Development must affirmatively market available Restricted Units and non-Restricted Units to households participating in the Housing Choice Voucher program and notify local housing authorities of their acceptance of voucher program tenants. Evidence of this must be provided to include, but not be limited to, notifications to the local housing authority, advertising that may be posted at the local housing authority properties, or mailings that were sent to local housing authority households.

(F) The home page of the internet website for the Development must include information about the Development and its compliance with Section 394.9026(c)(7), Texas Local Government Code, along with its policies on the acceptance of Housing Choice Voucher holders or any other rental assistance.

(G) Multifamily Residential Developments cannot refuse to rent to an individual or family solely because the individual or family participates in a Housing Choice Voucher program.

(H) Multifamily Residential Developments cannot require a minimum income standard for individuals or families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(I) The Auditor will review the Development's form of tenant lease, lease addendums and leasing policies to ensure the Development meets the following requirements and will report any deficiencies found in the Audit Report. Each residential lease agreement for a Restricted Unit must provide the following:

(i) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization;

(ii) The landlord may only choose to not renew the lease if the tenant: committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that disrupt the livability of the Development, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related Development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(iii) To non-renew a lease, the landlord must serve a written notice of proposed nonrenewal on the tenant no later than the 30th day before the effective date of nonrenewal.

(iv) Tenants may not waive these protections in a lease or lease addendum.

(J) Income Restrictions. A Development seeking an ad valorem tax exemption must meet the requirements of either clause (i) or (ii) of this subparagraph.

(i) at least 10% of the residential units are reserved as Lower Income Housing Units and at least 40% of the residential units are reserved as Moderate-Income Housing Units or;

(ii) at least 10% of the residential units are reserved as Very Low-Income Housing Units and at least 40% of the residential units are reserved as Middle Income Housing Units.

(K) Rent Restrictions:

(i) Monthly Rent for Restricted Units may not exceed thirty percent (30%) of the imputed household income limitation for the unit, adjusted for family size, as determined by HUD. To determine the adjustment for family size, the Auditor will defer to the Development's Regulatory Agreement and/or other operative document. In the event that the adjustment for family size is unclear, it is the responsibility of the HFC User to provide the Auditor support that the manner in which the adjustment was applied is acceptable by the HFC.

(ii) Notwithstanding the foregoing, if a Restricted Unit is occupied by a household with a Housing Choice Voucher, and the payment standard for that voucher is less than the monthly Rent for the Restricted Unit established pursuant to clause (i) of this subparagraph, the household may be required to pay the difference between the payment standard and the monthly Rent.

(L) Rent Reduction Comparison. It the sole responsibility of HFC User to:

(i) Identify the difference between the annual Rent charged for each Restricted Unit and the estimated annual Maximum Market Rent that could be charged for such units if they were not restricted. For Developments where all of the Units are Restricted Units, the HFC User must provide evidence of reasonably comparable Maximum Market Rents, which may be based on market studies, leasing surveys, Fair Market Rents as published by HUD, or other methods acceptable to the Department.

(ii) The Audit Report shall include the following public benefit test:

(I) The Rent Reduction for all Restricted Units at the Development in the preceding Tax Year must not be less than 50% of the amount of the estimated ad valorem taxes that would have been imposed on the Development in the same Tax Year if the Development did not receive the exemption.

(-a-) For a Development acquired by an HFC the first Audit Report that will include the rent reduction test is for the first Tax Year after the acquisition Tax Year. Example 1204(4): Development acquired by an HFC on July 24, 2025. The acquisition tax year would be 2025, and the second tax year after acquisition would be 2026, so the first Audit Report would be due on June 1, 2026. The first rent reduction test would be for Tax Year 2026 on Audit Report submitted June 1, 2027.

(-b-) For newly constructed Developments the first Audit Report that will include the rent reduction test for the first Tax Year after the Tax Year in which construction first begins. Example 1204(5): An Multifamily Residential Development begins new construction on February 1, 2026. The first tenant occupies the Development on September 15, 2027. The first Audit Report is due on June 1, 2028, and must include the rent reduction test for reporting year 2027.

(II) The Rent Reduction calculation for each Restricted Unit must be the difference between the Maximum Market Rent for the same Unit Type and the Rent on the rent roll for the Rent for the Restricted Unit. Restricted Units occupied by households with Housing Choice Vouchers or rental assistance will utilize the tenant-paid portion of the Rent for the Rent Reduction calculation. Units that are vacant for any portion of the Tax Year will be considered as follows for the for the purposes of the Rent Reduction calculation:

(-a-) for a Restricted Unit the maximum permitted Rent for such unit under the Regulatory Agreement will be utilized for all months of vacancy, and

(-b-) for any market rate unit the Maximum Market Rent that would be charged for that Unit Type will be utilized in the months that the Unit was vacant.

(III) If the Rent Reduction calculation demonstrates that the Rent Reduction was less than 50% of the amount of the estimated ad valorem taxes that would have been imposed on the Development for the Tax Year, the HFC User must pay each taxing jurisdiction(s) authorized to impose ad valorem taxes applicable to the

Development the pro rata share of the Rent Reduction shortfall; the pro rata amount will be based on each taxing authorities share of the combined aggregate published millage rate of all applicable taxing authorities. The Rent Reduction shortfall is an amount equal to 50% of the estimated ad valorem tax amount minus the total Rent Reduction for the Tax Year. The Auditor Report must include evidence of any payments made by the HFC User to each taxing jurisdiction(s) authorized to impose ad valorem taxes applicable to the Development.

(IV) In estimating the ad valorem taxes that would have been imposed, the HFC User may use, but is not limited to, the following:

(-a-) For occupied Developments acquired by an HFC, estimated ad valorem taxes should generally be based on the actual taxes applicable no earlier than the Tax Year prior to the acquisition by the HFC with a stated escalation factor.

(-b-) For occupied Developments acquired by an HFC which already receive a property tax exemption, estimated ad valorem taxes must be based on the public appraisal district value. In the event that the appraisal district does not provide a value, the following alternative valuation methods may be used: an independent appraisal, third-party property tax report, or other means acceptable to the Department.

(-c-) For new construction, estimated ad valorem taxes must be based on public appraisal district value. In the event that the appraisal district does not provide a value, the following alternative valuation methods may be used: an independent appraisal, third-party property tax report, or other means acceptable to the Department.

(4) A Development acquired by an HFC after May 28, 2025, must comply with all requirements in this Subchapter no later than the end of the Tax Year following the year of acquisition.

(5) The Auditor must maintain monitoring records and papers for each Audit Report for three years and must provide the Department and/or the Chief Appraiser a copy of their monitoring records upon request.

§10.1205. Income and Rent Calculations.

(a) Annual Income for a household occupying a Restricted Unit shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (HUD), using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3 as amended from time to time by publication in the Federal Register.

(b) For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as basic pay allowance for housing shall be disregarded with respect to any qualified building.

(1) The term "qualified building" means any building located:

(A) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(B) in any county adjacent to a county described in subparagraph (A) of this paragraph.

(2) The term "qualified military installation" means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(c) Income and rent limits will be derived from data released by HUD.

(d) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted.

(e) To document compliance, HFC Users must maintain sufficient documentation to support income eligibility of households which includes an application that screens for all includable sources of income and assets, first hand or third party documentation of income and assets and an Income Certification form signed by all adults in the household.

§10.1206. Penalties.

Noncompliance with Sections 394.9026 and or 394.9027 of the Texas Local Government Code, or this Subchapter, continuing after all available notice and corrective action periods, will result in a Department report to the Texas Comptroller and Chief Appraiser, and recommendation of loss of the ad valorem exemption for the Development for the Tax Year in which the Development that is owned by a HFC is determined by the Department based on an Audit Report to not be in compliance with the requirements of Sections 394.9026 and 394.9027.

§10.1207. Options for Review.

(a) The HFC User must attempt to address any issues of noncompliance identified in the Audit Report with the Auditor, prior to submission of the Audit Report to the Department.

(b) During any applicable corrective action period, the HFC User may appeal any noncompliance issued as provided for in §1.7 of this title (relating to Appeals). The filing of an appeal does not extend or suspend the 180-day corrective action period, unless the Department authorizes an extension in writing. The HFC User and Auditor, as applicable, must provide all documentation requested by the Department within ten calendar days prior to the meeting.

(c) An HFC User may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).

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 6, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §20.4

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §20.4 Eligible Single Family Activities, which applies to the Single Family Programs Umbrella Rule, with changes to the proposed text published in the December 26, 2025 issue of the *Texas Register* (50 TexReg 8460). The rule will be republished. The purpose of the amendment is to specify how households receiving benefits through Single Family Programs will have those benefits determined based on the household members' legal status. 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries outlines the requirement that all Single Family, Community Affairs and Homelessness programs subrecipients of the Department must confirm legal alien status for program participants in order to receive assistance. This is to ensure that an alien who is not a qualified alien does not receive a federal public benefit.

While §1.410 provides for the requirement to perform a review for alien status for program participants, it does not specify how each distinct Department program will calculate benefits based on those determinations, because each program is different enough in its eligible activities that such applicability needs to be tailored to the specific programs. The changes in this action provide that necessary specificity for the Single Family programs.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: how benefits will be determined in a specific Department program as it relates to alien status and the implementation of 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

2. The amendment may require additional work that may create new employee positions, but those costs are federal eligibly reimbursable expenses under the applicable program grants. The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but clarifying an existing regulation.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law and to the extent applicable to state programs, brings state programs into consistency with federal law.

7. The amendment increases the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities other than to the extent that such entities receive federal funds to operate Department programs subject to the rule. There may be several hundred entities in the state at any given time receiving funds for such programs. The added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal funds the entity is receiving for the applicable programs. No entities will bear any unreimbursable expenses to comply.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed section would be a rule that provides clarity in implementing

10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. There may be limited economic costs to individuals required to comply with the amended section; a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. Comment was received from six commenters: 1) Texas Appleseed, 2) El Paso Center for Children, 3) Texas Representative Mary E. Gonzalez, 4) Texas Housers, 5) Texas Council on Family Violence, and 6) Texas Homeless Network.

Comment Requesting for Rule to be Withdrawn.

Multiple commenters requested that the rule be withdrawn.

Commenters (1), (3), (4) and (6) point out that the US Department of Housing and Urban Development (HUD) has indicated that further guidance will be released from both HUD and Department of Homeland Security (DHS) and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released.

Commenters (3), (4) and (6) note that the rules will undermine access to critical housing and homelessness services under the guise of immigration compliance and that application of these policies to the affected programs is unnecessary, burdensome and harmful to Texans in need. Commenter (4) observes that such policies would also negatively impact public health.

Commenter (1) notes that HUD had not yet issued an economic impact analysis of its guidance, and that in recent guidance the US Department of Health and Human Service (USHHS) did consider its redefining of a federal public benefit to be an economically significant regulatory action. Commenter (1) notes that they believe the amount estimated by USHHS ($100 million nationally) is likely unrealistic and the cost would be higher. They question how TDHCA determined that there would be no economic impacts in the preambles to the rule. In their comment they describe several areas of potential costs including the costs to the households to obtain the required documentation, and the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule.

Commenters (1), (3), (4) and (6) are also concerned that the delays that will exist by having to obtain specific documentation will mean that households may be denied assistance, particularly with homeless assistance programs that are designed to address urgent and time-sensitive needs and in emergency rental assistance where a delay can result in an eviction. Commenter (4) expands on the issue of delays estimating that such verifications could take an average of 17 federal workdays.

Commenter (1) also notes that even when PRWORA was initially passed in 1996, it took several years to pass applicable rules and set up verification systems; state and local governments needed time to roll this out. They note that state and local governments should not be expected to produce verification systems that comply with regulations that do not yet exist. Commenters (3) and (4) note the administrative burden being placed on local governments, nonprofits and program operators that lack infrastructure and staffing to implement the processes.

Commenter (4) notes that according to the National Housing Law Project a benefit granting agency that improperly applies PRWORA's verification requirements could be subject to discrimination claims. They note that to their knowledge Texas is so far the only state to update rules ahead of additional guidance needed for implementation.

All of these reasons above support why commenters are requesting that the adoption of this rule be deferred until further federal guidance has been issued.

Staff Response: Staff does not recommend withdrawing or deferring the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. While we do expect federal agencies may release further detail, we have already been directed through 2025 federal funding agreements and guidance to ensure the applicability of PRWORA. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly become compliant with that guidance. The TDHCA rule changes are specific enough to reflect our adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. Further, per the HUD notice of November 26, 2025, states are not relieved from the requirements to ensure that all relevant programs are in compliance with PWRORA. HUD places the burden on TDHCA to ensure compliance with PWRORA, even before "new guidelines" are issued by HUD. No change is recommended to the rule in response to this comment.

As it relates to the economic impact, TDHCA has revised this preamble to provide greater specificity on this issue. It should be noted that Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law. Further, as it relates to the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule, the added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal or state funds the entity is receiving for the applicable programs. No entities will bear any non-reimbursable expenses to comply.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (4), (5) and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They request that In line with recent changes made to 10 TAC §1.410 in response to public comment, the final version of these proposed rules must explicitly exempt verification requirements for populations covered by VAWA or FVPSA to protect survivors of family violence in accordance with federal law.

Commenter (5) notes that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenters (5) and (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (5) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees "ensure that no person is denied services because of actual or perceived immigration status."

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Staff Response: Consistent with the changes made in 10 TAC §1.410 TDHCA will specify in the amended rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Exception for Nonprofits.

Commenter (5) requests that exemptions for nonprofit providers should be made because survivors routinely seek supportive nonprofit services and their information should be protected.

Staff Response: The exemption for VAWA or FVPSA covered populations will be applicable to partially address this issue. Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients- because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute.

Administrators that are nonprofit entities- including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment. No change is recommended to the rule in response to this comment.

Request for Operational Guidance.

Commenter (2) requested that TDHCA provide detailed implementation guidance prior to enforcement, clearly describing what constitutes emergency situations, that requirements be aligned with federal ESG or HUD guidance. Commenter (2) requests additional clarification be made in the rule regarding the practical implementation and administrative requirements particularly for vulnerable households.

Commenter (2) asks that the amendment address Intake and eligibility workflows, including Coordinated Entry processes; Program participant file requirements and documentation standards; timeliness of assistance delivery; staff training and administrative capacity; data collection, privacy, and record retention obligations; what types of documents are acceptable; what documentation requirement will be applicable to victims of domestic trafficking or are former foster children who were never provided with copies of their birth certificates or other forms of identification; how mixed-status households should be handle; whether self-attestation will be allowed in limited or emergency circumstances; and how eligibility determinations should be documented for monitoring purposes.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide guidance as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. Federal guidance provides for what constitutes an emergency situation, but TDHCA will provide in materials, web posts, and training more granular guidance on this as well. TDHCA will also provide on its website and to subrecipients what types of documents are acceptable, what forms should be used for documenting the process has been followed, and how mixed-status households should be handled. Other than the exceptions that will be allowable for emergency assistance (federally excepted), and for populations excepted in the rule that are protected under VAWA or FVPSA, self-attestations will not be allowed. As for some of the other requested guidance, TDHCA will not guide - or limit - how any particular subrecipient decides to adjust their operations or processes to implement these requirements. For instance it is up to each subrecipient to decide how it will integrate this policy into intake and eligibility workflows and the coordinated entry process. No change is recommended to the rule in response to this comment.

Request for Phased Implementation.

Commenter (2) requests that a phased implementation period be provided after final adoption. They also requested additional funding to absorb the labor costs for additional administrative burden.

Staff Response: TDHCA is unable to phase the implementation of this rule. Upon its adoption, subrecipients will be required to implement and adhere to this rule. Current subrecipients may use their administrative funds under the awards they receive to cover the costs of implementing this rule, which are fully eligible costs. No change is recommended to the rule in response to this comment.

Concern for Barriers to Access.

Commenter (2) noted that they are concerned that the proposed changes could create barriers for individuals who are otherwise eligible for services but face challenges obtaining documentation due to homelessness, disability, trauma, or language barriers. They encourage TDHCA to include safeguards that ensure: Non-discriminatory intake practices and clear communication to participants about eligibility requirements.

Staff Response: All subrecipients have the ability to institute non-discriminatory intake practices, and provide clear communication to participants about eligibility requirements. No change is recommended to the rule in response to this comment.

Appeals.

Commenter (4) notes that the rule says appeals will be addressed through each program's rules, but they did not see that the rules address the need for an appeals process specific to legal status verification.

Staff Response: Staff will add to the rule a requirement that each subrecipient must offer an opportunity for a household to appeal a legal status determination consistent with the appeals policy they utilize for other household eligibility appeals processes.

Training and Technical Assistance.

Commenter (2) requested that TDHCA offer technical assistance and written FAQs for subrecipients, and that TDHCA clearly outline monitoring expectations related to §1.410 compliance.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide training and technical assistance, including monitoring expectations, as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. No change is recommended to the rule in response to this comment.

Conditional Assistance.

Commenter (2) requests that in light of delays that are experienced in seeking documentation from households, TDHCA allow conditional or temporary assistance while documentation is obtained.

Staff Response: Benefits under these rules are not permitted to be provided to persons without PRWORA eligibility, including temporary or conditional assistance. No change is recommended to the rule in response to this comment.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) Rehabilitation or new construction of Single Family Housing Units;

(2) Reconstruction of an existing Single Family Housing Unit on the same site;

(3) Replacement of existing owner-occupied housing with a new MHU;

(4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;

(5) Refinance of an existing Mortgage or Contract for Deed mortgage;

(6) Tenant-based rental assistance; and

(7) Any other single family Activity as determined by the Department.

(c) Implementation of Single Family Activities are subject to §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries).

(1) For Tenant-based rental assistance, each Household member must be evaluated prior to submission of the activity to the Department for review in accordance with §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries). Assistance for mixed status Households must be prorated utilizing the method for proration of assistance described in 24 CFR §5.520(c)(2) related to prorated assistance for a Section 8 Housing Choice Voucher tenancy.

(2) For assistance provided as an area benefit or limited clientele activity under the Colonia Self-Help Centers Program related to CDBG, area benefit activities and limited clientele activities are exempt from the verification requirements in §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries) as individual eligibility is not required to be established for these Activity types.

(3) For any other single family housing Activity, any Household member who has or will have an ownership interest in the assisted housing upon completion of the Activity must be verified to be eligible in accordance with §1.410 of this Part (relating to Determination of Alien Status for Program Beneficiaries), prior to submission of the Activity to the Department for review.

(4) Populations that are documented by the Administrator as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance.

(5) Administrators must include in their operational processes a means by which a household may appeal a determination of their eligibility under this subsection.

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

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Texas Department of Housing and Community Affairs
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10 TAC §20.6

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §20.6 Administrator Applicant Eligibility, which applies to the Single Family Programs Umbrella Rule, without changes to the text published in the December 26, 2025 issue of the *Texas Register* (50 TexReg 8462). The rule will not be republished. The purpose of the amendment is to specify how households receiving benefits through Single Family Programs will have those benefits determined based on the household members' legal status. 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries outlines the requirement that all Single Family, Community Affairs and Homelessness programs subrecipients of the Department must confirm legal alien status for program participants in order to receive assistance. This is to ensure that an alien who is not a qualified alien does not receive a federal public benefit.

While §1.410 provides for the requirement to perform a review for alien status for program participants, it does not specify how each distinct Department program will calculate benefits based on those determinations, because each program is different enough in its eligible activities that such applicability needs to be tailored to the specific programs. The changes in this action provide that necessary specificity for the Single Family programs.

Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program but relates to changes to an existing activity: how benefits will be determined in a specific Department program as it relates to alien status and the implementation of 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

2. The amendment may require additional work that may create new employee positions, but those costs are federal eligibly reimbursable expenses under the applicable program grants. The amendment does not generate a reduction in work that would eliminate any employee positions.

3. The amendment does not require additional future legislative appropriations.

4. The amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but clarifying an existing regulation.

6. The amendment does expand an existing regulation to provide additional requirements, however the expanded regulations are required to comply with federal law and to the extent applicable to state programs, brings state programs into consistency with federal law.

7. The amendment increases the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities other than to the extent that such entities receive federal funds to operate Department programs subject to the rule. There may be several hundred entities in the state at any given time receiving funds for such programs. The added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal funds the entity is receiving for the applicable programs. No entities will bear any unreimbursable expenses to comply.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed section would be a rule that provides clarity in implementing

10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. There may be limited economic costs to individuals required to comply with the amended section; a household that does not currently have access to documents that confirm their legal status may have to take steps to obtain copies of birth certificates, or other applicable documents and pay associated fees for those items.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period was held December 26, 2025, to January 26, 2026, to receive input on the proposed action. Comment was received from six commenters: 1) Texas Appleseed, 2) El Paso Center for Children, 3) Texas Representative Mary E. Gonzalez, 4) Texas Housers, 5) Texas Council on Family Violence, and 6) Texas Homeless Network.

Comment Requesting for Rule to be Withdrawn.

Multiple commenters requested that the rule be withdrawn.

Commenters (1), (3), (4) and (6) point out that the US Department of Housing and Urban Development (HUD) has indicated that further guidance will be released from both HUD and Department of Homeland Security (DHS) and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released.

Commenters (3), (4) and (6) note that the rules will undermine access to critical housing and homelessness services under the guise of immigration compliance and that application of these policies to the affected programs is unnecessary, burdensome and harmful to Texans in need. Commenter (4) observes that such policies would also negatively impact public health.

Commenter (1) notes that HUD had not yet issued an economic impact analysis of its guidance, and that in recent guidance the US Department of Health and Human Service (USHHS) did consider its redefining of a federal public benefit to be an economically significant regulatory action. Commenter (1) notes that they believe the amount estimated by USHHS ($100 million nationally) is likely unrealistic and the cost would be higher. They question how TDHCA determined that there would be no economic impacts in the preambles to the rule. In their comment they describe several areas of potential costs including the costs to the households to obtain the required documentation, and the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule.

Commenters (1), (3), (4) and (6) are also concerned that the delays that will exist by having to obtain specific documentation will mean that households may be denied assistance, particularly with homeless assistance programs that are designed to address urgent and time-sensitive needs and in emergency rental assistance where a delay can result in an eviction. Commenter (4) expands on the issue of delays estimating that such verifications could take an average of 17 federal workdays.

Commenter (1) also notes that even when PRWORA was initially passed in 1996, it took several years to pass applicable rules and set up verification systems; state and local governments needed time to roll this out. They note that state and local governments should not be expected to produce verification systems that comply with regulations that do not yet exist. Commenters (3) and (4) note the administrative burden being placed on local governments, nonprofits and program operators that lack infrastructure and staffing to implement the processes.

Commenter (4) notes that according to the National Housing Law Project a benefit granting agency that improperly applies PRWORA's verification requirements could be subject to discrimination claims. They note that to their knowledge Texas is so far the only state to update rules ahead of additional guidance needed for implementation.

All of these reasons above support why commenters are requesting that the adoption of this rule be deferred until further federal guidance has been issued.

Staff Response: Staff does not recommend withdrawing or deferring the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. While we do expect federal agencies may release further detail, we have already been directed through 2025 federal funding agreements and guidance to ensure the applicability of PRWORA. Should additional federal guidance be released that provides any greater specificity on how PRWORA should be applied to the programs, TDHCA will certainly become compliant with that guidance. The TDHCA rule changes are specific enough to reflect our adherence to the requirements of the federal funding agreements and to properly put program participants on notice, but still provide sufficient leeway for further guidance to be issued to our program participants should federal guidance be forthcoming. Further, per the HUD notice of November 26, 2025, states are not relieved from the requirements to ensure that all relevant programs are in compliance with PWRORA. HUD places the burden on TDHCA to ensure compliance with PWRORA, even before "new guidelines" are issued by HUD. No change is recommended to the rule in response to this comment.

As it relates to the economic impact, TDHCA has revised this preamble to provide greater specificity on this issue. It should be noted that Tex. Gov't Code §2001.0045(b) does not apply to the amendment because it is subject to the exception under §2001.0045(c)(4) which excepts amendments that are necessary to receive a source of federal funds or to comply with federal law. Further, as it relates to the costs to the organizations in time and resources to check for legal status documentation and otherwise implement the rule, the added work associated with checking for the required documents is expected to be minimal, as household documents are being gathered during an eligibility review already. However, to the extent that there are additional costs, all of those costs are eligible reimbursable administrative expenses from the federal or state funds the entity is receiving for the applicable programs. No entities will bear any non-reimbursable expenses to comply.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (4), (5) and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They request that In line with recent changes made to 10 TAC §1.410 in response to public comment, the final version of these proposed rules must explicitly exempt verification requirements for populations covered by VAWA or FVPSA to protect survivors of family violence in accordance with federal law.

Commenter (5) notes that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenters (5) and (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (5) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees "ensure that no person is denied services because of actual or perceived immigration status."

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Staff Response: Consistent with the changes made in 10 TAC §1.410 TDHCA will specify in the amended rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Exception for Nonprofits.

Commenter (5) requests that exemptions for nonprofit providers should be made because survivors routinely seek supportive nonprofit services and their information should be protected.

Staff Response: The exemption for VAWA or FVPSA covered populations will be applicable to partially address this issue. Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients - because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute.

Administrators that are nonprofit entities - including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment. No change is recommended to the rule in response to this comment.

Request for Operational Guidance.

Commenter (2) requested that TDHCA provide detailed implementation guidance prior to enforcement, clearly describing what constitutes emergency situations, that requirements be aligned with federal ESG or HUD guidance. Commenter (2) requests additional clarification be made in the rule regarding the practical implementation and administrative requirements particularly for vulnerable households.

Commenter (2) asks that the amendment address Intake and eligibility workflows, including Coordinated Entry processes; Program participant file requirements and documentation standards; timeliness of assistance delivery; staff training and administrative capacity; data collection, privacy, and record retention obligations; what types of documents are acceptable; what documentation requirement will be applicable to victims of domestic trafficking or are former foster children who were never provided with copies of their birth certificates or other forms of identification; how mixed-status households should be handle; whether self-attestation will be allowed in limited or emergency circumstances; and how eligibility determinations should be documented for monitoring purposes.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide guidance as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. Federal guidance provides for what constitutes an emergency situation, but TDHCA will provide in materials, web posts, and training more granular guidance on this as well. TDHCA will also provide on its website and to subrecipients what types of documents are acceptable, what forms should be used for documenting the process has been followed, and how mixed-status households should be handled. Other than the exceptions that will be allowable for emergency assistance (federally excepted), and for populations excepted in the rule that are protected under VAWA or FVPSA, self-attestations will not be allowed. As for some of the other requested guidance, TDHCA will not guide - or limit - how any particular subrecipient decides to adjust their operations or processes to implement these requirements. For instance it is up to each subrecipient to decide how it will integrate this policy into intake and eligibility workflows and the coordinated entry process. No change is recommended to the rule in response to this comment.

Request for Phased Implementation.

Commenter (2) requests that a phased implementation period be provided after final adoption. They also requested additional funding to absorb the labor costs for additional administrative burden.

Staff Response: TDHCA is unable to phase the implementation of this rule. Upon its adoption, subrecipients will be required to implement and adhere to this rule. Current subrecipients may use their administrative funds under the awards they receive to cover the costs of implementing this rule, which are fully eligible costs. No change is recommended to the rule in response to this comment.

Concern for Barriers to Access.

Commenter (2) noted that they are concerned that the proposed changes could create barriers for individuals who are otherwise eligible for services but face challenges obtaining documentation due to homelessness, disability, trauma, or language barriers. They encourage TDHCA to include safeguards that ensure: Non-discriminatory intake practices and clear communication to participants about eligibility requirements.

Staff Response: All subrecipients have the ability to institute non-discriminatory intake practices, and provide clear communication to participants about eligibility requirements. No change is recommended to the rule in response to this comment.

Appeals.

Commenter (4) notes that the rule says appeals will be addressed through each program's rules, but they did not see that the rules address the need for an appeals process specific to legal status verification.

Staff Response: Staff will add to the rule a requirement that each subrecipient must offer an opportunity for a household to appeal a legal status determination consistent with the appeals policy they utilize for other household eligibility appeals processes.

Training and Technical Assistance.

Commenter (2) requested that TDHCA offer technical assistance and written FAQs for subrecipients, and that TDHCA clearly outline monitoring expectations related to §1.410 compliance.

Staff Response: TDHCA is committed to making the implementation of this rule as clear as possible and will provide training and technical assistance, including monitoring expectations, as the rule is implemented, and thereafter, to facilitate subrecipients ability to adhere to the rule. No change is recommended to the rule in response to this comment.

Conditional Assistance.

Commenter (2) requests that in light of delays that are experienced in seeking documentation from households, TDHCA allow conditional or temporary assistance while documentation is obtained.

Staff Response: Benefits under these rules are not permitted to be provided to persons without PRWORA eligibility, including temporary or conditional assistance. No change is recommended to the rule in response to this comment.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

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 6, 2026.

TRD-202601121

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Texas Department of Housing and Community Affairs
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 20, 2026, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning the accountability rating system. The amendment is adopted with changes to the proposed text as published in the December 12, 2025 issue of the *Texas Register* (50 TexReg 7967) and will be republished. The amendment adopts in rule applicable excerpts of the *2027 Accountability Manual*, which include provisions to implement House Bill (HB) 6, 89th Texas Legislature, Regular Session, 2025. Earlier versions of the manuals will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The amendment to §97.1001 adopts excerpts of the *2027 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2027 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public-school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2027 Results Driven Accountability (RDA) performance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered were updated to align with 2027 accountability and RDA. Edits for clarity regarding consistent language and terminology throughout each chapter are embedded within the proposed *2027 Accountability Manual*.

Chapter 1 gives an overview of the entire accountability system. The "Who is Rated?" section has been adjusted to include the new the Public Education Information Management System (PEIMS) Fall Enrollment Submission, which begins in the 2026-2027 school year. Language was adjusted to reflect four years of data for indicators related to earning an industry-based certification (IBC), dual credit, or an associate degree. The description of the Data Validation System was revised to highlight its role in ensuring education-related programs are implemented with fidelity. Clarification was added at adoption on page 5 to specify that adult charter high schools authorized under TEC, Chapter 12, Subchapter G, are excluded from A-F ratings. PEIMS data language was added at adoption on page 10 to align with statutory changes enacted by HB 8, 89th Legislature, 2nd Called Session, 2025. HB 8 requires TEA to establish processes for the submission and correction of prior-year PEIMS data for accountability purposes.

Chapter 2 describes the "Student Achievement" domain. The College, Career, and Military Readiness component was clarified, including updates to dual course credit criteria and definitions for Level I and Level II certificates. New language was added to outline requirements for dual credit courses, including curriculum crosswalks and annual memorandums of understanding between districts and partnering institutions of higher education. Language was added to reflect updated requirements for IBCs and Programs of Study.

Chapter 3 describes the "School Progress" domain. The Part A: Academic Growth: Annual Growth-Methodology section was revised to clarify annual growth methodology by explicitly stating eligibility rules for the State of Texas Assessments of Academic Readiness (STAAR®) and STAAR® Alternate 2 assessments, adding exclusions for certain score codes and specifying how growth is measured across grade levels and language transitions. Based on public comment, clarification was added at adoption on page 30 to specify that if a student completes English I and English II in the same year, the English to English II growth measure will be applied instead of relying on a prior-year STAAR® result.

Chapter 4 describes the "Closing the Gaps" domain. References to "migrant" were changed to "migratory" to align with TEA guidelines. Language was added to clarify that when a student group meets minimum size but lacks prior-year data or was measured with small numbers analysis, the campus cannot earn one or two points for that component in the current year. The methodology for Academic Achievement-Minimum Size Criteria and Small Numbers Analysis was clarified.

Chapter 5 describes how the overall ratings are calculated. No major changes were made beyond updates for year references.

Chapter 6 describes distinction designations. No major changes were made beyond updates for terminology and year references.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. Language was added to clarify that paired data from the Closing the Gaps domain are used for School Improvement identification. The phrase "charter school campuses" was removed and replaced with "all" at adoption on page 76 to clarify AEA pairing rules. Language was added at adoption on page 78 to specify that adult charter high schools authorized under TEC, Chapter 12, Subchapter G, are rated using the performance framework adopted specifically for these schools. A correction was made at adoption on page 81, updating "Closing the Gaps School Progress Domain" to "School Progress Domain."

Chapter 8 describes the process for appealing ratings. Language was added to clarify that campuses cannot appeal identification for comprehensive, targeted, or additional targeted support interventions, but a granted Closing the Gaps appeal can update identification. Additionally, new language for Local Accountability System (LAS) appeals was introduced, effective in 2027, along with clarifications on general considerations and the appeals submission process. Based on public comment, clarification was added at adoption on page 86 to specify acceptable formats for superintendent signatures and the minimum requirements for letterhead.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Language was added to move the campus number request deadline from September 1 to May 31 in alignment with anticipated changes to 19 TAC §97.1066. Language was added at adoption on page 93 to address the responsibilities and consequences for adult charter high schools in TEC, §12.262. Language was also added at adoption on pages 94-95 to clarify campus closure requirements and county-district-campus number (CDCN) reassignment, aligning with anticipated changes to §97.1066.

Chapter 10 provides information on the federally required identification of schools for improvement. The Overview section was updated to clarify the Every Student Succeeds Act (ESSA) alignment for school improvement identification, adding language specifying that campuses paired for state accountability fulfill ESSA requirements for Comprehensive Support and Improvement, Targeted Support and Improvement, and Additional Targeted Support identifications.

Chapter 11 describes LAS. The LAS Appeals section was revised to reference the state accountability appeals process in Chapter 8, including appeal steps for LAS and state ratings.

Chapter 12 describes the RDA system. HB 6, 89th Texas Legislature, Regular Session, 2025 changes were implemented, including the removal of performance level (PL) assignments for discipline indicators and the exclusion of those indicators from determination-level calculations. The federally required significant disproportionality risk ratio threshold has been adjusted from 2.5 to 3.0. Additionally, indicator names were fully updated in accordance with the requirements of the prior 2026 chapter, including revised terminology to "Alternative Methods." Based on public comment, language was added at adoption on page 106 to provide for inclusion of PLs for special education discipline as report only measures. Clarifying edits were made at adoption on pages 105 and 124-125 to ensure consistent use of the terms "bilingual education" and "bilingual program."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 12, 2025, and ended January 12, 2026. Following is a summary of the public comments received and agency responses.

General Feedback

Comment: The Texas Center for State Accountability (TXCSA) and Texas School Alliance (TSA) expressed appreciation for the inclusion of specific years or current years for describing data that ensures clarity and consistency for all stakeholders.

Response: The agency agrees that including specific years provides clarity and consistency.

Comment: TXCSA and TSA expressed support for the additional details included in the *2027 Accountability Manual* regarding the dual course credit process and the references to industry-based certification versions by year.

Response: The agency agrees that including these additional details provides meaningful clarification and practical guidance for district and charter staff.

Comment: TXCSA and TSA expressed support for the change indicating that federal identification labels can be updated following a successful Closing the Gaps appeal.

Response: The agency agrees that this clarification ensures districts and charter schools understand that federal identification labels can be updated when a Closing the Gaps appeal is granted.

Edits for Clarification

Comment: TXCSA and TSA recommended retaining the term "migrant" within the highly mobile student category.

Response: The agency disagrees. The US Department of Education (USDE) updated the definition of a migrant child and the terminology used in the ESSA, Title 1, Chapter 3, from "education of migrant children" to "education of migratory children." The accountability system and the Texas Education Data Standards have updated the terminology from "migrant" to "migratory" to align terminology with federal legislation.

School Progress Domain

Comment: TXCSA and TSA requested that the proposed statement describing the English II growth calculations be revised to specify whether a student's growth should be determined using the prior year's Grade 8 STAAR® assessment to English I end-of-course (EOC) assessment and/or the current year English I to English II EOC assessment in cases when a student takes English I and II during the same school year.

Response: The agency agrees and has made a clarifying edit in Chapter 3 on page 30 to specify that when a student completes English I and English II within the same year, only the English I to English II growth measure will be used to measure academic growth, not a prior year STAAR® assessment.

Closing the Gaps Targets

Comment: Disability Rights Texas noted that specific methodology used to calculate Closing the Gaps targets is not publicly documented in the manual and requested opportunities for meaningful stakeholder engagement for developing recommendations related to the special education Closing the Gaps targets.

Response: The agency disagrees with including the methodology for calculating Closing the Gaps targets in the accountability manual, as this information is currently published and approved by the USDE in the state's ESSA consolidated plan. However, TEA agrees to work with stakeholders to explore additional communications resources.

District and Campus Ratings

Comment: TXCSA suggested removing the "Campus Overall Ratings 3Ds Rule" and "Campus Overall Ratings 3Fs Rule."

Response: The agency disagrees. The D and F requirements are aligned with the redefinition of acceptable and unacceptable performance in Senate Bill 1365, 87th Texas Legislature, Regular Session, 2021. This consideration for the 2028 accountability refresh cycle was discussed with, and rejected by, the Texas Accountability Advisory Group.

Appeals Process

Comment: TXCSA and TSA requested clarification regarding acceptable forms of superintendent signatures and minimum requirements for letterhead.

Response: The agency agrees that clarification is needed and has made an edit in Chapter 8 on page 86 to indicate that a digital signature can be accepted on official district or charter school letterhead.

Campus Closures

Comment: TXCSA and TSA recommended that TEA maintain the June 30 deadlines as outlined in 19 TAC §97.1066 for districts to complete all outlined compliance requirements.

Response: The agency disagrees. Campus closure decisions should not be based solely on accountability ratings, and the updated May 31 deadline provides districts with adequate time for community engagement and summer planning to support an orderly transition. Changes to §97.1066 are anticipated to be in effect during the summer of 2026 and are, therefore, appropriately reflected in the *2027 Accountability Manual*.

Pairing Campus for Federal Identification Purposes

Comment: TXCSA and TSA requested that paired campuses be identified for federal identification purposes without requiring the implementation of school improvement provisions, noting that without a district-level federal identification process in place, this approach could unintentionally encourage districts to pair non-STAAR®-grade campuses with the district rather than with another campus.

Response: The agency disagrees, as school improvement requirements for paired campuses are beyond the scope of the current rule proposal.

Results-Driven Accountability (RDA)

Comment: TXCSA and TSA requested to include student-level data lists including student identification number, name, demographics, program information, campus number, and student outcome for each indicator in RDA.

Response: The agency disagrees, as this request for a student listing report is beyond the scope of the proposal.

Comment: TXCSA and TSA requested that the term "emergent bilingual education" be used to more accurately reflect the student population served across multiple instructional program models, noting that replacing "bilingual education/English as a second language/emergent bilingual" with "bilingual education" does not accurately represent the full range of students served.

Response: The agency disagrees, as the term "bilingual education" was adopted in the *2026 Accountability Manua*l and is consistent with other administrative rules, including 19 TAC §89.1201(a), which defines the state's policy for educating emergent bilingual students and specifies that they shall be provided the opportunity to participate in "bilingual education, to include bilingual and English as a second language (ESL) programs."

Comment: TXCSA, TSA, and Disability Rights Texas recommended continuing to report PLs for special education discipline as report-only measures.

Response: The agency agrees and has added a clarifying edit in Chapter 12 on page 106 to provide for inclusion of PLs for special education discipline as report-only measures.

Comment: TXCSA and TSA suggested expanding the RDA section to include RDA-specific guides, intervention requirements, and submission calendars that are currently available on the RDA web page. They also suggested maintaining the "Monitoring Interventions" section from page 124 and including new changes, such as the new DL 4 special education calculation.

Response: The agency disagrees, as the guides, calendars, and web page materials are outside the scope of the proposal.

Accountability Releases

Comment: TXCSA and TSA recommended including Appendix H in all future rulemaking processes.

Response: The agency disagrees with making this change. Appendices are not part of the rule text adopted under §97.1001 and, therefore, are not included in the rulemaking process. The appendices will be published as soon as feasible after the adoption of the 2027 manual.

Comment: TXCSA and TSA requested that TEA publish preliminary reports such as the Texas Academic Performance Reports (TAPR) and the Texas Performance Reporting System (TPRS) prior to finalizing the data after the appeals process.

Response: The agency disagrees, as the reporting calendars of TAPR and TPRS are outside the scope of the proposal.

2028 Accountability

Comment: A district administrator expressed concerns about the cost of additional assessments required for the 2028 accountability system due to the implementation of through-year testing under House Bill 8, 89th Texas Legislature, 2nd Called Session, 2025. The individual recommended that the state cover the testing cost.

Response: The agency disagrees, as through-year testing is outside the scope of the proposal.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §7.021(b)(1), which authorizes TEA to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2027 are based upon specific criteria and calculations, which are described in excerpted sections of the *2027 Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.003.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2027 RDA report is based on specific criteria and calculations, which are described in the *2027 Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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 9, 2026.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: December 12, 2025
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §213.13, relating to Complaint Investigation and Disposition, without changes to the proposed text as published in the December 19, 2025 edition of the *Texas Register* (50 TexReg 8153). The rule will not be republished.

Reasoned Justification. The adopted amendments are necessary to align §213.13 with applicable statutory requirements and to ensure that the rule accurately reflects current agency practices related to complaint intake, investigation, and notification. An internal audit conducted in conjunction with the Board's enforcement department identified provisions of the rule that were outdated or inconsistent with current procedures. The amendments address those findings.

The amendments update the complaint submission provisions to reflect the Board's existing intake processes, including submission in writing or through the agency's online complaint portal, and clarify the information required to initiate an investigation. The amendments remove certain information requirements that may not be reasonably available to complainants and that are not necessary at the initial intake stage. The complaint priority system is also amended to reflect current operational practice. The adopted amendments further clarify investigative timeline and notification requirements to ensure consistency with Texas Occupations Code §§301.204 and 301.457. Finally, the amendments remove language requiring a criminal background check at the preliminary stage of an investigation to accurately reflect current procedure. Criminal background checks remain part of agency practice but are not conducted during the initial intake phase.

Section-by-Section Overview. The adopted amendments revise subsection (a) to consolidate complaint submission requirements and clarify the information collected to initiate or conduct an investigation.

Subsection (b) is amended to retain the currently used complaint priority levels and remove the unused Priority 4 category.

Subsection (c) clarifies that, not later than the 30th day after receipt of a complaint, staff must complete a preliminary investigation to determine the identity of the person named or described in the complaint, if necessary, and to assign complaint priority scheduling, which establishes the projected timeline for case completion.

Subsection (d) clarifies notification requirements consistent with Texas Occupations Code §§301.204 and 301.457, including documentation and communication of projected investigative timelines and any subsequent changes. The reference to §301.457 preserves the Board's statutory authority to withhold notice to a licensee when providing such notice would jeopardize an investigation.

Subsections (e) and (f) remove obsolete language and clarify when an investigation is considered complete and when summary data must be provided to the Executive Director for cases extending beyond established timelines.

Public Comment. No comments were received.

Statutory Authority. These amendments are adopted under the authority of Texas Occupations Code §§301.151 and 301.204. Section 301.151 authorizes the Board to adopt and enforce rules necessary to perform its duties, regulate the practice of professional and vocational nursing, and conduct proceedings before the Board. Section 301.204 requires the Board to adopt rules, policies, and procedures governing the investigation and disposition of complaints. In relevant part, §301.204 requires the Board to distinguish between categories of complaints; establish a schedule for each phase of a complaint not later than the 30th day after receipt; notify parties of projected time requirements and any changes to those timelines; and receive notification of complaints that remain unresolved beyond prescribed timeframes.

Cross Reference to Statute. The following statutes are affected by this adoption: Texas Occupations Code §§301.151, 301.204, and 301.457.

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 9, 2026.

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James W. Johnston
General Counsel
Texas Board of Nursing
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 300. MANUFACTURE, DISTRIBUTION, AND RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS or department), adopts the amendments to §§300.100 - 300.103, 300.201 - 300.203, 300.301 - 300.303, 300.402 - 300.404, 300.501, 300.502, 300.601 - 300.606; and new §§300.204 - 300.208, 300.405 - 300.407, 300.701, and 300.702, concerning Manufacture, Distribution, and Retail Sale of Consumable Hemp Products.

Sections 300.100, 300.102, 300.206, 300.404, 300.407, 300.602, 300.604, 300.605, and 300.702, are adopted without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8486). These rules will not be republished.

Sections 300.101, 300.103, 300.201 - 300.205, 300.207, 300.208, 300.301 - 300.303, 300.402, 300.403, 300.405, 300.406, 300.501, 300.502, 300.601, 300.603, 300.606, and 300.701 are adopted with changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8486). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Executive Order GA-56. House Bill (HB) 1325 (86th Legislature, Regular Session, 2019) established Texas Health and Safety Code (HSC) Chapter 443 for the Manufacture, Distribution, and Sale of Consumable Hemp Products (CHPs). The resulting rules to implement HSC 443 are at 25 Texas Administrative Code (TAC) Chapter 300 and became effective on August 2, 2020.

On September 10, 2025, Governor Greg Abbott issued Executive Order GA-56, directing the department to amend the rules to prohibit the sale of CHPs to minors, to add age verification requirements, to update testing requirements, and to update record keeping requirements.

The adopted rules increase the initial and annual renewal licensing fees for consumable hemp manufacturers to $10,000 per facility, and the annual registration fees for retailers to $5,000 per location. The adopted rules add a written consent requirement for Texas Alcoholic Beverage Commission (TABC) to enter the premises to conduct a physical inspection for both manufacturers and retail hemp registrants. The adopted rules also include tetrahydrocannabinol acid (THCA) in the definition of total delta-9 tetrahydrocannabinol (THC) and in the definition of acceptable hemp THC level. The adopted rules update testing, packaging, labeling, and record-keeping requirements.

COMMENTS

The 31-day comment period ended January 26, 2026.

During this period, DSHS received comments regarding the proposed rules from 1,421 commenters. DSHS received comments from Alcohol and Drug Awareness for the Alcohol & Drug for the Concho Valley (ADACCV), GREENT Club, Good Spirits Beverages, Treehouse Dispensary, American Pharmacies, Delta Bros-Twisted Liquors, Cheech and Chong's Apothicaria West Frisco, the Banks Law Firm, LVLX Wellness LLC, Cannabis Retailers Alliance for Texas (CRAFT), Smokin Glassworks, The Happy Cactus, United Wholesale, Price-Catch, American Shaman, Texas Food & Fuel Association, C Good Staging LLC, Elevated, The CannaShack Co., Pinnacle Essentials, Sunmed CBD, Haus of Jayne, Reggie and Dro, ZAR, A to Z Ivestments and Wholesale LLC, CannaWize Co., 4K Pharm LLC, PrimeOne Sourcing LLC, Royal Habash LLC, C Better Days Inc, UFORIQ, Restart, Texas Hemp Coalition, Compliance Pros LLC, Hemp Industry and Farmers of America, Chubby's Green, Sacred Leaf, Sublingwell LLC, Happy Clouds, CBD Temptations, Frontline Farms CBD, Coastal Wellness and Gifts, Discount Pharms, 24hr Bud Delivery LLC, American Hemp Co/American Weed Co, Califlower Garden, Medanature LLC, East Texas Hemp Company LLC, American Trade Association for Cannabis and Hemp, Eureka Heights Brewing Co., High Tides LLC, HRD Investment LLC, Lonestar HempWorks, Cresent Canna, Blum Reserve Co, Wild Revival, Green Haus Wellness, Bullfrog Botanicals, Dope Daiquiris, the Green Hit Smoke Shop, DRMZ Brands, SMB Nation, Treeline, Delta Vine, Hummingbird Hemp, The Puebla Group, The Healing Herb, Healing Herbal LLC, Rebel Chef, San Antonio Council on Alcohol and Drug Awareness (SACADA), Hill Country Council on Alcohol and Drug Abuse (HCCADA), Texans for a Safe and Drug Free Youth, Reach Council, Ninja Consultation Group TTX LLC dba Habit Crafted, Rolling & CO Smoke CBD & Vapes, Elevated CBD & Smoke, Austinite Cannabis Co, Ropeace CBD Vape Smoke, Habit CBD, Bahama Mama, Farm Road Wellness, Texas Hemp and Honey, Wyatt Purp, Texas Hemp Business Council (THBC), Smoking Valley LLC, CBD American Shaman East McKinney, Hemp Beverage Alliance, Not Beer, Delta Bros, Waco CBD American Shaman, The Pink Cloud LLC, Eureka Chill LLC, Oak Cliff Cultivators and Ease Up, Texas Package Stores Association, Vitam, The Texas Cannabis Collective, 1937 Apothecary LLC & Custom Botanical Dispensary, Law Office of Susan Hays, High 9ine LLC, The Law Office of Jeffery W. Wells, Fire Holistics LLC, Elevated Stash, Pops Smoke and Vapor, Delta 8 Delton, Serenity Organics, Citizens for a Safe and Healthy Texas, Pheonix House, Jota Living, Total Wine, Jollypop Vape Shop, Bayou City Hemp Company Inc, SBT Law, THC Provisions LLC, MedCanna Ventures LLC dba Happy Hemp Co, Grateful Greens LLC DBA Morning Dew Farms, The Canna Busters, Third Coast Wellness LLC, Willie's Remedy, Solid Foundations, Concho Valley C.A.R.E.S Coalition-Community Coalitions Partnership (CCP), Hopes Family FDN, Fyr Flower, The Vapor Bar, MNG 2005 Inc, Victory Pluz, Mighty Distro, True Life Spirits, North Canna, True Hemp Science, Uniwyze Inc, The Concord, Levotic, VaporScape, Texas Cannabis Policy Center, CBD American Shaman, Public Health Texas Medical Association, ECL Testing, Hill Country Pregnancy Care Center, Oasis Farms, Texas Original, and 1,280 individuals. A summary of comments relating to the rules and DSHS's responses follow.

Comment: Multiple commenters oppose §300.404, which states the restrictions for bulk raw hemp material, isolates, or distillates that have a total delta-9 THC content exceeding THC limits. Commenters argue that imposing restrictions violate Texas Agriculture Code §122.356, which allows transport of hemp plant material in this state if it is produced in compliance with a state or tribal plan approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) §1639p.

Response: DSHS disagrees and declines to revise the proposed rule in response to this comment. DSHS is aware that THC fluctuates during the extraction process, and the extractor must ensure the final extracted product is under 0.3 percent delta-9 THC. Section 300.206 and HSC §443.152 total THC limits apply to products distributed and sold at retail, otherwise introduced into commerce, and transported into Texas for further processing.

HSC Chapter 481, Texas Controlled Substances Act, applies to products that meet the definition of a controlled substance. DSHS does not have the authority to permit products in excess of statutory limitations.

Comment: Most commenters oppose the proposed fees for consumable hemp manufacturers and retailers.

Response: DSHS agrees with this comment. DSHS revised §§300.202(c)(1), 300.202(c)(2)(A), and proposed 300.502(f)(1) (renumbered to subsection (g)(1)) to set the fee for a manufacturer's license at $10,000 per facility per year, and a retailer's registration at $5,000 per location per year. HSC §12.0111 authorizes DSHS to collect licensing fees to recover direct and indirect costs of administering and enforcing the program. To set these fees, DSHS made estimates of the costs necessary to support regular inspection of manufacturers and retailers, including inspector salaries and travel, laboratory testing costs, related legal and State Office of Administrative Hearing costs for resulting compliance actions, and assistance from the TABC and the Texas Department of Public Safety (DPS) per Executive Order GA-56. DSHS will reevaluate licensing fees periodically to ensure fees do not exceed the amount required to administer the program.

Comment: Most commenters oppose a ban on hemp.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs. The rules comply with Executive Order GA-56.

Comment: Most commenters oppose a ban on THCA flower.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs. The rules comply with Executive Order GA-56.

Comment: Multiple commenters suggested raising taxes on cannabis dispensaries.

Response: DSHS considers these comments outside the scope of rulemaking for this chapter.

Comment: Multiple commenters suggested revising the age limit to purchase CHPs to 25 years old.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Executive Order GA-56 directed DSHS to set the age limit to 21 years of age.

Comment: Multiple commenters suggested restricting access to a hemp establishment if a person is less than 21 or 25 years old.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Many retailers covered by these regulations offer a variety of non-hemp products and deliver numerous services unrelated to CHPs. Restricting access to their premises as proposed would likely cause substantial economic harm to these businesses and impose potential restrictions on consumers under the age of 21 or 25. Retailers are already required to verify the customer is at least 21 years old before completing any CHP sales or deliveries.

Comment: Many commenters oppose track and trace requirements.

Response: DSHS does not agree with the commenters and declines to revise the rule in response to this comment. These systems are essential to maintain regulatory compliance, uphold public safety, and ensure product quality. Furthermore, these systems enable quick, targeted recalls of contaminated or non-compliant products.

Comment: Multiple commenters oppose testing requirements.

Response: DSHS does not agree with the commenters and declines to revise the rule in response to this comment. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs in Texas. This includes developing rules for testing requirements.

Comment: Multiple commenters suggested a grace period to implement rules.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Governor's Executive Order GA-56 tasked DSHS with reviewing and updating rules, especially those prohibiting access to minors. Immediate enforcement is necessary to address the concerns raised by Executive Order GA-56.

Comment: Multiple commenters stated the Texas Compassionate Use program, while well-intentioned, remains out of reach for many due to cost and limited availability.

Response: DSHS considers this comment outside the scope of rulemaking for this chapter.

Comment: Multiple commenters suggested legalizing marijuana.

Response: DSHS considers this comment outside the scope of rulemaking for this chapter. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs in Texas.

Comment: Most commenters oppose total THC reclassification via THCA conversion (§300.101) for both total THC and total delta-9 THC. The commenters suggest the compliance threshold exceeds statutory authority.

Response: DSHS does not agree and declines to revise the rule in response to this comment. The Texas Agriculture Code §121.001 defines hemp to include "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 Texas Department of Agriculture rules at 4 TAC §24.26 state that testing methodology should account for the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp to delta-9 tetrahydrocannabinol (THC). HSC Section 443.051 requires rules to be consistent with federal laws and regulations; the federal regulations account for THCA conversion. Furthermore, the test results must accurately represent the total available THC, calculated as the sum of both THC and THCA content. Executive Order GA-56 directed DSHS that testing methods account for THCA conversion to THC.

Comment: Multiple commenters suggested recognizing established third-party compliance programs, training providers, and independent audits as valuable partners in achieving regulatory goals.

Responses: DSHS disagrees and declines to revise the rule in response to this comment. Businesses may conduct third-party compliance programs at their own discretion.

Comment: Multiple commenters suggested restricting cannabidiol (CBD)/THC seltzers to liquor stores or knowledgeable CBD retailers, instead of vape shops or gasoline stations.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HSC Chapter 443 makes no distinction between gas stations, convenience stores, liquor stores, consumable hemp stores, and vape shops. Businesses that sell CHPs are required to obtain a license or registration from DSHS and to comply with HSC Chapter 443, and with 25 TAC Chapter 300.

Comment: Multiple commenters suggested dosing, serving size, and milligram restrictions and guidance.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The label must include the serving size as per 21 Code of Federal Regulation (CFR) 101, declared on the product label. HB 1325 adopts federal food labeling requirements.

Comment: Multiple commenters stated that the proposed rules prohibit transporting hemp.

Response: DSHS disagrees with the commenters and declines to revise the rule. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs. CHPs may be legally transported across state lines and exported to foreign countries in a manner that is consistent with federal law and the laws of respective foreign countries.

Comment: One commenter stated §300.501(b) deletes the limitation that retail registration applies only to products "containing CBD." However, HSC §443.2025(b) requires registration only for retail locations selling "consumable hemp products containing cannabidiol [CBD]," and the fee schedule authority in HSC §443.2025(f) is likewise tied to locations where "consumable hemp products containing cannabidiol [CBD] are sold."

Response: DSHS disagrees with the commenter and declines to revise the rule in response to this comment. HB 1325 ensures Texas has primary regulatory authority over CHPs in this state, not just CBD.

Comment: Multiple commenters stated §300.601(b) purports to count each day a violation continues as a separate violation; however, HSC §443.201 requires the Department to provide fair notice of a potential violation and an opportunity to cure.

Response: DSHS disagrees with the commenters and declines to revise the rule in response to this comment. The department is statutorily required to notify retailers of potential violations and to provide an opportunity to resolve unintentional or negligent violations. Section 300.606(b) is consistent with this requirement. Section 300.601(b) applies to violation of department licensure or registration requirements.

Comment: One commenter suggested clarification that product labels must identify the licensed legal entity, with DBA's requiring additional licenses.

Response: DSHS disagrees with the commenter and declines to revise the rule in response to this comment. HB 1325 only requires the manufacturer's name on the product label. Section 300.201(f)(2), relating to application for license or renewal, requires applicants to list other names under which the firm does business.

Comment: Multiple commenters stated that extensive compliance burdens, such as child-resistant packaging, could be more appropriately addressed through targeted legislation rather than sweeping agency rulemaking.

Response: DSHS disagrees with the commenters and declines to revise the rule in response to this comment. These requirements are essential for public safety, primarily designed to mitigate the risks of accidental ingestion by minors and to comply with state and federal requirements, such as the Poison Prevention Packaging Act (PPPA). The revisions are consistent with Executive Order GA-56.

Comment: Multiple commenters oppose proposed rules in general.

Response: DSHS disagrees with these commenters and declines to revise the rule in response to this comment. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs. The revisions are consistent with Executive Order GA-56.

Comment: Multiple commenters stated testing could be more appropriately addressed through targeted legislation rather than sweeping agency rulemaking.

Response: DSHS disagrees with the commenters and declines to revise the rule in response to this comment. HB 1325 states the executive commissioner shall adopt rules and procedures necessary to administer and enforce this chapter. The revisions are consistent with Executive Order GA-56.

Comment: Multiple commenters stated warning labels could be more appropriately addressed through targeted legislation rather than sweeping agency rulemaking.

Response: DSHS disagrees with the comment and declines to revise the rule in response to this comment. HB 1325 states the executive commissioner shall adopt rules and procedures necessary to administer and enforce this chapter. The revisions are consistent with Executive Order GA-56.

Comment: Multiple commenters stated recall procedures could be more appropriately addressed through targeted legislation rather than sweeping agency rulemaking.

Response: DSHS disagrees with the commenters and declines to revise the rule in response to this comment. HB 1325 states that the executive commissioner shall adopt rules and procedures necessary to administer and enforce this chapter. Recalls are essential because they safeguard the public from products that could cause injury, illness, or even death.

Comment: Multiple commenters asked to clarify that Texas CHP standards apply to out-of-state products sold in Texas.

Response: DSHS agrees with the commenters and revised §300.403 to clarify the standards apply to all out-of-state products sold in Texas.

Comment: One commenter suggested standardizing reporting of the measurement of uncertainty.

Response: DSHS disagrees with the commenter and declines to revise the rule in response to this comment. No mandatory, general-purpose, or maximum bounds are set for the calculation of laboratory measurement uncertainty. Such metrics are instead controlled through laboratory testing performance standards.

Comment: Multiple commenters stated that converted cannabinoids and synthetic products are not addressed directly in the proposed rules, raising product safety concerns.

Response: DSHS disagrees and declines to make the suggested change at this time. The rules are consistent with

Executive Order GA-56. DSHS will consider the requested definition change in a future rulemaking.

Comment: Multiple commenters suggested prohibition of the sale of other intoxicants such as kratom, tianeptine, nitrous oxide, synthetic cannabinoids, hallucinogenic mushrooms, or psilocybin products.

Response: DSHS considers these comments outside the scope of rulemaking for this chapter. The rules are consistent with Executive Order GA-56.

Comment: Three commenters requested that DSHS align Subchapter G with 16 TAC §35.6 adopted by the TABC.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. 16 TAC §35.6 applies only to persons who have a TABC license or permit. HB 1325 applies to firms that manufacture, process, or retail sale CHPs. The rules are consistent with Executive Order GA-56.

Comment: Multiple commenters stated packaging and labeling rules are an undue burden on retailers. Sections 300.402, 300.405, and 300.406 put the burden on retailers to evaluate product labeling and packaging for compliance with Subchapter D and requires the retailers to develop written procedures for doing so. The commenters recommend limiting the task only to "qualified individuals."

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. HB 1325 requires retailers to ensure labeling and packaging requirements comply with this chapter.

Comment: Multiple commenters propose to remove gas chromatography from the total delta-9 THC provision.

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. The rule allows, but does not require, the use of gas chromatography.

Comment: One commenter suggested removal of the definition of "marihuana."

Response: DSHS agrees with this comment and has removed §300.101(25), the definition of marihuana. The paragraphs in §300.101 have been renumbered accordingly.

Comment: Most commenters disagree with the hemp definition stating the definition is not the same as the federal definition.

Response: DSHS disagrees with this comment but revised §300.101(20) and §300.203(b), to align with the Texas Agriculture Code definition of hemp. The Texas definition is not required to mirror the Federal definition.

Comment: Multiple commenters oppose the definition of "Facility" to include U.S. Food and Drug Administration (FDA) Facility registration.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. FDA requires all food manufacturers, including consumable hemp manufacturers that manufacture CHPs for ingestion, to register according to the Food Safety Modernization Act (FSMA) unless exempted.

Comment: Multiple commenters oppose the definition of "cannabis" and want it deleted.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. The definition of "cannabis" informs the stakeholders of the type of plant.

Comment: Multiple commenters ask for clarification regarding whether licensing for an approved hemp source applies only to the Texas-based distributor or retailer selling the final, retail-ready products. Do the requirements for the manufacturer or brand apply whether based in or out of state?

Response: DSHS agrees that a clarification is needed and revised §300.101(5) to clarify approved hemp source.

Comment: One commenter states the definition of accredited laboratory should only have one clear standard, ISOIEC 17025 and delete "comparable or successor standard."

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. HB 1325 includes "comparable standard" language.

Comment: One commenter stated that the definition of "Process" includes "intended for incorporation" and could be interpreted too broadly and unintentionally include pilot or experimental batches that never reach consumers. Clarifying that intent applies only to materials reasonably expected to become consumer-ready products would reduce regulatory uncertainty while keeping safety and compliance intact.

Response: DSHS disagrees with the comment and declines to revise the rule in response to this comment. Consistent with HB 1325, Texas Agriculture Code §§121.001-121.020, 25 TAC §§300.101-300.104, and FDA intended-use principles under Federal Food, Drug, and Cosmetic Act (21 U.S.C. §321g, h, and k), materials intended or reasonably expected to be incorporated into CHPs must remain subject to regulatory oversight to prevent gaps in safety and compliance.

Comment: One commenter suggested amendment of the definition of "manufacturer" to clarify the distinction between manufacturing, distribution, and allowed modifications to reduce regulatory risk for lawful hemp-derived products.

Response: DSHS agrees with this comment and revised §300.101(23), (24), and proposed (34) (renumbered to paragraph (33)) to provide a distinction between hemp manufacturers and distributors.

Comment: Multiple commenters suggested halting these rule changes until there is clearer federal guidance and a comprehensive economic impact study on Texas' small businesses.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The revisions are consistent with Executive Order GA-56.

Comment: One commenter stated, "Moving distributor licensing out of the hemp regime is not advisable."

Response: DSHS agrees with this comment and has made clarifying edits to state distributors must obtain a wholesaler license under HSC 431. DSHS clarified the licensing requirements for distributors throughout the rules.

Comment: One commenter suggested an amendment to the definition of "cannabis" to indicate "any plants or plant matters from plants in the genus Cannabis Sativa L."

Response: DSHS agrees with this comment and revised §300.101(8) in response to this comment.

Comment: One commenter suggested that TABC be allowed to access records per §300.203.

Response: DSHS agrees with this comment and revised §300.203(a) in response to this comment.

Comment: One commenter suggested clarification of who approves suppliers and whether the approval process includes all ingredients.

Response: DSHS disagrees and declines to revise the rules in response to this comment. All ingredients used in hemp production must be from approved sources. Approved source is defined in TAC §229.211(7). Unprocessed materials must originate from vendors that adhere to relevant state and federal regulations and are licensed, if appropriate, and evaluated by the governing body responsible for overseeing the processing and distribution of these raw materials.

Comment: One commenter suggested that DSHS require and enforce batch-specific Certificate of Analysis (COA) results.

Response: DSHS agrees with this comment and revised §300.205(2) in response to this comment.

Comment: One commenter stated, "In 25 TAC §300.402(a)(6) consider a QR code rather than a universal resource locator (URL). QR codes are easier for consumers to use (two-clicks rather than trying to read a small font URL then type in the text) and are more expected in the marketplace now."

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. HB 1325 requires the product's label to have a URL linked to the certificate of analysis. A firm has the option to also incorporate a QR code, but the URL is required.

Comment: One commenter suggested consideration of a font size minimum for recommended serving size and servings per container in §300.402(a)(7).

Response: DSHS disagrees and declines to revise the rule in response to this comment. DSHS follows 21 CFR 101.2(c) and (f), which provide guidance on serving size and servings per container.

Comment: Multiple commenters suggested DSHS consider allowing a universal THC symbol.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Currently, there is no standard for a universal THC symbol. However, a firm may add a THC symbol to their label.

Comment: Two commenters suggested removal of "All THCs have psychoactive properties that may produce an effect similar to or greater than the effect of marihuana, a controlled substance" due to tetrahydrocannabivarin (THCV) not being psychoactive.

Response: DSHS agrees with this comment and has revised §300.402(b)(3).

Comment: One commenter suggested the word "marihuana" within the warning statement is not commonly known to the typical consumer and should be deleted.

Response: DSHS agrees with this comment and has amended §300.402(b)(3).

Comment: Two commenters oppose §300.405(b)(5)(E), which prohibits packaging with images of any celebrities as many are not known to children.

Response: DSHS agrees and has revised §300.405.

Comment: One commenter suggested standardized warnings on dosing, driving, and age restrictions.

Response: DSHS disagrees and considers this comment outside the scope of Executive Order GA-56. DSHS will consider the requested revision in future rulemaking. CHPs are prohibited from being marketed or sold to minors.

Comment: One commenter suggested requiring standard operating procedures as part of the license renewal.

Response: DSHS disagrees and declines to make the suggested change at this time. The rules are consistent with Executive Order GA-56. DSHS will consider the requested revision in future rulemaking.

Comment: One commenter suggested "Remote inspections (Zoom/document audits)" become standard and on-site visits are only triggered by "risk flags."

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. Though remote inspections have been used under certain conditions, remote inspections require inspections be announced. This can limit the effectiveness of the inspection.

Comment: One commenter suggested "Licensees upload COAs into a DSHS system or via QR-linked database."

Response: DSHS disagrees and declines to make the suggested change at this time. The rules are consistent with HB 1325 and Executive Order GA-56. DSHS will consider the requested revision in future rulemaking.

Comment: One commenter stated §300.103 is too broad and should require a "defined inspection basis (routine schedule, complaint-driven, follow-up, or targeted risk), require written notice when feasible, and require inspectors to provide a written scope statement at the start of an inspection so licensees know what is being examined and why."

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. Pursuant to HSC Chapters 431 and 443, the department is authorized to conduct unannounced inspections to ensure compliance with consumable hemp requirements. Requiring notice or predefined inspection scope would limit effectiveness of inspections. Regulated entities already receive written inspection findings and enforcement notices upon conclusion of inspections.

Comment: Multiple commenters suggested clarification of §300.204 and §300.205, specifically, who maintains these records, who must have access, or how compliance would be verified, especially for out-of-state suppliers.

Response: DSHS disagrees and declines to revise the rules in response to this comment. Consumable hemp manufacturers are required to comply with §300.204 and §300.205. DSHS must review records to ensure compliance with Chapter 300. Non-resident suppliers are obligated to adhere to all relevant federal regulations as well as the statutory requirements of the destination state.

Comment: Multiple commentors stated the definition for "Approved Hemp Source" is overly broad, internally conflicting, and confusing.

Response: DSHS agrees and revised §300.101(5) in response to this comment.

Comment: One commenter stated recalls should be the responsibility of the manufacturer, not the distributor or retailer.

Response: DSHS disagrees with this comment but revised §300.207 to differentiate the requirements for retailers and manufacturers. Although manufacturers have a significant responsibility for recalls, retailers also need a plan for recalls.

Comment: One commenter stated §300.203 is only appropriate for in-state manufacturers, but is not applicable to farmers, retail shops, or distributors.

Response: DSHS agrees with the comment and declines to revise the rule in response to this comment. Section 300.203 is applicable to manufacturers, not farmers, retail shops, or distributors.

Comment: Multiple commenters suggested complaint files should be the manufacturer's responsibility instead of the store owners.

Response: DSHS agrees with the comment but declines to revise the rule. Section 300.208 relating to complaints only applies to manufacturers and processors.

Comment: One commenter suggested clarifying sampling methodology enforcement.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. DSHS samples are based on whether the inspection is routine, compliance, investigation, or complaint based.

Comment: One commenter opposes §300.402, Packaging and Labeling Requirements, as ambiguous and subjective standards.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. The revisions are consistent with Executive Order GA-56.

Comment: One commenter suggested §300.403, Relating to Retail Sale of Out-Of-State Consumable Hemp Products, is ambiguous.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. Section 300.403 is consistent with federal and state requirements.

Comment: One commenter opposes the term "attractive to children" because it is opinion based.

Response: DSHS agrees and has revised §300.405.

Comment: One commenter opposes §300.406 because it does not define the terms "clear," "sufficient detail," and "qualified individual."

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. A "qualified individual" is defined in 25 TAC §229.211(54).

Comment: One commenter suggested deleting §300.407 "Misleading Consumable Hemp Packaging."

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. It is important for the consumer to be able to determine whether the package contains a hemp-derived cannabinoid and whether the product is intended for medical purposes. Consumable hemp product packaging must clearly indicate that the package contains a hemp-derived cannabinoid and that the product is not intended for medical purposes. This requirement ensures informed consumers and is consistent with Executive Order GA-56.

Comment: One commenter stated that introduction into commerce is not defined.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. "Commerce" is defined in Texas Business and Commerce Code §17.45(6).

Comment: One commenter opposes §300.701(a) citing that it is too subjective.

Response: DSHS agrees and has revised §300.701(a). The revisions are consistent with Executive Order GA-56.

Comment: One commenter opposes §300.603 and suggested this section allows inspectors to take "full control over business owners" property without checks and balances.

Response: DSHS does not agree with the commenter and declines to revise the rule in response to this comment. The revisions are consistent with Executive Order GA-56 and HSC §443.002, which incorporates recall and embargo authority under HSC §431.048.

Comment: One commenter opposes §300.605, "Correction by Proper Labeling or Processing."

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. HSC §431.052 authorizes Correction by Proper Labeling or Processing.

Comment: One commenter suggested recognizing smokable flower and pre-Rolls as "cigar lounge-style products."

Response: DSHS disagrees and declines to make the suggested change at this time. The revisions are consistent with Executive Order GA-56. DSHS will consider the requested revision in a future rulemaking.

Comment: One commenter suggested DSHS require one certified THC Handler per licensed store.

Response: DSHS disagrees and declines to make the suggested change at this time. The revisions are consistent with Executive Order GA-56. DSHS will consider the requested revision in a future rulemaking.

Comment: One commenter suggested a centralized DSHS portal for managing licensee compliance, training, and inspection reports.

Response: DSHS agrees in part and disagrees in part. DSHS has a portal that manages license compliance, and inspection reports. DSHS declines to make the suggested change for a training portal at this time. DSHS will consider the comment in a future rulemaking.

Comment: One commenter suggested the establishment of a Hemp Regulatory Commission.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. DSHS considers this comment outside the scope of rulemaking for this project and Executive Order GA-56.

Comment: Multiple commenters recommend specific penalties for noncompliance, such as: $500 - $1,000 per unregistered product, $10,000/day for unlicensed operation, and $20,000/day for operation after license revocation. Some commenters suggest the rules "should also include clear, automatic penalties for violations such as falsified certificates of analysis, sales to minors, and distribution of unauthorized products."

Response: DSHS does not agree with the commenter and declines to revise the rule in response to this comment. DSHS relies on an administrative penalty matrix in making enforcement determinations. All enforcement actions taken by DSHS are administrative or civil rather than criminal.

Comment: Multiple commenters suggested banning THC-Infused Foods and Beverages in Violation of Federal Law.

Response: DSHS disagrees with this comment and declines to revise the rule in response to this comment. HB 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of CHPs in Texas. The revisions are consistent with Executive Order GA-56.

Comment: Multiple commenters suggested DSHS should establish a cost-recovery grant program to assist local law enforcement and municipal partners in conducting compliance checks, underage stings, and inspections; the best practice already used in tobacco and alcohol enforcement programs. Underage sting operations should be conducted once per quarter with retailers, as a recommended best practice.

Response: DSHS disagrees and declines to revise the rule in response to this comment. DSHS has established fees that will support TABC underage sting operations. TABC has already implemented undercover underage sting operations. DSHS also collaborates with Texas Department of Public Safety, as directed by Executive Order GA-56.

Comment: Multiple commenters suggested aligning with Federal Product Standards, which limit finished products to no more than 0.4 milligrams of total THC per serving.

Response: DSHS disagrees and declines to make the suggested change at this time. DSHS will consider the requested revision in a future rulemaking when the federal amendments take effect.

Comment: Multiple commenters suggested DSHS require Third-Party Lab Testing and QR-Code COAs that include THC content, a complete analyte list, and documentation of the absence of contaminants or adulterants.

Response: DSHS does not agree with this comment and declines to revise the rule in response to this comment. HB 1325 has already incorporated requirements for testing. CHP manufacturers are required to test for, as appropriate, cannabinoids, residual solvents, microbiological contaminants, pesticides, and heavy metals.

Comment: Multiple commenters suggest DSHS incorporate the ability to quickly update prohibited product forms, potency structures, and compliance triggers as the market evolves.

Response: DSHS disagrees and declines to make the suggested change at this time. The revisions are consistent with Executive Order GA-56. DSHS will consider the requested revision in a future rulemaking.

Comment: Multiple commenters suggest strengthening accountability for out-of-state products, including consideration of a distributor or importer responsibility mechanism to prevent retailer only enforcement.

Response: DSHS declines to revise the rule in response to this comment. A consumable hemp product distributor is required to hold a wholesaler license from the department per HSC Chapter 431. Out of state manufacturers' products must comply with Texas statutes and rules in order to be sold in Texas.

Comment: One commenter suggested the DSHS Commissioner include guidance on acceptable forms of identification issued by another country.

Response: DSHS agrees and revised §300.701(c) in response to this comment.

Comment: Multiple commenters oppose the inclusion within the warning statement "…greater effect than marihuana."

Response: DSHS agrees with this comment and has revised §300.402(b)(3).

Comment: Multiple commenters oppose batch date labeling requirements.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HB 1325 requires a batch date.

Comment: Multiple commenters oppose packaging and Child Resistance Requirements for 750ml containers.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Executive Order GA-56 directed the department to implement rules to prevent minors access to all consumable hemp products.

Comment: Multiple commenters stated rules should follow only food Good Manufacturing Practices (GMPs).

Response: DSHS does not agree and declines to revise the rule in response to this comment. HB 1325 provides that a consumable hemp products means food, a drug, a device, or a cosmetic that contains hemp or one or more hemp-derived cannabinoids. Food, drug, device, and cosmetic are defined by HSC §have their own regulations.

Comment: Multiple commenters suggested recordkeeping obligations are often impractical for lawful operators to satisfy, particularly for those whose activities are limited to repackaging, relabeling, or distribution of finished products manufactured elsewhere.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HSC §431.044 requires records to be kept showing movement in commerce, which includes finished product distribution. Repackaging, relabeling, and private labeling operations are considered manufacturing and are subject to these rules.

Comment: One commenter suggested "approved hemp source" creates confusion about hemp from outside the United States, which complies with federal law.

Response: DSHS agrees and revised §300.101(5) in response to this comment.

Comment: Multiple commenters suggested §300.407 restricts labeling and marketing for medical use or therapeutic benefit but does not clearly distinguish between explicit disease-treatment claims (which are appropriately restricted) and general wellness language or imagery common in food and supplement contexts.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The FDA regulates wellness claims on conventional foods, classifying them into three categories: authorized health claims, nutrient content, and structure/function claims. All such claims require substantiation, must be truthful, and typically highlight a nutrient's specific role in health, like calcium for bone strength, without claiming a cure.

Comment: One commenter opposes random testing in general.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HB 1325 requires DSHS to establish a process for the random testing of CHPs.

Comment: Multiple commentors suggested zoning regulations to be established for specific areas that are distant from schools and churches.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HSC Chapter 443 does not authorize zoning restrictions.

Comment: Multiple commentors suggested proposed rules exceed those authorized under the governor's executive order.

Response: DSHS does not agree and declines to revise the rule in response to this comment. The revisions are consistent with Executive Order GA-56 and HSC §443.002, which incorporates HSC Chapter 431.

Comment: One commenter suggested implementation of a secure purchase environment.

Response: DSHS disagrees and declines to make the suggested change at this time. The revisions are consistent with Executive Order GA-56. DSHS will consider the requested revision in a future rulemaking.

Additionally, DSHS made minor editorial changes to the rules to improve clarity, readability, and to correct an error as follows.

DSHS revised §300.101(15) to improve clarity. DSHS revised §300.101(24) by adding "mixes" to improve clarity. DSHS also revised proposed §300.101(35) (renumbered to paragraph (34)) to remove "or leading" and include "processor" to improve clarity.

DSHS revised §300.103(a) to clarify that TABC may enter the premises to ensure compliance with this chapter; added the acronym for Texas Health and Safety Code in §300.103(b); corrected a clerical error in §300.103(c) replacing "prescription drug or restricted device" with "consumable hemp products," and updated a citation in §300.103(c)(5)(B).

DSHS revised §300.201 to clarify which license consumable hemp product distributors are required to hold and made minor grammatical revisions to improve clarity.

DSHS revised §300.202(f)(2) by replacing "denied" with "approved" and replacing "denial" with "approval" to be consistent with Texas Government Code Chapter 2005.

DSHS revised §300.203(d) to clarify who must maintain the records and made minor grammatical revisions in subsections (d) and (e) to improve clarity.

DSHS revised §300.204(b) to remove proposed paragraph (4) to eliminate a duplicate ingredient measurement requirement. The paragraphs were renumbered accordingly.

DSHS revised §300.208 and §300.402 to include "processor" to provide clarity. The title of §300.208 was revised to "Complaints" for clarity.

DSHS revised §300.301(c) to spell out "certificate of analysis" and §300.301(d)(2) to include "hemp processor" to provide clarity. DSHS also revised subsection (e) removing "with the intent to deceive" to be consistent with HSC 431.

DSHS revised §300.302(a) by removing "section" and replaced with "chapter" to clarify low-THC cannabis does not apply to 25 TAC Chapter 300.

DSHS revised §300.303 language to clarify who is responsible for complying with each requirement. DSHS revised §300.303(b) to include "retailer" as also responsible for providing testing results. This section was also revised to include the "consumer" and "Texas Alcoholic Beverage Commission" be provided testing results upon request. DSHS deleted proposed §300.303(c) since these requirements are now reflected in §300.303(b) and renumbered the subsections accordingly. DSHS revised proposed §300.303(g) - (i) (renumbered to subsections (f) - (h)) by replacing "or" with "and" to clarify what is required by stakeholders.

DSHS revised §300.403(3) to clarify out of state consumable hemp products must comply with acceptable hemp THC levels.

DSHS revised §300.406(b) to correct punctuation and §300.501(a) by removing "section" and replacing with "chapter" to correct a clerical error.

DSHS revised §300.502(b)(7) to include "sold" to provide clarity. DSHS updated §300.502 for consistency with §300.202 by revising subsection (c); adding subsections (d) and (h); revising proposed subsection (f)(2) (renumbered to subsection (g)(2)) and adding paragraphs (3) - (4). The subsections were renumbered accordingly.

DSHS revised §300.601(a)(1) to include "processing" to improve clarity.

DSHS revised §300.603 and §300.606(g) - (i) by making minor grammatical changes to improve clarity.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§300.100 - 300.103

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.101. Definitions.

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

(1) Acceptable hemp THC level--A total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less.

(2) Accredited laboratory--A laboratory, including at an institution of higher education, accredited in accordance with the International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.

(3) Act--House Bill 1325, 86th Legislature, Regular Session, 2019, relating to the production and regulation of hemp in Texas, codified in Texas Health and Safety Code Chapter 443.

(4) Analyte--A chemical, compound, element, bacteria, yeast, fungus, mold, or toxin identified and measured by accredited laboratory analysis.

(5) Approved hemp source--Hemp and hemp products for human use and consumption must be grown under a state or compatible federal, foreign, or Tribal plan. These plans must be approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, or Texas Agriculture Code Chapter 121. The products must comply with federal law and the laws of respective foreign jurisdictions.

(6) Batch date--The date a product batch was made, used for tracking and quality control. This is also called the lot date.

(7) Batch ID number--A number that identifies a specific amount of raw or processed hemp product that meets standards for identity, strength, purity, and composition. Each batch ID number must include the manufacturer's, processor's, or distributor's number and a sequence for inventory, traceability, and identification of the plant batches used in making consumable hemp products. This is also called the lot number.

(8) Cannabis--A type of flowering plant in the Cannabaceae family. Any plants or plant matters from plants in the genus Cannabis Sativa L.

(9) Cannabidiol (CBD)--A phytocannabinoid produced by cannabis.

(10) Certificate of Analysis (COA)--An official document from an accredited laboratory available to the manufacturer, processor, distributor, retailer, public, or department. The COA shows the concentrations of cannabinoid analytes and other measurements required by the department, including data on THC levels, and states whether a sample passed or failed content analysis limits.

(11) Consumable hemp product (CHP)--Any product processed or manufactured for consumption that contains hemp, including food, a drug, a device, and a cosmetic, as defined by Texas Health and Safety Code §431.002. The definition excludes any hemp product containing a hemp seed or hemp seed-derived ingredient that the FDA has designated as Generally Recognized as Safe (GRAS).

(12) Consumable hemp products license--A license issued to a person or facility engaged in the act of manufacturing, extracting, or processing consumable hemp products for human consumption or use.

(13) Decarboxylation--The removal or elimination of a carboxyl group from a molecule or organic compound.

(14) Delta-9 tetrahydrocannabinol (d-9 THC)--A tetrahydrocannabinol isomer known as the primary psychoactive component of cannabis.

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

(16) Distributor--A person who distributes consumable hemp products for resale, either through a retail outlet owned by that person or through sales to another retailer. A distributor is required to hold a wholesaler license per Texas Health and Safety Code Chapter 431.

(17) Facility--A place of business engaged in manufacturing, processing, or distributing consumable hemp products subject to the requirements of this chapter and Texas Health and Safety Code Chapter 431. A facility includes a domestic or foreign facility required to register under the Federal Food, Drug, and Cosmetic Act, Section 415 in accordance with the requirements of 21 Code of Federal Regulations Part 1, Subpart H.

(18) FDA--The United States Food and Drug Administration or its successor agency.

(19) Federal Act--Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(20) Hemp--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.

(21) Hemp-derived cannabinoid product--Any intermediate or final product derived from hemp (other than industrial hemp), that:

(A) contains cannabinoids in any form; and

(B) is intended for human or animal use through any means of application or administration, such as inhalation, ingestion, or topical application.

(22) Independent contractor--A person or entity contracted to perform work or sales for a registrant.

(23) License holder--The person who is legally responsible for the operation as a consumable hemp manufacturer or processor and possesses a valid license.

(24) Manufacturer--A person who makes, mixes, extracts, processes, packages, or repackages consumable hemp product from one or more ingredients. The definition includes synthesizing, preparing, treating, modifying, or manipulating hemp, hemp crops, or ingredients to create a consumable hemp product. It also includes private-labeling. For farmers and persons with farm mixed-type facilities, manufacturing and processing do not include activities related to growing, harvesting, packing, or holding raw hemp product. Manufacturers may only distribute products they manufactured.

(25) Measurement of uncertainty--The parameter, associated with the results of an analytical measurement that characterizes the dispersion of the values that could reasonably be attributed to the quantity subjected to testing measurement. For example, if the reported total d-9 THC content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured total d-9 THC content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance.

(26) Minor--A person under 21 years of age.

(27) Non-consumable hemp processor--A person who intends to process hemp products not for human consumption and who is registered with the Texas Department of Agriculture.

(28) Non-consumable hemp product--As defined by Texas Agriculture Code §122.001(8), means a product that contains hemp, other than a consumable hemp product as defined by Texas Health and Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(29) Pathogen--A microorganism of public health significance, including molds, yeasts, Listeria monocytogenes, Campylobacter, Salmonella, E. coli, Yersinia, or Staphylococcus.

(30) Person--An individual, business, partnership, corporation, or association.

(31) Private labeling--When a person or manufacturer labels a CHP with the person's name and address, thereby representing itself as responsible for the purity and labeling of a CHP.

(32) Process--Extraction of a component of hemp, including CBD or another cannabinoid, that is:

(A) sold as a consumable hemp product;

(B) offered for sale as a consumable hemp product;

(C) incorporated into a consumable hemp product; or

(D) intended for incorporation into a consumable hemp product.

(33) Processor--A person who operates a facility that processes raw agriculture hemp into consumable hemp products for manufacture, distribution, and sale. A hemp processor is required to hold a consumable hemp products license.

(34) QR code--A quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing a user to product information regarding manufacturer or processor data and accredited laboratory COA.

(35) Raw hemp--An unprocessed hemp plant, or any part of the plant, in its natural state.

(36) Registrant--A person who sells consumable hemp products directly to consumers, and who submits a complete registration form to the department for purposes of registering the place of business to sell consumable hemp products at retail to the public.

(37) Reverse distributor--A person registered with the federal Drug Enforcement Agency as a reverse distributor that receives controlled substances from another person or entity for return of the products to the registered manufacturer or to destroy adulterated or impermissible THC products.

(38) Smoking--Burning or igniting a substance and inhaling the resultant smoke or heating a substance and inhaling the resulting vapor or aerosol.

(39) Supplier--A person or entity that manufactures or processes a material used in the processing or manufacturing of hemp. This term also includes a person or entity that manufactures hemp-derived cannabinoids or sells products containing hemp-derived cannabinoids to retailers.

(40) Tetrahydrocannabinol (THC)--A cannabinoid found in cannabis and considered the primary psychoactive component of the cannabis plant.

(41) Tetrahydrocannabinolic acid (THCA)--A precursor to all tetrahydrocannabinols (THC).

(42) Texas Department of Agriculture--The state agency responsible for regulation of planting, growing, harvesting, and testing of hemp as a raw agricultural product.

(43) Texas.gov--The online registration system for the State of Texas found at https://www.texas.gov.

(44) Total THC--The value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total tetrahydrocannabinol content derived from the sum of all THC isomers and THCA content and reported on a dry weight basis. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC], which calculates the potential total THC in a given sample.

(45) Total delta-9 THC--The value is determined after decarboxylation or by applying a conversion factor if the testing method does not include decarboxylation. This shows the potential total delta-9 THC content from the sum of delta-9 THC and THCA, reported on a dry weight basis. The post-decarboxylation value of delta-9 THC can be calculated using a chromatograph technique with heat, like gas chromatography, which converts THCA. This test calculates the potential total delta-9 THC in a sample. The total delta-9 THC can also be calculated using a liquid chromatograph technique, which keeps THCA intact. This technique uses the conversion: [Total delta-9 THC = (0.877 x THCA) + delta-9 THC]. This test calculates the potential total delta-9 THC in a sample.

§300.103. Inspections.

(a) Authorized employees of the department or the Texas Alcoholic Beverage Commission, after showing proper credentials to the owner, operator, or person in charge, may:

(1) enter the premises at reasonable times, conduct inspections, collect samples, and take photographs to determine compliance with this chapter and Texas Health and Safety Code (HSC) Chapters 431 and 443;

(2) enter a vehicle being used to transport or hold a consumable hemp product in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the facility or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(b) The inspection of a facility where consumable hemp products are manufactured, processed, distributed, packed, repackaged, sold, or held, for introduction into commerce must undergo inspection to determine if the consumable hemp product is:

(1) adulterated or misbranded; or

(2) manufactured, processed, held, distributed, packed, or sold in violation of this chapter or HSC Chapters 431 and 443.

(c) An inspection of a facility where a consumable hemp product is being manufactured, processed, packed, or held for introduction into commerce under subsection (b) of this section must not extend to:

(1) financial data;

(2) sales data other than shipment data;

(3) pricing data;

(4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter; or

(5) research data other than data:

(A) relating to new consumable hemp products; and

(B) subject to reporting and inspection under 21 United States Code (U.S.C.) §§355, 360i, or 360j.

(d) The inspector must start and complete the inspection under subsection (b) of this section with reasonable promptness.

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

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SUBCHAPTER B. MANUFACTURE, PROCESSING, AND DISTRIBUTION OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.201 - 300.208

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.201. Application for License or Renewal.

(a) A person must hold a consumable hemp products license issued by the department before engaging in manufacturing or processing of consumable hemp products. A person must hold a wholesaler license per Texas Health and Safety Code (HSC) Chapter 431 before engaging in the distribution of consumable hemp products.

(b) A person must apply for a consumable hemp products license by submitting an application to the department for each location engaged in manufacturing or processing consumable hemp products. The application must include:

(1) a legal description of each location, including the global positioning system coordinates for the perimeter of each location:

(A) where the applicant intends to manufacture or process consumable hemp products; and

(B) where the applicant intends to store consumable hemp products;

(2) written consent from the applicant or property owner, if the applicant is not the property owner, for the department, the Department of Public Safety, Texas Alcoholic Beverage Commission, and any other state or local law enforcement agencies to enter all premises where consumable hemp is manufactured, processed, or delivered for physical inspection or to ensure compliance with this chapter; and

(3) a fingerprint-based criminal background check from each applicant at the applicant's expense.

(c) If the applicant has been convicted of a felony relating to a controlled substance under federal law or the law of any state within 10 years before the date of application, the department must not issue a consumable hemp products license under this subchapter.

(d) If the department receives information that a license holder has been convicted of a felony relating to a controlled substance under federal law or the law of any state within 10 years before the license was issued, the department must revoke the consumable hemp products license.

(e) A person holding a consumable hemp products license under this subchapter must undergo a fingerprint-based criminal background check at the person's own expense.

(f) Applications must contain the following information:

(1) the name of the license applicant;

(2) the business name, if different from the applicant's name, and any other names under which the firm does business, if applicable;

(3) the mailing address of the business;

(4) the street address of the facility;

(5) the primary business contact telephone number;

(6) the personal email address of the applicant; and

(7) the email address of the business, if different than the applicant's email address.

(g) If a person owns or operates two or more facilities, each facility must have a separate license with its own application form, listing the name and address of each facility.

(h) Applicants must submit an application for a consumable hemp products license request under this subchapter electronically through www.Texas.gov. The department is authorized to collect fees to recover costs associated with application and renewal application processing through www.Texas.gov.

(i) All fees required by the department must be submitted with the application.

(j) Applicants must provide any additional information required by the department, as specified on the application forms.

(k) The facility must display the consumable hemp products license issued by the department in an obvious and conspicuous public location.

§300.202. License Term and Fees.

(a) A consumable hemp product license is valid for one year from the date displayed on the license and must be renewed annually. An expired license is not current or valid. A person must not process hemp or manufacture a consumable hemp product without a valid license.

(b) The department must issue and renew a license if the license holder:

(1) is eligible to obtain a license under §300.201 of this subchapter (relating to Application for License or Renewal);

(2) submits a license fee to the department;

(3) does not owe outstanding fees to the department;

(4) possesses testing results of consumable hemp products before manufacture, distribution, or sale into commerce, and provides those testing results upon department request;

(5) has not been convicted of a felony relating to a controlled substance under federal law or the law of any state in the 10 years before the date of renewal of the license;

(6) submits a complete application; and

(7) has not had a consumable hemp products license revoked for sale to a minor in the preceding five years from the date on which an application is submitted to the department.

(c) Fees.

(1) Before manufacturing or processing consumable hemp products, a license holder must pay a fee of $10,000 per facility. License renewal fees are $10,000 per facility.

(2) For each facility, a license holder must pay:

(A) a $10,000 fee for an amendment to a new license due to a change of ownership of the licensed facility; or

(B) a $125.00 fee for any amendment during the licensure period due to minor changes, such as change of location, change of name, or change of address.

(3) Fees are not prorated.

(4) A person who files a renewal application after the expiration date of the current license must pay an additional delinquency fee of $1,000.

(d) An application for an amendment of a consumable hemp product license is complete when the department has received, reviewed, and found acceptable the application information and fee required by subsection (c) of this section.

(e) An initial and renewal application for a consumable hemp product license must be processed in the following time periods:

(1) the first time period of 45 calendar days begins on the date the department receives a completed application. If the department receives an incomplete application, the period ends on the date the department issues a written notice that the application is incomplete. The department must issue the written notice within 60 calendar days after receiving the incomplete application and describe the specific information or fee required before the application is considered complete;

(2) the second time period of 45 calendar days begins on the date the department receives a completed application and ends on the date the department issues the license or issues a written notice that the application is being proposed for denial; and

(3) the third time period of 135 calendar days begins on the date the department issues the written notice to the applicant as described in paragraph (1) of this subsection. If the applicant fails to submit the requested information or fee within this period, the department considers the application withdrawn.

(f) Reimbursement of fees:

(1) in the event the application is not processed within the time periods stated in subsection (e) of this section, the applicant has the right to make a written request within 30 business days after the end of the second time period that the department shall reimburse in full the fee paid in that application process; and

(2) if the department finds that good cause does not exist for exceeding the established periods, the request shall be approved, and the department shall notify the applicant in writing of the approval of the reimbursement within 30 business days after the department's decision.

§300.203. Access to Records.

(a) A person who is required to maintain records under this chapter or 21 United States Code (U.S.C.) §360i or §360j must maintain records on site for immediate inspection. Upon request by the department or the Texas Alcoholic Beverage Commission, the person must provide access to records for review or copying to verify that consumable hemp products are being produced in accordance with United States Department of Agriculture under 7 U.S.C. Chapter 38, Subchapter VII, or Texas Agriculture Code Chapter 121.

(b) A person regulated under Texas Agriculture Code Chapter 122 must provide the department with test results of hemp or hemp products upon request. These results must show that the total delta-9 tetrahydrocannabinol concentration is not more than 0.3 percent on a dry weight basis.

(c) Records described in this chapter must be maintained for a period of no less than three years after the date the records are created.

(d) A consumable hemp manufacturer or processor must maintain the following records, as applicable:

(1) certificate of analysis (COA) of raw hemp and hemp ingredients in accordance with §300.301(b)(1) - (3) and §300.301(c) of this chapter (relating to Testing Required);

(2) COA of finished hemp products by batch number;

(3) source of ingredients, including:

(A) receiving records with address and contact information from suppliers, distributors, warehouses, or any person engaged in the business of making a consumer product directly or indirectly; or

(B) licensing documentation, if applicable, from the supplier's respective hemp or food regulating authority;

(4) batch production records;

(5) recalled product information;

(6) consumer complaints;

(7) other records required by the department, including corrective action logs, destruction logs, equipment calibration records, or other accurate reproductions of the original records, or electronic records; and

(8) master production records.

(e) Records must contain actual values and observations. Records must be accurate, permanent, legible, and created concurrently with performance of the activity documented. Records can be electronic. Records must be detailed enough to provide a history of work performed, and include:

(1) the name and, if more than one, the location of the plant or facility;

(2) the date and time of the documented activity

(3) the signature or initials of the person performing the activity; and

(4) the identity of the product and the batch number.

§300.204. Master Production Records.

(a) To ensure uniformity from batch to batch, one person must prepare, date, and sign with full handwritten signature, the master production records for each consumable hemp product, including batch size. A second person must independently check, date, and sign these records. The preparation of master production and control records must be described in a written procedure that the firm must follow.

(b) Master production records must include:

(1) the name and weight or measure of each ingredient;

(2) a complete list of ingredients;

(3) a statement of any calculated excess of a by-product; and

(4) complete manufacturing instructions and specifications.

§300.205. Batch Production Records.

Batch production records must be prepared for each batch of consumable hemp product produced and must include complete information regarding each batch. These records must include, if applicable:

(1) the appropriate master product record, checked for accuracy, dated, and signed; and

(2) documentation that each step in the manufacture, processing, packaging, or holding of the batch was accomplished, including:

(A) dates;

(B) identity of individual major equipment and lines used;

(C) weight and measure of ingredients;

(D) in-process results;

(E) laboratory control results, if applicable;

(F) inspection of the packaging and labeling area before and after use;

(G) statement of the actual yield;

(H) complete labeling records, including copies of all labeling used;

(I) any sampling performed;

(J) any investigation conducted;

(K) any destruction of tetrahydrocannabinol;

(L) any rework conducted; and

(M) certificate of analysis of hemp or hemp derivative used in the manufacture of a consumable hemp product.

§300.207. Recalls.

(a) Recall Procedures. All facilities engaged in the manufacture, processing, distribution, or retail sale of consumable hemp products must maintain written recall procedures. The recall procedures must describe the steps, assign responsibility, and include at a minimum:

(1) identification of recalled products;

(2) immediate removal and segregation of recalled products from sale and active inventory;

(3) return holding, or disposal of recall products; and

(4) notification to the public about any hazards presented by the product to protect public health.

(b) Recall plan. Manufacturers, distributors, or processors must establish a recall plan. The recall plan must include the following procedures:

(1) directly notify the direct consignees of the hemp product, including how to return or dispose of the affected product;

(2) notify the public about any hazards presented by the product to protect public health;

(3) conduct effectiveness checks to verify that the recall is carried out; and

(4) dispose of recalled product appropriately by reprocessing, reworking, diverting to a safe use, or destroying the product.

§300.208. Complaints.

(a) Each manufacturer or processor must maintain complaint files relating to product safety. Each manufacturer or processor must establish and maintain procedures for receiving, reviewing, and evaluating complaints. The procedures must ensure that:

(1) all complaints are processed in a uniform and timely manner;

(2) oral complaints are documented upon receipt; and

(3) complaints are evaluated to determine whether the complaint represents an event that must be reported to the FDA and the department.

(b) Each manufacturer or processor must review and evaluate all complaints to determine whether an investigation is necessary. All safety-related complaints must be investigated. If no investigation is made, the manufacturer or processor must maintain a record that includes the reason for not investigating and the name of the individual responsible for the decision.

(c) Any complaint about labeling or packaging not meeting specifications must be reviewed, evaluated, and investigated, unless a similar complaint has already been investigated and another investigation is not needed.

(d) The record of the investigation must include:

(1) the name of the product;

(2) the date the complaint was received;

(3) the batch number and batch date of product used;

(4) the name, address, and phone number of the complainant;

(5) the nature and details of the complaint;

(6) the dates and results of the investigation;

(7) any corrective action taken; and

(8) any reply to the complainant.

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

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SUBCHAPTER C. TESTING OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.301 - 300.303

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.301. Testing Required.

(a) Before a hemp plant is processed or otherwise used in the manufacture of a consumable hemp product, a representative sample must be tested to determine:

(1) the concentration and identity of the cannabinoids, including all acids in the plant;

(2) the presence and quantity of heavy metals, pesticides, microbial contamination, and other substances prescribed by the department;

(3) the presence and concentration of d-9 THC, total d-9 THC, and total THC; and

(4) a total delta-9 tetrahydrocannabinol concentration of 0.3% or less on a dry weight basis.

(b) Before a consumable hemp product, including hemp-derived ingredients used for further processing into another consumable hemp product, is sold at retail, distributed, or otherwise introduced into commerce in this state, a representative sample must be tested to determine:

(1) the presence, concentration, and identity of cannabinoids;

(2) the presence and concentration of d-9 THC, total d-9 THC, and total THC;

(3) the presence and quantity of residual solvents, heavy metals, pesticides, and harmful pathogens; and

(4) the total delta-9 tetrahydrocannabinol concentration is 0.3% or less on a dry weight basis.

(c) A certificate of analysis (COA) documenting tests conducted under this subchapter must:

(1) be made available to the department upon request in an electronic format before manufacture, processing, or distribution into commerce; and

(2) include measurement of uncertainty analysis parameters.

(d) The COA must contain, at a minimum, the following information:

(1) laboratory name, address, and contact information;

(2) hemp cultivator, hemp processor, or hemp manufacturer's name and address;

(3) sampler identification;

(4) sample identifying information, including matrix type;

(5) lot identification number of sample;

(6) sample received date and the dates of sample analyses and corresponding testing results;

(7) units of measure;

(8) analytical methods, analytical instrumentation used, and corresponding limits of detection (LOD) and limits of quantitation (LOQ);

(9) expiration date;

(10) QR code on the COA verifying the authenticity of testing conducted at an accredited laboratory;

(11) measurement of uncertainty analysis parameters; and

(12) results of all requested analyses performed for the sample, including percentage of delta-9 THC, total delta-9 THC, and total THC per container.

(e) It is a violation if a person forges, falsifies, or alters the results of a laboratory test authorized or required by this chapter. Consumable hemp products found in violation of this subsection must be retested and are subject to detention or embargo under Texas Health and Safety Code §431.048.

(f) Expired COAs are not valid. Consumable hemp products with expired COAs must be retested and are subject to detention or embargo under Texas Health and Safety Code §431.048.

§300.302. Sample Analysis of Consumable Hemp Products.

(a) This chapter does not apply to low-THC cannabis regulated under Texas Health and Safety Code Chapter 487.

(b) Regardless of any other law, a person must not sell, offer for sale, possess, distribute, or transport a consumable hemp product in this state if the consumable hemp product contains any material extracted or derived from the plant Cannabis sativa L., other than from hemp produced in compliance with 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, and:

(1) a representative sample of the consumable hemp product has been tested by an accredited laboratory and found to have a total delta-9 THC concentration of 0.3% or less on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less; and

(2) testing results are provided to the department upon request.

(c) The department must conduct random testing of consumable hemp products at various retail and other facilities that sell or distribute products to ensure the products:

(1) do not contain harmful ingredients;

(2) are produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(3) have a total delta-9 THC content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less.

(d) Upon request by the department, the manufacturer, processor, distributor, or retailer of consumable hemp products must provide representative raw or finished consumable hemp product samples to the department. These samples must be provided at the licensee's or registrant's expense.

§300.303. Provisions Related to Testing.

(a) A consumable hemp product that exceeds the acceptable hemp THC level or is adulterated in a manner harmful to human consumption must not be sold at retail or otherwise introduced into commerce in this state.

(b) A hemp manufacturer, processor, distributor, and retailer must provide the results of testing required by §300.301 of this subchapter (relating to Testing Required) to the consumer, the Texas Alcoholic Beverage Commission, and department upon request.

(c) A license holder must not use an independent testing accredited laboratory unless the license holder:

(1) has no ownership interest in the accredited laboratory; or

(2) holds 10 percent or less ownership interest in the accredited laboratory if the accredited laboratory is a publicly traded company.

(d) A manufacturer, processor, or retailer must pay the costs of raw and finished hemp product testing in an amount prescribed by the accredited laboratory selected by the license holder.

(e) The department may require that a copy of the test results be sent directly to the department.

(f) A manufacturer, processor, and retailer must retain results from samples for at least three years from the date that testing results are received.

(g) A manufacturer and processor of consumable hemp products must conduct sampling and testing using acceptance criteria determined by the department.

(h) A manufacturer, processor, and retailer must ensure all products are tested for the most current list of analytes maintained by the department.

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SUBCHAPTER D. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.402 - 300.407

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.402. Packaging and Labeling Requirements.

(a) All consumable hemp products marketed as containing cannabinoids must, in addition to the requirements of §300.102 of this chapter (relating to Applicability of Other Rules and Regulations), be labeled in the manner provided by this section with the following information:

(1) batch number;

(2) batch date;

(3) product name;

(4) name of the product's manufacturer or processor;

(5) telephone number and email address of manufacturer or processor;

(6) a uniform resource locator (URL) that provides or links to a certificate of analysis (COA) for the product or each hemp-derived ingredient of the product, including the amount of cannabinoid in each serving or unit of the product, the amount of total THC, and total delta-9 THC. The URL must:

(A) be conspicuously marked; and

(B) directly link to a webpage where the required COA may be found in three or fewer steps; and

(7) recommended serving size in milligrams and servings per container.

(b) Labels must include the following specific warnings:

(1) keep out of reach of children;

(2) product may contain tetrahydrocannabinol (THC) and can cause a user to fail a drug test;

(3) all THCs have psychoactive properties;

(4) pregnant or nursing women should consult a healthcare provider before use; and

(5) this product has not been evaluated by the FDA.

(c) The label required by this section must appear on the outer packaging of each product intended for individual retail sale.

§300.403. Retail Sale of Out-Of-State Consumable Hemp Products.

A person selling consumable hemp products in Texas, that are processed or manufactured outside of Texas must comply with this chapter, and upon request, submit to the department evidence that the products were processed or manufactured in another state or a foreign jurisdiction in compliance with:

(1) a state or tribal or jurisdiction's plan approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) §1639p;

(2) a plan established under 7 U.S.C. §1639q if that plan applies to the state or jurisdiction; or

(3) the laws of a foreign jurisdiction if the products are tested in accordance with §300.301 of this chapter (relating to Testing Required), comply with acceptable hemp THC levels, and comply with federal regulations.

§300.405. Packaging Requirements.

Before selling or distributing a consumable hemp product, the product must be prepackaged or, at the time of sale, placed in packaging or a container that is:

(1) tamper-evident;

(2) child resistant; and

(3) resealable, if the product contains multiple servings or includes multiple products purchased in one transaction, while keeping the child-resistant mechanism intact.

§300.406. Packaging and Labeling Control.

(a) There must be clear written procedures describing in sufficient detail the process for receipt, identification, storage, handling, and examination of labeling and packaging materials.

(b) Labeling and packaging materials must be examined upon receipt and before use in packaging or labeling of a consumable hemp product. All labels and packaging material meeting appropriate written criteria must be approved by a qualified individual as defined in 25 TAC §229.211(54) (relating to Definitions) and released for use. Any labeling or packaging materials that do not meet such criteria must be rejected to prevent use in unsuitable operations.

(c) Records must be maintained for each shipment received of each different labeling and packaging material indicating receipt, examination, and whether accepted or rejected.

(d) Obsolete or rejected labeling and other packaging must be destroyed.

(e) Labeling materials issued for a batch must be carefully examined for identity and conformity to the labeling specified in the master production records.

(f) Labeling not currently being applied must be stored in a manner to prevent mix-ups with active labeling and ensure appropriate use.

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SUBCHAPTER E. REGISTRATION FOR RETAILERS OF CONSUMABLE HEMP PRODUCTS

25 TAC §300.501, §300.502

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.501. Registration Required for Retailers of Certain Products.

(a) This chapter does not apply to:

(1) low-THC cannabis regulated under Texas Health and Safety Code Chapter 487; or

(2) products approved by the FDA, or recognized by the FDA under 21 Code of Federal Regulations Part 182, Substances Generally Recognized as Safe (GRAS).

(b) A person must not sell consumable hemp products at retail in Texas unless the person registers each location with the department. This includes any location owned, operated, or controlled by the person where consumable hemp products are sold.

(c) A person is not required to register with the department under subsection (b) of this section if the person is:

(1) an employee of a registrant; or

(2) an independent contractor of a registrant who sells the registrant's products at retail.

§300.502. Application.

(a) A person must register under this subchapter by submitting an application in the manner prescribed by the department.

(b) The owner, operator, or owner designee must submit an application that contains the following information:

(1) the name under which the business is operated;

(2) the mailing address of the facility;

(3) the street address of each location;

(4) the primary business contact telephone number;

(5) the phone number for each location;

(6) the primary business email address; and

(7) the written consent from the applicant or property owner, if the applicant is not the property owner, for the department, Department of Public Safety, Texas Alcoholic Beverage Commission, and other state or local law enforcement agencies to enter all premises where consumable hemp is manufactured, processed, sold, or delivered for physical inspection or to ensure compliance with this chapter.

(c) A retail hemp registration is valid for one year from the date displayed on the registration and must be renewed annually. An expired registration is not current or valid. A person must not sell at retail or offer to sell a consumable hemp product without a valid registration.

(d) An initial and renewal application for a retail hemp registration must be processed in the following time periods.

(1) The first time period of 45 calendar days begins on the date the department receives a completed application. If the department receives an incomplete application, the period ends on the date the department issues a written notice that the application is incomplete. The department must issue the written notice within 60 calendar days after receiving the incomplete application and describe the specific information or fee required before the application is considered complete.

(2) The second time period of 45 calendar days begins on the date the department receives a completed application and ends on the date the department issues the license or issues a written notice that the application is being proposed for denial.

(3) The third time period of 135 calendar days begins on the date the department issues the written notice to the applicant as described in paragraph (1) of this subsection. If the applicant fails to submit the requested information or fee within this period, the department considers the application withdrawn.

(e) Proof of registration from the department must be prominently displayed in a conspicuous location visible to the public.

(f) Applicants must submit an application for registration electronically through www.Texas.gov.

(g) All fees required by the department must be submitted with the application.

(1) A retail hemp registration or renewal fee of $5,000 for each location is required before the sale of consumable hemp product.

(2) A person who files a renewal application after the expiration date of the current registration must pay an additional delinquency fee of $1,000.

(3) A $125 fee is required for any amendment during the registration period due to minor changes, such as change of location, change of name, or change of address.

(4) Fees are not prorated.

(h) Reimbursement of fees:

(1) in the event the application is not processed within the time periods stated in subsection (d) of this section, the applicant has the right to make a written request within 30 business days after the end of the second time period that the department reimburse in full the fee paid in that application process; and

(2) if the department finds that good cause does not exist for exceeding the established periods, the request shall be approved, and the department shall notify the applicant in writing of the approval of the reimbursement within 30 business days after the department's decision.

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 2, 2026.

TRD-202601068
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: March 31, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 719-3521

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SUBCHAPTER F. ENFORCEMENT

25 TAC §§300.601 - 300.606

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.601. Violation of Department License or Registration Requirement.

(a) A person commits a violation if the person manufactures, processes, distributes, sells, or otherwise introduces a consumable hemp product into commerce without a license or registration required by the department under:

(1) §300.201 of this chapter (relating to Application for License or Renewal) for manufacturing, processing, or distribution of consumable hemp products; or

(2) §300.502 of this chapter (relating to Application) for the retail sale of consumable hemp products.

(b) Each day a violation continues or occurs counts as a separate violation when calculating an administrative penalty.

§300.603. Detained or Embargoed Article.

The department must attach a tag or other appropriate marking to an article that is a food, drug, device, cosmetic, or consumer commodity that gives notice that the article is, or is suspected of being, adulterated or misbranded. The department tags or marks any detained or embargoed article if the department finds or has probable cause to believe the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) is in violation of Texas Health and Safety Code §431.084, §431.114, or §431.115.

§300.606. Administrative Penalty.

(a) The department may impose an administrative penalty against a person who violates this chapter.

(b) The department must notify a retailer of consumable hemp products of a potential violation and provide the registrant an opportunity to resolve unintentional or negligent violations after being notified by the department.

(c) The department assesses administrative penalties based upon one or more of the following criteria:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the efforts to correct the violation; and

(5) any other matter that justice may require in relation to the violation.

(d) If the department determines that a violation has occurred, the department must issue a notice of violation. The notice must state the facts on which the determination is based. The notice must include an assessment of the penalty.

(e) The notice of violation must be in writing and be sent to the license holder or registrant by certified mail. The notice must include a summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person of a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 business days after the date the person receives the notice of violation, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty, the department issues an order imposing the recommended penalty.

(h) If the person charged with the violation does not respond in writing within 20 business days after the date the person receives the notice of violation, the department may determine that a violation occurred and assesses the penalty. The department must issue an order requiring that the person pay the penalty.

(i) If the person requests a hearing, the department refers the matter to the State Office of Administrative Hearings.

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 2, 2026.

TRD-202601069
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: March 31, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 719-3521

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SUBCHAPTER G. RESTRICTIONS ON SALE TO MINORS

25 TAC §300.701, §300.702

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001, Texas Government Code §524.0005, and HSC §12.001, HSC Chapter 431, and HSC Chapter §443.051.

§300.701. Restriction on Sale to Minors.

(a) A person is prohibited from delivering, selling, or offering to sell a consumable hemp product to a minor.

(b) A person who sells CHP must verify each purchaser's age by reviewing a valid proof of identification before completing the sale of any CHP.

(c) A valid proof of identification may include a driver's license issued by Texas or another state, a passport, or an identification card issued by a state or government agency. A valid proof of identification must meet the following criteria:

(1) include a physical description and a photograph that matches the person's appearance;

(2) provide the individual's date of birth;

(3) be issued by a government agency; and

(4) is not expired.

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 2, 2026.

TRD-202601070
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: March 31, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 719-3521

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.382

The Comptroller of Public Accounts adopts amendments to §20.382, concerning printing, without changes to the proposed text as published in the January 9, 2026, issue of the *Texas Register* (51 TexReg 195). The rule will not be republished.

The comptroller amends subsection (a) to remove unnecessary language that merely recites the statute. The revised language provides that §20.382 does not apply to institutions of higher education. The revised language aligns this section with Government Code, §2172.003(d).

The comptroller amends subsection (b) to streamline language. The revised language provides that the comptroller may assess and evaluate printing operations of state agencies and make recommendations to increase productivity and cost-effectiveness.

The comptroller amends subsection (c) to remove the outdated Council on Competitive Government's (CCG) Cost Methodology as a baseline for evaluating and comparing cost of state agency printing operations. CCG has been abolished. The new language provides all state agency print shops in Travis County shall operate under an interagency contract, and an interagency contract is the sole method through which the comptroller will authorize a state agency in Travis County to operate a print shop.

The comptroller amends subsection (d) to provide that the comptroller's review of print shop equipment purchases under §20.382 is optional. Subsection (d) now states that the comptroller may review state agency requisitions for new print shop equipment, including copiers and other printing devices. The new language also provides instruction on how to initiate the review, and lists written documentation the state agency may provide the comptroller for review. It eliminates items the comptroller will no longer review, because it is duplicative or irrelevant to the comptroller's review. The amendment renumbers the paragraphs in subsection (d) to adjust for the deleted language.

The comptroller amends subsection (f) to describe the comptroller's internet portal for obtaining quotes from print shops. Because the print shop portal has replaced the print shop roster formerly maintained by the comptroller, the amended subsection (f) no longer mentions the roster. The amended subsection (f) also provides that institutions of higher education and agencies with print shops outside Travis County may participate in the portal by entering an interagency agreement with the comptroller.

The comptroller deletes subsection (g). The comptroller maintains the online Centralized Master Bidders List as described in §20.107 of this title. Maintaining a printed listing as described in the former subsection (g) would merely duplicate the same information in a less useful format.

The amendment renumbers former subsection (h), to subsection (g).

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2172.003 which provides that the comptroller shall adopt rules for state agencies to implement Chapter 2172 regarding printing activities; and assess and evaluate those activities.

These amendments implement Government Code Chapter 2172.

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 2, 2026.

TRD-202601071

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Effective date: March 22, 2026

Proposal publication date: January 9, 2026

For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES

The Department of Family and Protective Services (DFPS) adopts the repeal of Title 40, Texas Administrative Code (TAC), Chapter 704, relating to Prevention and Early Interventions Services including §§704.1, 704.3, 704.201, 704.203, 704.205, 704.207, 704.209, 704.601, 704.603, 704.701, 704.703, 704.801, 704.803. The proposal was published in the January 30, 2026, issue of the *Texas Register* (51 TexReg 539). The repeals of the rules are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

In 2023, Senate Bill 24 of the 88th Regular Legislative Session transferred the Prevention and Early Intervention (PEI) Services Division from DFPS to the Health and Human Services Commission (HHSC). Chapter 704 contains the rules previously adopted by DFPS to govern the former PEI Division. As DFPS no longer oversees this program, the rules in Chapter 704 are no longer necessary.

COMMENTS

The 30-day comment period ended March 1, 2026. During this period, DFPS did not receive any comments regarding the rules repealed.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §704.1, §704.3

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, Senate Bill 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter, Chapter 137, to be administered by HHSC.

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, 2026.

TRD-202601090

Sanjuanita Maltos

Rules Coordinator

Department of Family and Protective Services

Effective date: March 23, 2026

Proposal publication date: January 30, 2026

For further information, please call: (512) 945-5978

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SUBCHAPTER C. PREVENTION AND INTERVENTION PRIMARY RESPONSIBILITIES

40 TAC §§704.201, 704.203, 704.205, 704.207, 704.209

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, Senate Bill 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter, Chapter 137, to be administered by HHSC.

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, 2026.

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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Effective date: March 23, 2026
Proposal publication date: January 30, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER G. INFANT MORTALITY PREVENTION AND EDUCATION PROGRAM

40 TAC §704.601, §704.603

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, Senate Bill 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter, Chapter 137, to be administered by HHSC.

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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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Effective date: March 23, 2026
Proposal publication date: January 30, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER H. COMMUNITY-BASED FAMILY SERVICES GRANT PROGRAM

40 TAC §704.701, §704.703

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, Senate Bill 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter, Chapter 137, to be administered by HHSC.

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

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TRD-202601093
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Effective date: March 23, 2026
Proposal publication date: January 30, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER I. CHILDREN'S TRUST FUND

40 TAC §704.801, §704.803

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, Senate Bill 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter, Chapter 137, to be administered by HHSC.

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, 2026.

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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Effective date: March 23, 2026
Proposal publication date: January 30, 2026
For further information, please call: (512) 945-5978

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Exhibit G

Texas DPS — Licensed Dispensaries and Corrected Tabulation for Texas Compassionate Use Program Expansion

(May 8, 2026) — showing Fluent, Texas Original, Goodblend, and the conditional awards

Licensed Dispensaries

HB 46 requires the Department of Public Safety (DPS) to issue a total of 15 TCUP licenses. With 3 current active licenses, DPS will issue an additional 12 new licenses. These new licenses will enhance patient access statewide and availability for patients prescribed low-THC cannabis under **Chapter 169, Occupations Code**.

Current Active Licensed Dispensaries:

Fluent (formerly Cansortium Texas)
License #0004
info@fluenttx.com
https://getfluent.com/

Texas Original
License #0005
info@texasoriginal.com
https://texasoriginal.com/

Goodblend (Surterra Texas LLC, d/b/a goodblend)
License #0006
SupportTX@goodblend.com
https://tx.goodblend.com/support/

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The Governor's Committee on People with Disabilities

Statement on Telemarketing

Texas Fusion Center Privacy Policy

Telework Plan

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Compact with Texans

SimpliGov Travel System

AV First Responder Safety Plans

DPS Releases Corrected Tabulation for Texas Compassionate Use Program Expansion

May 8, 2026

LATEST NEWS

from the Texas Department of Public Safety

DPS Releases Corrected Tabulation for Texas Compassionate Use Program Expansion

AUSTIN – The Texas Department of Public Safety (DPS) today announced a correction to the tabulation methodology for awarding conditional licenses under the Texas Compassionate Use Program (TCUP) expansion process. **This correction affects some businesses that were previously awarded conditional TCUP licenses or spots on the TCUP license eligibility list during Phase I and Phase II of the expansion selection process.**

Using the corrected tabulation methodology, the following organizations will be **conditionally** awarded TCUP licenses, subject to additional due diligence, including review of disciplinary history, financial suitability, litigation history and any other information required by the department:

Name	Region
Verano Texas, LLC	Public Health Region 10
GTI Texas, LLC dba RISE Dispensaries	Public Health Region 9
Trulieve, TX, Inc	Public Health Region 1
Lone Star Bioscience, Inc	Public Health Region 8
Lonestar Compassionate Care Group, LLC	Public Health Region 3
Texas Patient Access, LLC	Public Health Region 3
Bluebonnet Technologies, LLC	Public Health Region 6
Sawtooth Texas LLC	Public Health Region 4
Bayou City Medical Dispensary	Public Health Region 5
Dilatso, LLC	Public Health Region 2
Texa OP, dba TexaRx	Public Health Region 11

PC TX OPCO LLC dba PharmaCann	Public Health Region 6

Conditional licenses **do not** grant the applicant permission to cultivate, manufacture, distribute or sell cannabis products until final approval by the department. As a holder of a conditional license, the licensee is subject to the department's ongoing due diligence evaluation. Each conditional licensee is expected to fully comply with all statutory and regulatory requirements applicable to the medicinal license issued under TCUP.

DPS will request additional information from these businesses and will not invoice any dispensing organization license fees until the additional due diligence evaluations are completed and passed. **The announcement of these businesses today does not guarantee that these businesses will be issued final TCUP licenses to operate as dispensing organizations**.

As outlined in **House Bill 46**, DPS will issue a total of 12 new licenses over a two-phased selection period. Nine conditional licensees in Phase I, and three conditional licensees in Phase II.

House Bill 46 also requires that businesses issued TCUP licenses must become fully operational within 24 months of licensure. If a business that is issued a TCUP license fails to meet this requirement, the department will refer to the TCUP license eligibility list for a replacement.

The following organizations have been placed on a **TCUP license eligibility list**, following the corrected tabulation methodology:

Name
Story of Texas, LLC
Cresco Labs Texas, LLC
Lone Star Life, LLC

MSC Lone Star, LLC
Texas Medica Collective, LLC
Village Farms, LP
Sua Vaping Inc dba VI Vape City
Yes TX, LLC
JG Texas LLC dba Justice Cannabis Co
Crown Grove Investments, LLC dba Smoke and Vape
Texas Health Systems, Inc
GB Farms Texas Investments, LLC

About the Corrected Tabulation Methodology

As part of the Texas Compassionate Use Program, the department was responsible for issuing a predetermined number of conditional licenses to companies seeking to participate in this program. In August 2025, the department published a document on its website identifying four scoring categories within the exhibits section and indicating that each category would carry an equal weight of 25% of the total score.

While the published document communicated this weighting structure, the department did not communicate externally that the internal scoring methodology was still under development. Internally, discussions were ongoing regarding alternative approaches to scoring, including methods that would weigh individual line items rather than applying equal weight to each of the four categories.

Following the April 1, 2026, announcement of successful applicants and the subsequent public posting of score sheets, a tabulation error was identified. The methodology used to tabulate the final scores did not apply the 25% equal weighting to each of the four scoring categories as reflected in the published document.

After careful review, the department determined that the most appropriate and equitable course of action was to re-tabulate the scores using the 25% equal category weighting methodology reflected in the document published in August 2025, which applicants and the public reasonably relied upon. This corrective action does not constitute a re-scoring of applications. The scores assigned by the individual scoring committee members remain entirely unchanged; only the tabulation methodology was corrected.

As a result of the corrected tabulation, three companies that were not included among the originally announced successful applicants now qualify for conditional license awards. Correspondingly, the conditional licenses previously awarded to three companies have been rescinded, and those companies have been placed on the eligibility list. All companies affected by this change are being notified directly.

About TCUP

Passed and signed into law in 2015, **Senate Bill 339** charged DPS with creating and administering TCUP in Texas, under the authority of the Texas Health and Safety Code, Chapter 487. Through the program, DPS operates the Compassionate Use Registry of Texas (CURT) – a secure online registry of qualified physicians who can prescribe low tetrahydrocannabinol (THC) to patients with specific medical conditions.

Additionally, TCUP dispensing organizations are licensed by DPS and undergo regular physical inspections to ensure their compliance with state statute and administrative rules.

More information about TCUP is available online, **here**.

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(HQ 2026-046)

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AV First Responder Safety Plans

Exhibit H

Texas DPS

Compassionate Use Program: Program Evaluation and Recommendations for Sustainability (2024)

TEXAS

COMPASSIONATE USE PROGRAM

PROGRAM EVALUATION & RECOMMENDATIONS FOR SUSTAINABILITY

Weeds.
Licensing. Compliance. Public Policy.
weeds.team

ABOUT THIS REPORT.

In 2023, Weeds LLC of Albuquerque, New Mexico was awarded a contract to serve as a subject matter expert to assist the Texas Department of Public Safety in an evaluation of the Compassionate Use Program.

The analysis presented here is based on data provided by the Compassionate Use Program (CUP), the Texas Dept. of State Health Services (DSHS), the Texas Medical Board (TMB), the Texas State Legislature, surveys of physicians and participating patients, and public sources, as cited, as well as input from stakeholders through the CUP Working Group.

About Weeds. Weeds LLC is a public policy and compliance firm specializing in THC and hemp cannabis regulatory policy. Individually, our team members have been an elected legislator, a law enforcement leader, a state policy manager, a cannabis program regulator and industry operators. Working together, we work to navigate the ever-changing landscape of federal, state and local industry policy and compliance.

Learn more at weeds.team

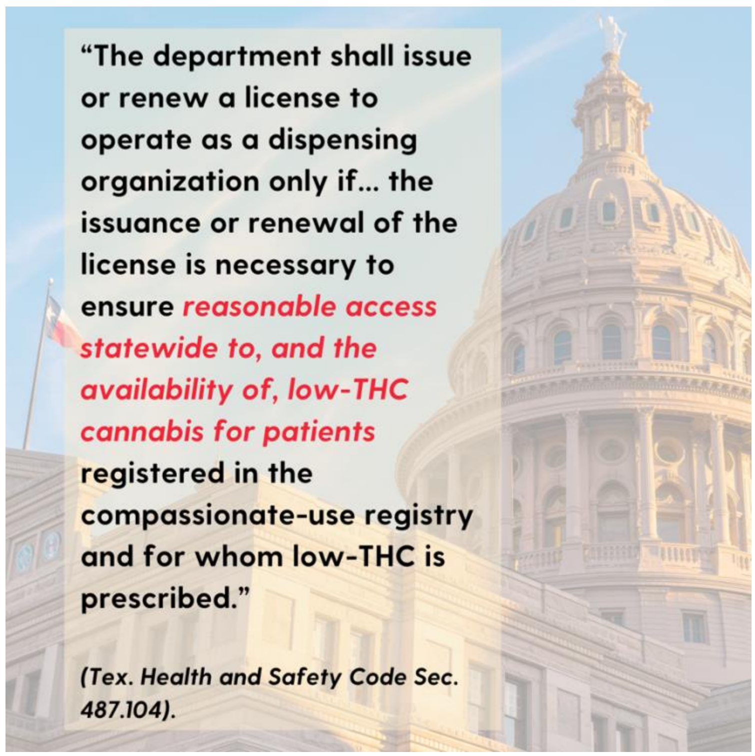
Table of Contents

INTRODUCTION

Background

In 2015, the Texas Legislature passed Senate Bill 339 requiring the Department of Public Safety to create a program "to ensure *reasonable access statewide to, and the availability of, low-THC cannabis for patients* registered in the compassionate-use registry and for whom low-THC is prescribed" (Tex. Health and Safety Code Sec. 487.104).

To fulfill its obligation the Public Safety Commission established the Compassionate Use Program under the Regulatory Services Division which under administers the program under the authority of the Texas Health and Safety Code, Chapter 487, Texas Occupation Code, Chapter 169, and the related administrative rules (37 TAC Part 1, Chapter 12, and 25 TAC Part 1; Chapter 1, Rule §161). The CUP program administers three main components: a patient registry, a physician/prescriber registry, and licensed dispensing organizations (DOs).



The initial CUP enabling legislation required DPS to authorize at least three dispensing organizations and then no more than would be required to meet the "reasonable statewide access… for patients" standard.

Based on the department's evaluation of patient needs and the limited number of eligible conditions, the department initially licensed three dispensing organizations and opened the program to patients in late-2017 (by the end of 2017 the program had enrolled 16 prescribing physicians and served just 12 patients). In the 6 years since, 756 qualified physicians have enrolled 66,205 patients under an expanding list of conditions authorized by the legislature in 2019 and 2021[1].

While the number of eligible conditions and patients continued to grow, no additional dispensing organization licenses have been issued.

To administer the program, CUP created and maintains an internally built database, the Compassionate Use Registry of Texas (CURT), to track patients, physicians, products, and associated data points. The program produces monthly reports with top-level data extracted from CURT including the total number of enrolled patients and physicians.

This Evaluation

In response to questions from the legislature and Public Safety Commission relating to the status and sustainability of the CUP program, the agency in 2023 determined that it needed to provide a more nuanced dashboard of metrics to determine and monitor the program's health and sustainability. At the same time, legislation was introduced that would have expanded eligible conditions and allowable THC limits. Although that legislation did not pass, the experience of stakeholders in that process encouraged the Department to conduct a more in-depth analysis of the program's current status and map out potential adjustments to be considered to support future growth.

To assist the department in that evaluation, the program issued a solicitation for a subject matter expert. The solicitation award was issued to Weeds LLC, a New Mexico-based regulatory and public policy firm with experience in this area.

Pursuant to that scope of work, CUP program staff provided the SME with CURT program data relating to prescriptions issued and fulfilled and enrolled physicians. The SME firm gathered additional data by attending a meeting of the CUP Working Group at DPS Headquarters in Austin, reviewing data and reports from DPS and other state agencies and public policy groups, including DSHS, the US Cannabis Regulators Association, and economic and market data from publicly sourced data made available by Whitney Economics whose founder serves as the chief economist for the National Industrial Hemp Council and National Cannabis Industry Association. SME staff also conducted

[1] Texas DPS, CUP Reports and Statistics, https://www.dps.texas.gov/section/compassionate-use-program/reports-statistics

personal interviews with members of the working group and received unsolicited comments from patient advocacy organizations, patients, and the industry through the SME's website.

In the spring of 2024, the program solicited feedback from physicians and patients to identify, among other things, awareness of the state's medical cannabis program and to challenge assumptions related to program access. Those results are included here as appendices.

This report is limited to an evaluation of existing data as provided by CUP and those sources mentioned.

Our charge is to provide decision makers with a framework through which they can evaluate the current status of the program, and specifically as it relates to the statutory requirement to ensure "reasonable statewide access" for patients.

In addition, the SME was charged with evaluating options for program expansion or modification, if policy makers determine that program sustainability requires it now or in the future. The SME takes no position on past or potential future legislation regarding the program.

In consultation with CUP program officials, the program evaluation is designed in two parts:

1. **Determine whether the current program provides for reasonable statewide access as required by statute.**
    - *If not, recommend strategies for addressing gaps and planning for future growth; and recommend a framework for decision making to achieve program goals*

2. **Evaluate the CUP against best practices in other states' low-THC and medical cannabis programs to maintain a high-quality program.**

This evaluation is based on our analysis of the data received from the program, patients and medical professionals who contributed input through the CUP working group and public surveys.

EXECUTIVE SUMMARY

The initial scope of this project evaluated whether the current Compassionate Use Program (CUP) meets the requirements to evaluate licenses on the need to provide “reasonable access statewide, and the availability of low-THC products, for patients…”.

In general, Texas’ huge geographic spread creates unique problems for both patients and dispensing organizations trying to provide statewide access. The legislature’s expansion of qualifying conditions and increasing patient enrollment have not been matched by comparable increases in enrolled prescribing physicians or dispensary locations.

We conclude that while telemedicine and physician education can reduce access gaps between medical cannabis patients and qualified medical specialists, the lack of dispensing organizations outside of the Central Texas region makes access to products to meet those medical needs in accessible.

We recommend a three-part approach to meeting patient needs: Recruiting additional qualified physicians through continuing education programs for medical professionals, allowing existing dispensing organizations to open a limited number of additional physical locations outside of the Central Texas region, and expanding the number of dispensing organizations to serve other regions outside of Central Texas.

This report provides baseline data and a framework for policymakers to evaluate these recommendations for the current program and future growth.

Access to Physicians

Texas' program is unique in that it limits physician participation in the medical cannabis program to those with enumerated specialties correlating to legislature-authorized conditions for medical cannabis use.

The CUP working group identified two major challenges to access relating to physicians: The long distances prospective patients outside of central Texas must travel to access required medical specialists, and the relatively small number of qualified specialists enrolled in the program to evaluate and treat medical cannabis patients.

Data from the Compassionate Use Registry of Texas (CURT) and the Texas Medical Board (TMB) show that just 63 of 254 counties have at least one prescribing physician with a primary practice location identified with the Texas Medical Board many counties (and entire DPS and DSHS regions) lack access to locally practicing CUP-enrolled specialists. However, the popularity of telemedicine and phone consultations with both physicians and patients may minimize the importance of physical proximity in determining reasonable patient access to qualified and enrolled physicians. 80% of physicians with required specialties and 81% of patients seeking an evaluation for CUP reported using telemedicine or phones for medical consultation. DSHS data shows that medical access in general is a challenge for many Texas residents. Medical access to CUP – when including telemedicine options – appears to be on par with medical specialist access in general.

Conversely, the limited number of certified specialists enrolled in CURT to serve patients appears to be a program challenge. The number of enrolled physicians has not kept up with annual increases in the number of patients and expanded conditions authorized by the legislature. For example, there are just 30 specialists registered in the CURT system to treat 12,000 PTSD patients.

The CUP physician survey found that 32% of physicians with qualifying specialties were not aware of the state’s medical cannabis program. When asked about their interest in learning more, 65% of specialties who are not already enrolled prescribers are interested in and would participate in continuing education on CUP if offered. Others simply requested written training materials. This points to the use of physician education as an accessible and high-impact tactic to expand the number of participating physicians available for patients.

Among physicians enrolled in CUP, the overwhelming majority (72%) rated the process to enroll as "easy," and 62.5% chose to list themselves publicly in the CUP prescriber directory.

When these responses are considered alongside the interest in education about medical cannabis and the CUP from certified specialists, it appears that public education to physicians will increase prescriber participation.

Continued on next page

Access to Dispensing Locations

It is well known that the state's three licensed dispensing organizations ("DO"s)are all located in central Texas (and only two are actively serving a significant number of patients). Those dispensing organizations in this region are open daily for walk-in service to patients with registered or new prescriptions and those prescriptions are being fulfilled without delay.

Patient survey data (which generated responses mostly from areas served by an existing DO or remote pickup program from a DO), found that accessing specialists is "easy" and they majority are satisfied with their experience with dispensing organizations. Prescription and dispensing data confirms that physicians are actively providing prescriptions and patients are filling those regularly from nearby dispensing organizations (or through approved remote pickup options).

Based on the data and patient feedback, it is reasonable to conclude that patients in the Central Texas region have reasonable access to products.

Notably, the patient survey which was distributed primarily through licensed dispensing organizations, the working group and patient advocacy groups generated few responses outside of the major metro areas of Austin, Houston, Dallas and Fort Worth.

The limited CURT prescriber and patient data available also confirms that very little CUP activity occurs outside of those areas.

While DOs do provide "remote" delivery to locations outside of central Texas, our review found that except for one location in the Dallas metro area, remote pickup options are open just a few hours weekly or bi-weekly. They are also not distributed evenly to provide statewide access. Even if these options were more robust, patients using these pickups face additional hurdles including limited hours, additional costs imposed as delivery fees, and a requirement for pre-ordering that is not compatible with all patients and financial situations.

Based on program participation data and modeling of the number of potential patients that should be enrolled statewide, it is reasonable to conclude that a lack of dispensing organizations outside of the Central Texas DPS region is a barrier to program access statewide.

To provide equitable access to a DO for all Texas residents, DPS should consider expanding the number of licensed DO locations to the 5 unserved DPS regions. This program analysis, confirmed by patient and physician survey data, concludes that three dispensing retail locations can provide product access to patients in the Central Texas DPS region. **Providing similar access to the other 5 regions would require 10-15 additional dispensary retail locations statewide.** This can be accomplished by offering existing DOs additional locations, or by opening the program to new licensing.

We recommend a two-phase hybrid model for expanding DO access: allowing existing DOs to open additional retail dispensary locations where overnight storage of products is allowed, and licensing new operators who commit to serve DPS regions not currently served by a DO location. Additional analysis and a framework for evaluating these options is included in the report below.

Additionally, the program is highly dependent on one operator who could close at any time without notice, including for unforeseen reasons such as natural disasters, crop failure incidents, or changes to their business model. The loss of either one of the two largest DOs would significantly harm patient access statewide. Replacing a lost operator would take two years or more from licensing to construction to operation.

As recommended by the working group, we also conducted a cursory analysis of the impact of non-CUP cannabis products (hemp-derived and illicit cannabis) on program participation. That analysis and some initial conclusions are included below.

The amount of data available from CURT, the Texas Medical Board, hemp program and industry analysis and other data sources referenced here provides many more opportunities for analysis than was required to answer basic program status questions.

The summary below and sections that follow provide high-level overviews of the key questions in the analysis. Supplemental data analysis is provided in the data appendix to help guide future opportunities for analysis.

Continued on next page

How Many Patients and Physicians are Active in the Program?

When the CUP program first launched in 2017, it served patients for just one condition. Within 12 months, the program was serving 646 enrolled patients from three licensed dispensing organizations.

Following the expansion of eligible conditions for enrollment authorized by the legislature in 2019 in 2021, the number of unique patients served had ballooned to 66,205 (Sept. 2023). The CUP program has traditionally used this “total patients enrolled/listed” number to measure the size of the program.

Our analysis finds that 24,554 unique patients fulfilled at least one prescription in calendar year 2022 and 29,057 did so over the most recent 12-month data period ending in August 2023. We believe these are the current “active” patient counts, depending on how CUP chooses to track data. For reasons discussed further in the Patients section below, we believe the number of new patient enrollments and number of patients fulfilling prescriptions provide the best metrics for measuring patient participation.

The program continues to attract new eligible patients. 25,106 new patients enrolled in 2022 based on unique patient IDs issued. There was insufficient data at the time of the patient analysis to determine how many newly-enrolled patients had remained active in the program for one year or more.

Evaluating active physician participation, we found 495 physicians identified in CURT as “active” but only 390 issued subscriptions in 2022. Notably, 11 physicians (2.3% of all enrolled) accounted for 53% of prescriptions issued (one issued more than 10,000 in 12 months). DSHS physician shortage forecasts indicate that the current physician shortages in dispersed health regions will continue to expand, especially in specialties required for the CUP program.

An analysis of the total units of THC fulfilled by patients shows a similar trend. Fulfillment increased exponentially until 2022 (up 445% in 2020, 353% in 2021, and 276% in 2022) but the number of units fulfilled is on track to increase just 21% in 2023 over last year.

At the time of the data analysis in August 2023, 2023 was on track to exceed 2022's numbers in both the number of new patients enrolled and number of patients fulfilling a prescription, but the rate of growth is significantly lower than in any prior year (including years where no new conditions were added).

Conclusions

As noted above, we conclude that the current program does not meet either the access or availability standard statewide.

Under the current statute, the program is required to evaluate new Dispensing Organization license applications according to their ability to meet those standards. DPS would be justified in considering program expansion either by expanding the licensed footprint of existing DOs or expanding the number of DO licenses to serve areas outside of central Texas. We recommend a hybrid approach detailed later in this report.

We also identified two high-risk factors that could impact future program success and continuity.

First, stakeholders' concerns that patients are leaving the low-THC program to seek alternatives in the unregulated or less-regulated hemp-derived market cannot be validated to an individual patient level. But overall trends in patient enrollment and prescription fulfillment, correlating with explosive growth in that competing market, indicate that the rate of program growth across all metrics has slowed significantly since hemp-derived products became more available publicly.

Our evaluation also identified what we believe to be a significant risk to the future of the program: the high number of patients served by one licensed dispensing organization. 73% of patients and 78% of fulfilled prescriptions were serviced by just one DO in 2022. While that DO (and the other 2) have expressed concerns about the program's future, they have not expressed any intent to close or alter operations in a way that would significantly impact the program today. Nonetheless, from a program continuity perspective, the program is highly dependent on one operator who could close at any time without notice, including for unforeseen reasons such as natural disasters, crop failure incidents, or changes to their business model. The loss of either one of the two largest DOs would significantly harm patient access statewide. Replacing a lost operator would take two years or more from licensing to construction to operation. As policy makers consider whether to expand the allowable operating footprint for current licensees or whether to consider adding additional licenses to the program, program continuity should weigh heavily on that decision.

We conclude our report with recommendations for a framework to evaluate a potential expansion of DO locations in underserved areas outside of the central Texas corridor.

PATIENTS

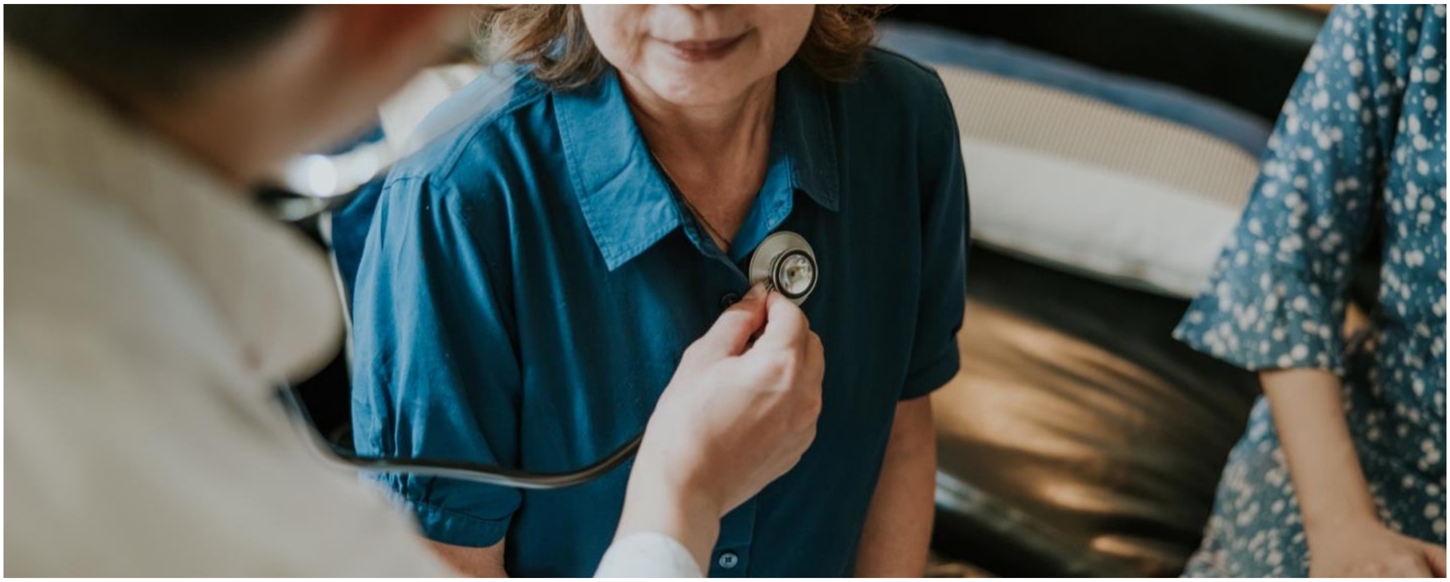
Introduction

The CUP program was established by the legislature to provide patients with qualifying conditions access to low-THC medical products pursuant to a treatment plan overseen by a physician with expertise in the patients' specific condition.

Since launching with just 12 patients in 2017, the program has enrolled a total of 66,205 patients over the lifetime of the program. This is the most cited figure when speaking of the size of the program.

However, the CUP program recognizes that not enrolled patients are actively "participating" in the program. Nonetheless, CUP and CURT data does provide voluminous data down to the individual prescription level that can be used to measure program activity at a point of time or longitudinally.

Our analysis is based on a review of more than 322,000 individual prescription records to weigh different metrics for their value as longitudinal measures of activity by enrolled patients.



Question: How many patients are "active" in the CUP program

There is no national standard for determining an "active" patient count in medical cannabis programs.

To further complicate analysis, treatment plans for different conditions and patient-specific requirements vary widely across specialty and patients (a seizure patient may require intermittent medical consultation and access to lifelong treatment while patients seeking treatment for cancer or PTSD are often engaged in acute treatment and hope to enjoy an end to their treated condition).

Existing Dispensing Organizations (DOs) and physicians have raised concerns in public and with CUP administrators about the appearance of declining patient participation over the past 12 months. DOs specifically stated that patients are leaving the program and not being replaced, but CURT program data provides a more nuanced analysis on this question.

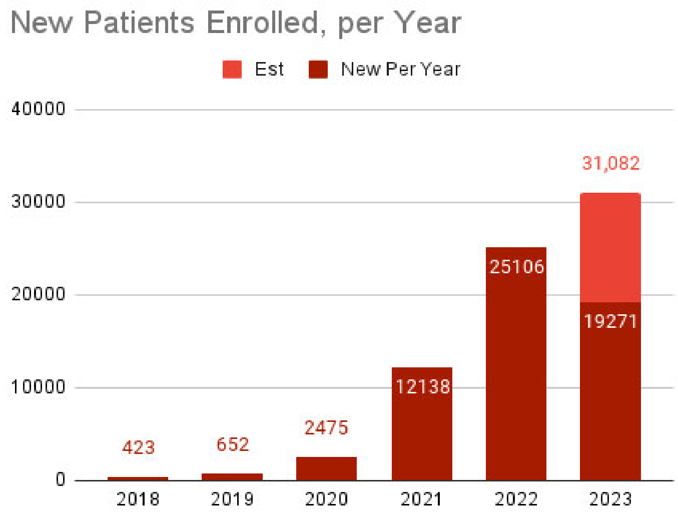
To determine the program's rate of growth or decline we examined three different data points from CUP data.

Our analysis examines three common ways to measure activity, and thus participation, at key interaction points in the patient journey from program enrollment to fulfillment of a prescription. Using CURT data, we studied:

1. **The number of new patients enrolled in the program each year;**
2. **The number of enrolled patients receiving at least one prescription per year; and**
3. **The number of enrolled patients fulfilling at least one prescription per year.**

CURT data shows that new patient enrollment continues to increase each year, but the <u>rate of growth</u> decreased significantly in 2023.

This slower rate for new patient enrollment tracks with physician and DO anecdotal statements that they are seeing fewer new patients than in prior years. When evaluating the number of new patient enrollment, it is important to note that patient enrollment increased exponentially in years where new conditions were authorized by the legislature. Our analysis shows that without the new patients enrolled for PTSD in 2022, new patient enrollment in 2022 would have been just 5% greater than 2021.



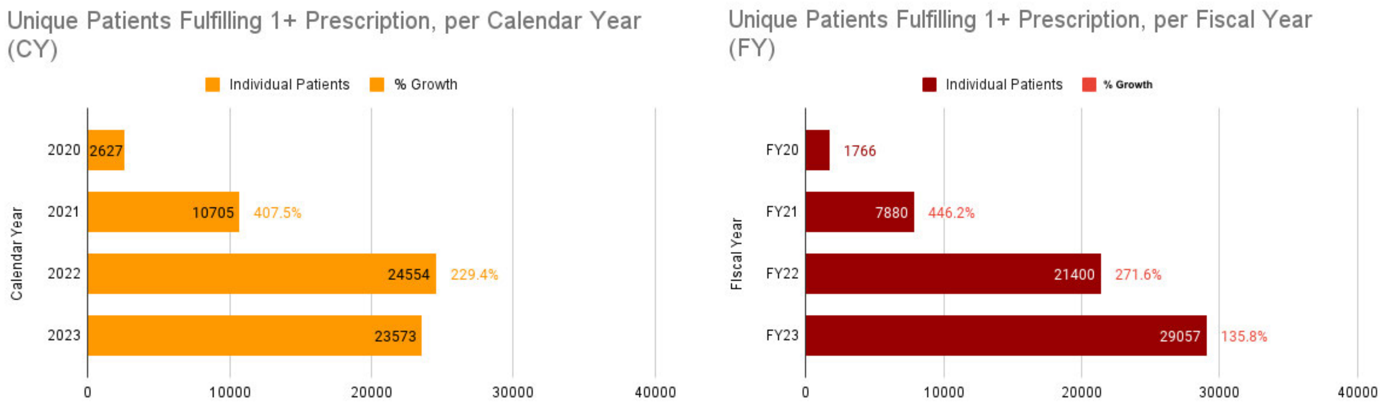
Total new patient enrollment in 2022 was 25,106 and 2023 is on track to exceed that number, though new patient growth continues to slow.

Measuring patient activity at the next stage of the process (receiving a prescription), tells a similar story. **The number of enrolled patients receiving at least one prescription in 2022 was 25,584.** This is only slightly more than the number of new patients enrolled which seems to indicate that current patients may be receiving prescriptions for longer than 1 year and/or that new patients are enrolling but not receiving prescriptions. Additional analysis of patient-level data is required to better identify patient drop-off points. In either case, this proved to be the least informative metric in our analysis of patient activity.

The first two patient metrics track patients at the first two stages of the patient's path, but data indicates that many prescriptions remain unfilled after issuance (more on this below).

Because the third metric captures the number of patients completing the entire CUP progress from enrollment through prescription to fulfillment, we believe this is the best longitudinal metric for measuring "active patients." After comparing individual patient fulfillment data (metric #3) by calendar year and fiscal year, we determined that a fiscal year analysis provided the most relevant and complete data. It also aligns with program budgets and department goal timelines.

Exhibit: Patients Fulfilling 1+ Prescription, per Calendar and Fiscal Year (Comparison)



A full data analysis is included in the supplemental "Patient Participation" data summary at the end of this report.

We conclude that a measurement of enrolled patients fulfilling at least one prescription per fiscal year provides the best longitudinal metric for measuring the number of active patients in the program.

This analysis finds that 24,554 unique patients fulfilled at least one prescription in calendar year 2022 and 29,057 did so over the most recent 12-months. We believe these are the current "active" patient counts, depending on how CUP chooses to track data. (DPS has traditionally reported data on a calendar year basis, so we conducted our analysis using a CY standard for most metrics).

Metrics one and 2 also provide important data to measure the impact of program changes on enrollment and, importantly, drop off by eligible patients between stages of the program.

Unused or Abandoned Prescriptions

Of the more than 143,000 prescriptions issued through the CUP program since 2018, 4,736 were unused by patients as of August 2023. While some were canceled (and usually replaced with supplemental prescriptions), the majority of those, 3,905, remain active in the system and available for fulfillment. Of those active and unfilled prescriptions, just 1% are from 2021. The remaining are from 2022 and 2023.

Of the active prescriptions still pending fulfillment from 2021-2023, 910 (23.3%) are from one prescribing physician.

While more analysis, likely including patient interviews, are required to determine the causes for the large number of unfulfilled prescriptions, patients have suggested several causes: physicians providing multiple prescriptions at once, the inaccessibility of a DO to fulfill the prescription at the time it is issued, and the availability of cheaper help-derived products available for “self-serve” use from CBD stores and traditional retail shops.

Because of the large numbers of unfilled prescriptions and variances in fulfilled quantity levels, we do not believe quantitative measurements of prescriptions issued or fulfilled is a best metric for measuring program performance or stability.

Defining the Doctor-Patient Relationship

As previously noted, CURT data tracks more than 66,000 total patients who have been enrolled in the program since its inception. Patients who are treated must have a treatment plan to govern a prescription with an expiration date; but there is no set term for an expiration of a prescription, nor is there a requirement for a physician and patient to have regular consultation to review the treatment plan. The CURT system currently requires patients to be enrolled and under care of an enrolled physician to participate in the CUP program. Physicians are not required to update these patient enrollment records when a patient completes a treatment plan or becomes otherwise ineligible.

Efforts to monitor “active” patient counts in the future are hampered by the large number of patients with unused or abandoned prescriptions coupled with the cohort of patients who have not received or filled a new prescription in more than a year.

We recommend the program consider issuing administrative guidance to prescribing physicians helping them define the current physician-patient relationship relating to medical cannabis and appropriate status for patients no longer under their care.

Florida’s low-THC program, for example, requires physicians to “update the registry within seven days after any change is made to the original [treatment plan] to reflect the change. The physician must deactivate the registration of the patient and the patient's legal representative when treatment is discontinued"[2].

Question: Which conditions are driving program growth?

An analysis of patient-level data provided insight into the impact additional conditions have had on program growth over the years.

Not surprisingly, the addition of new conditions which impact proportionally larger populations have driven larger participation growth in years following legislative action to authorize them.

In 2022, PTSD was a large driver of new patient growth. CURT data shows that 48.8% of patients receiving at least 1 prescription in 2022 are enrolled with PTSD as their only or first qualifying condition. These data points indicate that without the legislature's PTSD expansion, the program's active patient participation growth rate would have remained relatively stagnant in 2022, though the program would have grown by 12,500 patients seeking treatment for other conditions.

	2019	2020	2021	2022
ALS	2	117	74	76
Autism	163	428	623	734
Cancer	16		1,298	2,795
- Includes terminal cancer				
Epilepsy & Seizure Disorders	180	390	791	995
· Epilepsy	166	295	408	517
· Seizure Disorders	14	95	383	478
Multiple Sclerosis	46	353	586	573
Neurodegenerative Disease	12	566	2,683	5,358
PTSD		424	4,230	12,507
Seizure Disorders	14	95	383	478
Spasticity	59	191	1,853	2,068
Total**	492	2,564	12,521	25,584

	2019-2020	2020-2021	2021-2022
ALS	5750.0%	-36.8%	2.7%
Autism	162.6%	45.6%	17.8%
Cancer	-100.0%	-	115.3%
- Includes terminal cancer			
Epilepsy & Seizure Disorders	116.7%	102.8%	25.8%
· Epilepsy	77.7%	38.3%	26.7%
· Seizure Disorders	578.6%	303.2%	24.8%
Multiple Sclerosis	667.4%	66.0%	-2.2%
Neurodegenerative Disease	4616.7%	374.0%	99.7%
PTSD	-%	-	195.7%
Seizure Disorders	578.6%	303.2%	24.8%
Spasticity	223.7%	870.2%	11.6%
	421.1%	388.3%	26.8%

Data Note: The total number of patients receiving new prescriptions by condition deviates slightly from the total unique patients receiving a prescription overall. This is due to a few patients who receive new prescriptions for multiple conditions each year. The variance is negligible.

[2] Physician's Information, Fl. Dept of Health, Office of Compassionate Use, https://flboardofmedicine.gov/pdfs/OCUphysicians.pdf

This data provides important insight into the impact of new conditions on patient participation. When considered with DSHS data on physician scarcity across the state, CUP staff, DOs and program advocates can use this data to determine where to focus new prescriber recruitment efforts, if they choose to do so at a future date.

More analysis on this topic is included in the supplemental data review at the end of this report.

Texas Program Participation vs Other States

Stakeholders have long argued that Texas' approach to low-THC is more limiting than other low-THC and medical cannabis programs in other states. The legislature recently considered changes to the program that would have potentially expanded the allowable conditions and removed or reduced some barriers to participation. Because those changes did not pass the legislative session, we did not consider them in our current program analysis. We did, however, include a high-level comparison between Texas and other states, including low-THC Florida and high-THC medical New Mexico, to provide some comparisons between Texas' program and other more mature programs nationally. That analysis is included in the supplemental data summary on patients at the end of this report.

Data references

For an in-depth analysis of data discussed in this section see these Data Analysis sections in the Appendix.

- See **DATA SUMMARY: PATIENT PARTICIPATION**
- See **DATA SUMMARY: PATIENT PARTICIPATION IN TEXAS VS OTHER STATES**

DISPENSING ORGANIZATIONS

Introduction

Pursuant to their statutory charge, DPS initially determined that three dispensing organizations (DOs) would be required to meet the "reasonable access statewide" requirement under the law when the program was first authorized in 2015. Two of those DOs have actively served a significant number of patients. The third ceased operations in 2019 until 2022 when it resumed service, though to a very limited patient cohort.

Each of those licensees is authorized to cultivate low-THC plants and manufacture and sell a limited number of low-THC products from their own dispensary.

All 3 DOs have argued in legislative hearings and to the CUP program that they are failing to provide equitable statewide access for all patients because of limits of the program and the licensees themselves.

Of the 3 DOs, one served 73% of all patients receiving prescriptions in 2022. A second served the remainder. The third licensee has been effectively inoperable, serving less than 100 patients in each of its first two years, then none since 2020[3].

In meetings of the CUP Working Group, patient organizations have identified several barriers limiting access and/or participation in the program, including:

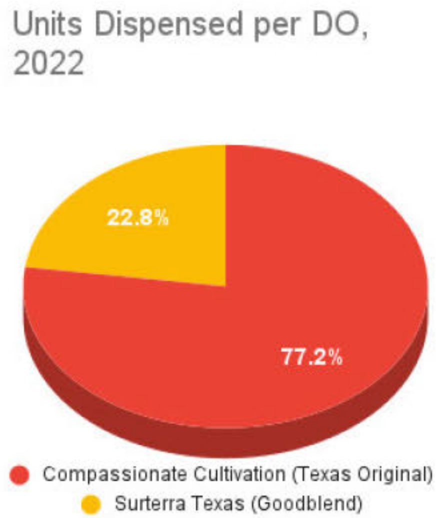
- Limited product options, specifically a lack of quick-onset products for acute medical needs. By law, the CUP program may only permit the use of low-THC by means "other than by smoking" which is further defined as "burning or igniting a substance and inhaling the smoke." (See Tex. Occ. Code Ann. 169.001 (4) & (5). In practice, the most common products manufactured by DOs are edibles such as chocolates, gummies, tinctures, and beverages)

[3] In 2023, CUP required the third DO to reinitiate operations. As of August, CUP data shows that they had served just 23 patients. This demonstrates the challenges of the market and the long lead time to build up a vertically integrated low-TCH operation and grow a customer base.

- Long travel times to their DO for patients outside of central Texas.
- Inconsistent schedules or inaccessible schedules for remote pickup and partner pickup locations.
- The inability to travel independently to a DO because of a medical condition.

Dispensing Organizations (DO) Fulfillment, by Year

CURT data shows that 73% of patients receiving a prescription in 2022 were customers of just one licensed Dispensing Organization: Compassionate Cultivation dba Texas Original.



Except for 32 patients served by Cannasortium dba Fluent TX, the remainder (27%) were served by Surterra Texas dba Goodblend. All three DOs are in central Texas within about an hour of downtown Austin.

That same leading DO served 77% of "units" fulfilled in 2022.

Exhibit: Unique Patients and Units Fulfilled by DO, per Year

Based on CURT data through August 2023

		2018	2019	2020	2021	2022	2023 (est.)	2023 YTD*
Cannasortium TX (Fluent TX)	**Unique Patients**	**31**	**5**		**1**		**32****	**23**
	Units Fulfilled	71,100	18,900		600		7,916**	5,700
Compassionate Cultivation (TX Original)	**Unique Patients**	**323**	**720**	**2,398**	**8,137**	**19,022**	**21,875**	**17,568**
	Units Fulfilled	3,283,500	9,537,975	12,341,550	16,905,581	35,797,098	43,314,488	29,475,515
Surterra Texas (Goodblend)	**Unique Patients**		**58**	**268**	**3,235**	**6,981**	**8,028**	**7,147**
	Units Fulfilled		242,550	1,081,398	3,827,171	10,587,571	12,810,960	9,308,234
ESTIMATED 2023 YEAR-END UNITS FULFILLED							**56,133,094**	

**YTD as of August 24, 2023 **Since this DO has no 2022 data, 2023 projections are estimated based on consistent growth throughout the year. Data for patients served per DO varies slightly from unique patients served in other data sections because patients can access prescriptions from multiple DOs.*

Data note: Program staff noted that the use of “units dispensed” data prior to February 2022 may not be consistent across all DOs. The formulation of different products and changes in law to the percent of THC by weight for products over time created inconsistent methods of entry for “units” across all three DOs. The program issued guidance in February to track units by THC milligrams dispensed. For this reason, we believe 2022 data is the most accurate for determining program activity by THC dispensed.

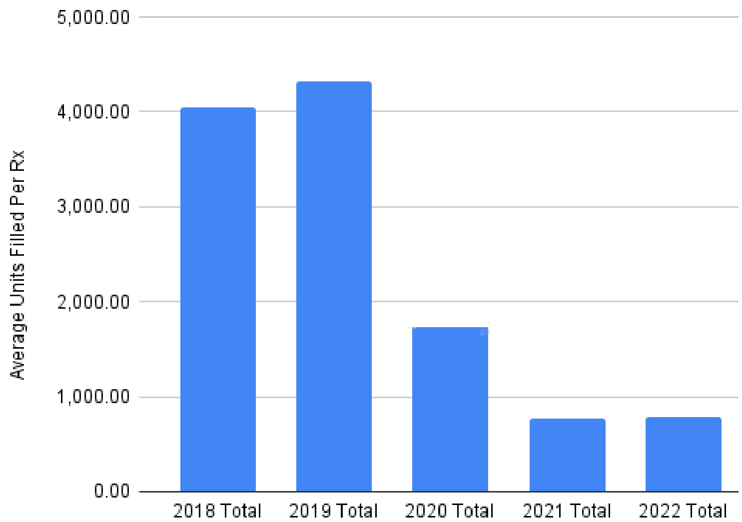
Declining Rates of Prescription Fulfillment

In Texas, licensed DOs have specifically correlated the growth of unregulated hemp-derived products, now available at gas stations and hemp shops around the state, to the decline in participation in the CUP program. During a September meeting of the CUP Working Group, representatives from all 3 Dispensing Organizations expressed concern that patients were seeking low-THC alternatives and decreasing participation in the CUP program. Those DOs specifically cited competition from the mostly unregulated hemp-derived THC market. We explore the impact of that market more fully in the supplemental analysis later in this report.

Prescription-level from the CURT program supports the observations of DOs that patients are obtaining fewer units through CUP. The chart above shows that the rate of growth for prescription units issued increased exponentially in previous years (445% in 2020, 353% in 2021) and then slowed to 276%, or 10.5 million units, in 2022. At the current rate, patients are expected to require just 12.8 million units dispensed in 2023 – a modest 21% increase compared to prior years.

However, the average prescription fulfillment quantity has decreased dramatically from more than 3,000 units when the program first began to just under 800 by the end of 2022.

Exhibit: Average Prescription Fulfillment Size, by Year



Taken together, CURT prescription data shows that the number of prescribed units have increased alongside the increase in prescriptions issued, but the average prescription fulfillment size has decreased steadily. This validates the DO concerns about declining sales and slower program growth.

Combined with data showing a declining rate of growth for both new patients enrolling in the program, high numbers of abandoned or unfulfilled prescriptions, and significantly lower demand at the point of fulfillment for low-THC products it is reasonable to conclude that factors outside the program are impacting patient participation.

Taken together, these data points and the concerns expressed by the DOs should raise concerns. From a business perspective, DOs must project multiple crops ahead to ensure an adequate product supply for patients. They do this based on past performance in the program. Under planning risks failing to meet patient needs and over planning risks stranded capital. As is discussed more fully in the supplemental section on competition from the hemp-derived market, all three DOs have indicated that they are experiencing challenges relating to these factors.

Distance from Dispensing Organizations

The Texas CUP program currently operates with just three licensed dispensing organizations (DOs). Each DO is required by rule to operate from a single location where products are cultivated, manufactured, and dispensed from a single address.

The program also allows DOs to provide remote dispensing locations, similar to remote pharmacy delivery locations, where patients can receive prescriptions, they had previously ordered from the DO’s primary dispensary. Under this option, patients order their prescription and schedule it for delivery to the pickup location at a scheduled date and time. The DO must fill the prescription at the dispensary then drive it to the scheduled remote location on the scheduled date where the patient meets them to pick up the scheduled product. This opportunity greatly expanded the ability of DOs to provide expanded access to patients located outside of central Texas where all 3 DOs are currently headquartered.

Off-Site Pick Up Locations Expand DO Access in a Limited Way

As of September 2023, licensed DOs have expanded service to 26 additional remote and partner pickup locations in 14 counties. Still, just 5.5% of all Texas counties now have access to a dispensary or off-site pickup location.

While undoubtedly helpful for many patients, the process for administering these remote pickup locations has nonetheless proven logistically challenging for both DOs and patients. For example, under the current requirements set by CUP:

1. Prescribed products must originate from and return to the DO’s primary dispensary in the same day (no overnight storage at a remote location). This limits the use of remote pickup locations to only those locations that are no more than a half day’s driving distance from the dispensary (see more below).
2. Each prescription that leaves the primary dispensary must be assigned to a specific patient and prescription prior to leaving the location. This requires patients to plan their medical needs, prescription pickup and payment around the DO’s schedule which, when accounting for drive time, often includes a very short window for pickup appointments. Patients who are medically unable or otherwise obligated during those limited times may miss their appointment and their prescription is returned to the DO location hours away.

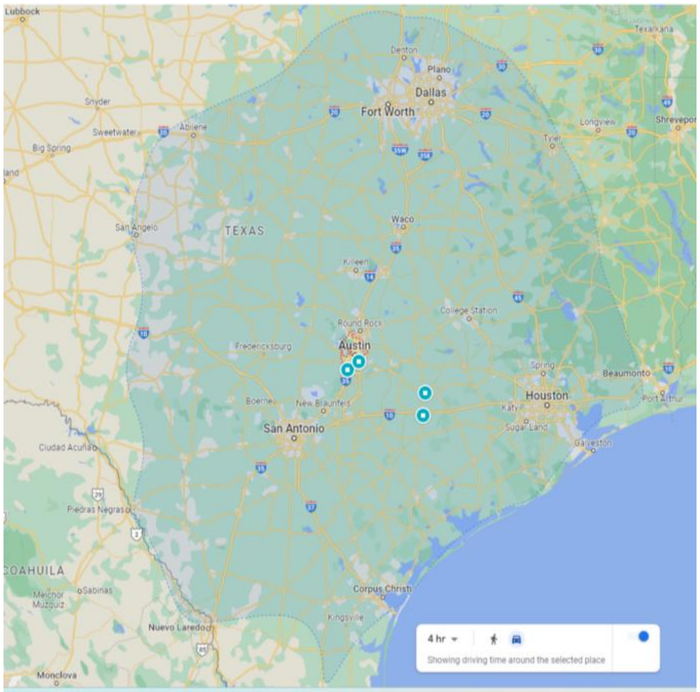
Two notable exceptions do exist, though they have limited access. Goodblend has extended their off-site pickup outside of the 4-hour buffer to Wichita Falls (5 hours), but only for limited midday hours, 3 days per week. Texas Original makes an off-site pickup available 6-hours from Austin in Lubbock, but only for 4 hours every other Saturday.

The prohibition on overnight storage of product off-site effectively prohibits direct patient-dispensary service to all patients more than a half-day's drive from one of the 3 licensed DO dispensing headquarters locations.

To determine the effective reach of the current licensees, we mapped a 4-hour one-way commuting zone over each DO's primary dispensing location.

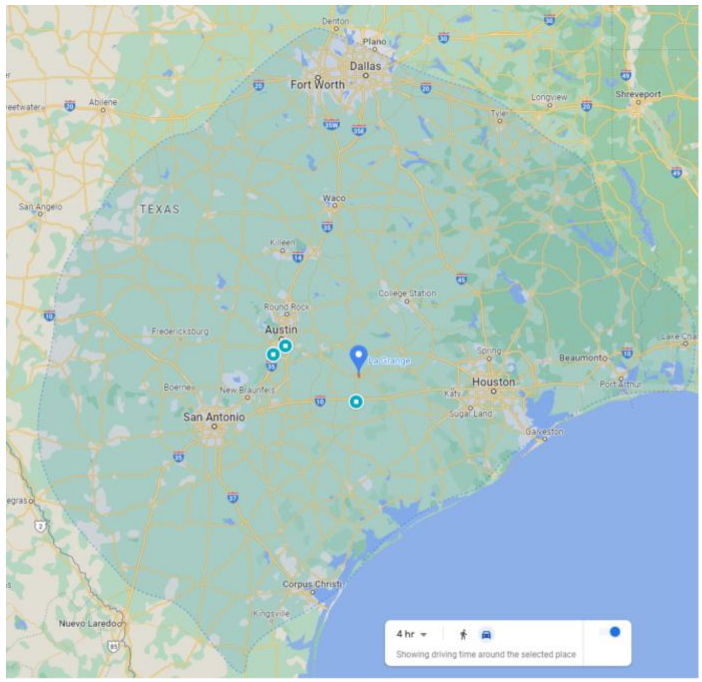
Exhibit: Effective remote-delivery reach for existing Dispensing Organizations

Austin-based Dispensaries



Source: Google Maps, driving distance buffer (4 hours) from South Austin

Schulenburg-based Dispensaries



Source: Google Maps, driving distance buffer (4 hours) from Schulenburg

While this 4-hour zone is a theoretical access area for DOs and covers all major metropolitan areas except El Paso, in practice patient access varies widely inside the zone. Corpus Christi, for example, is inside the 4-hour zone for each of the 3 dispensaries but none provide regular access to prescriptions in this area.

In the current form, the remote pickup and partner pickup options for DOs are mostly ineffective for patients outside of central Texas. While a few locations allow for patients to schedule next day pickup options, most remote options are limited to a few hours per day, a few days per week, or every other week. Under the current provision, patients in north and west Texas, including population centers such as El Paso and border communities are essentially locked out of the CUP program because they lack prescribing physicians or local access to DOs, or both.

Importantly, CURT data provided by DPS found that less than 100 patients out of more than 60,000 registered use this option regularly.

Our analysis concludes that remote pickup is an important tool for expanding access beyond the primary dispensing location but the logistics and regulatory requirements to provide equitable access to remote patients would require large infrastructure investments by DOs in logistics planning and structural changes to regulation to allow for overnight storage, remote fulfillment and payment and additional considerations for addressing the Border Patrol seizure zones. These changes are not reasonable for administrators or DOs, so we conclude that remote pickup and delivery is likely not a viable option for providing reasonable statewide access.

The Border Patrol Enforcement Zone is an Artificial Barrier to Access

The Immigration and Nationality Act 287(a)(3) and subsequent federal regulations established an enhanced enforcement zone administered by the US Border Patrol. In the zone, USBP agents enjoy greater liberty to search persons and vehicles traveling through the zone if agents develop probable cause to believe violations of federal law are occurring.

Cannabis remains illegal under federal law, transporting cannabis across and into the enhanced border area creates special risks for DO deliveries and patients. DO couriers and patients traveling through USBP permanent and temporary checkpoints are subject to additional enforcement and seizure of CUP medicine and/or CUP prescriptions and patient payments from licensed DOs.

In practice, existing DOs regularly transport prescriptions from “inland” across the buffer zone for delivery to patients at remote dispensary locations inside the 100-mile zone. But if a patient fails to pick up the prescription, the DO’s driver is required to return to the DO. This may require the driver to encounter a checkpoint or be subject to a regular traffic stop where the medicine and vehicle may be seized, and the employee may be subject to detention or prosecution. While these instances are rare, the risks themselves may serve as a deterrent for DOs headquartered outside the 100-mile border to extend access to patients inside the zone.

Small Number of Licenses Presents High risk to Program Continuity

The CUP program is dependent on a very small number of licensees (3) to meet its statutory requirements to provide “statewide access” for patients with eligible conditions. The loss of just one of these licensees (as happened before when Cannasortium TX withdrew from the market) could significantly impact patient access. If either one of the two largest licensed DOs withdrew from the market today, between 28-68% of active patients would lose access to their current dispensary.

Like any business, these 3 licensees face standard risks including closure for emergencies such as fire or natural disasters. But Marijuana-Related Businesses (MRBs) also face extraordinary pressures imposed by a lack of access to conventional business capital required to adapt to changing market conditions.

During one recent convening of the CUP Working Group, one licensed DO expressed that his company had taken on more than $1 million in new investment to meet growth projections from 2022 that had slowed in 2023. Nationally, access to private capital for MRBs is currently frozen or minimal at best as global economic changes limit access to cash for traditional high-risk business investors. One national MRB investment fund recently noted, “Federal regulatory momentum came to a standstill, earnings slowed down to single-digit growth as inflation eroded margins and squeezed consumer wallets, and financing continued to dry up with regional banks and credit unions tightening their credits in the face of a banking crisis in the US,” (Purpose Marijuana Opportunities Fund (CBOE:MJJ), May 20, 2023)[4].

If a current licensee exited the market for any of these reasons it would take between 18-24 months for a new operator to design, license and stand up a vertically integrated operation to begin serving patients.

It is our assessment that the limited number of active licenses presents a high risk to the continuity of the program.

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[4] It is important to note that no current licensed DOs have indicated plans to reduce services, but they have expressed concerns about declining patient participation which could impact future revenue, access and service. In fact, all 3 current DOs are advocating for expansion of the program.

RECOMMENDATIONS FOR EXPANDING ACCESS

Introduction

As already noted, our analysis concluded that the current system does not provide for statewide access for patients to the program or low-THC products.

If DPS agrees with this conclusion, it may then consider whether additional licenses are required to achieve this statutory requirement.

Recruiting Additional Physicians

Identifying and accessing a qualified, enrolled physician to evaluate a new patient is the first step towards program participation for a new patient. This analysis shows that for most Texans, this is a significant hurdle because of the low enrollment rate of qualified specialist and the long distances required to travel to access care outside of central Texas for patients or physicians not using telemedicine options.

Insights from DSHS physician scarcity data reports show that the access gap is likely to increase in future years.

The CUP physician survey found that 86% of all physicians – including 65% of physicians with required specialties - who are not already enrolled prescribers are interested in and would participate in continuing education on CUP if offered. This points to an accessible and high-impact tactic to expand the number of participating physicians available for patients.

Among physicians enrolled in CUP, the overwhelming majority (73%) rated the process "easy," and 60% chose to list themselves publicly in the CUP prescriber directory. When these factors are considered alongside the interest in education about medical cannabis and the CUP from certified specialists, a strategy for increasing patient access to specialists emerges.

To address this gap, CUP staff have already begun outreach through the state medical board and medical organizations to increase awareness of the program.

Expanding Product Diversity for Patient Needs

By law, the CUP program may only permit the use of low-THC by means “other than by smoking” which is further defined as “burning or igniting a substance and inhaling the smoke.” (See Tex. Occ. Code Ann. 169.001 (4) & (5).

Consequently, the most common products manufactured by DOs are edibles such as chocolates, gummies, tinctures, and beverages which may take 30-90 minutes to take effect, whereas consumption by vaping (a non-combustible aerosol inhalant) takes effect almost immediately[5]. In addition, the science of cannabis product manufacturing has advanced to allow for “fast-acting” edibles using water-soluble delivery methods to provide onset in 5-15 minutes[6].

Expanding product lines into new categories requires new research and development investment from DOs. As discussed elsewhere, current DOs have expressed concern about their ability to maintain operations at the current status quo and, therefore, are reluctant to invest in R&D.

Nonetheless, earlier this year CUP program managers indicated that they may be open to authorizing new products, including vapable (non-combustible) products. In response, DOs have initiated new product reviews with CUP staff.

Patient survey data found that of patients who supplement their medical cannabis with products from a source not including a DO, 59% prefer smoking or vaping as a consumption method. It will be useful to track patient participation data and product sales data for new vaping products, if approved

[5] Grotenhermen F. Pharmacokinetics and pharmacodynamics of cannabinoids. Clinical Pharmacokinetics. 2003;42(4):327–360. http://dx.doi.org/10.2165/00003088-200342040-00003.
[6] https://azuca.co/traditional-vs-quick-onset-edibles/

for use in CUP, to determine if patients who seek out non-program vapes will purchase CUP-approved vapes instead.

Overcoming geographic barriers to access

The disparity between physician and DO participation in central Texas versus all other parts of the state indicates a need to consider adding additional DOs in other regions of the state.

DPS divides the state of Texas into six major service regions (and a 7th for the State Capitol complex. We excluded that region for this evaluation). When DOs are layered over DPS regions, we see that all 3 DOs are currently licensed from locations in the Central Texas region.

1: Texas DPS Regions

To provide equitable access to a DO for all Texas residents, DPS should consider expanding the number of licensed DO locations to the 5 unserved regions. This program analysis, confirmed by patient and physician survey data, concludes that three dispensing retail locations can provide product access to patients in the Central Texas DPS region. **Providing similar access to the other 5 regions would require 10-15 additional dispensary retail locations statewide.** This can be accomplished by offering existing DOs additional locations, or by opening the program to new licensing.

We recommend a two-phase hybrid model for expanding DO access.

First, we recommend allowing existing DOs to add additional dispensary (retail) locations off-site from their currently vertically integrated location. This is commonly referred to as allowing “overnight storage” of low-THC products. As existing DOs have infrastructure in place, they are best positioned to expand product access more quickly than a new startup operation.

Second, we recommend licensing additional new dispensing organizations with vertically integrated and secondary overnight-storage retail locations, with new licenses prioritized to those applicants willing to serve DPS regions currently underserved by the existing DOs.

In sections below, we explore the framework for policy makers to evaluate these options.

In evaluating those options, DPS should consider:

- The number of unique licenses required to service an area, while ensuring that if any license fails to perform or exits the market sufficient DO infrastructure exists to continue serving patients[7].
- Are there sufficient qualified applicants available in each region to meet patient access and ensure program continuity.

Considerations for Expansion

In early 2023, DPS opened applications for new Dispensing Organizations and received more than 130 responses. While this demonstrates the high level of interest in providing expanded access through additional licensure, DPS is not obligated to act on any of these licenses and has not qualified or evaluated those applications against any standard for likely success.

Existing Dispensing Organizations have advocated for allowing them to expand their footprint by allowing for overnight storage at remote dispensary or partner pickup locations as a way of expanding access with lower capital requirements and more quickly than a new licensee could stand up operations. This is a policy call for DPS, but our analysis leads us to encourage DPS to consider expanding the total number of licenses or implementing a hybrid approach for the reasons discussed previously and below.

If DPS determines that statewide access for patients and products is not currently achieved by the current system, the program has two options to expand access:

1. Allow existing Dispensing Organizations to expand their footprint with additional locations; or
2. Open new licenses to serve patients outside of the central Texas area (DPS Region 6).

[7] If each region was open to 3 new licensees, similar to the current status in Region 6, the program would be able to operate if any licensee failed to launch and/or was unable to serve patient needs.

DEVELOPING A FRAMEWORK FOR EXPANSION

If DPS determines that additional licenses are required, the next analysis centers on the number and dispersement of each.

A decision process for considering expansion likely includes an evaluation of:

1. **Does the current system meet statewide patient and product access requirements of law?**
2. **What regions or areas of Texas are underserved for one of those requirements?**
3. **Could additional locations (either as new licensees or expanded locations for existing DOs) meet the requirements?**
4. **If so, what qualifications are needed to determine success in those areas?**

Because the program is heavily dependent on two existing DOs who have no requirement to remain in operation, we recommend expanding the total number of licensed organizations to provide continuity in the program and prevent an overreliance on a single provider. This can be achieved by only opening new licenses or through a hybrid approach to allow existing DOs to compete for new locations alongside other applicants.

If DPS determines that additional licenses are required, the next analysis centers on the number and dispersement of each.

Other states have engaged in different strategies which we analyze here:

New Mexico: New Mexico’s medical program was initially limited to five dispensaries statewide in 2009 but the state did not require operators to diversify locations or limit “clustering” of licenses. As such, all dispensaries were located in Albuquerque which created access challenges for more dispersed patients. The state initially limited each operator’s plant count and opened additional licenses when those licensed plants were no longer sufficient to meet patient demand (plant counts for existing operators were also expanded to allow for program continuity as new licensees were onboarded). The state never limited licensees by region. Larger dispensaries naturally located in urban areas and smaller operators emerged in some smaller markets with limited products. New Mexico transitioned to an open license (unrestricted locations) hybrid medical/adult-use market in 2021.

Maine: Following voter approval of a medical cannabis law in 2009, the legislature authorized the licensing of dispensaries spread across each of the state’s 8 public health regions. The state received applications in only 6 of those regions. (Because of the large number of responses to the Texas license solicitation, we do not anticipate this to be the case in Texas).

Illinois: Following the passage of adult-use legislation in 2021, Illinois implemented a hybrid regional and lottery system for awarding licenses. Applicants who received at least 85% of 250 available points were entered into a lottery for 110 total licenses distributed across each of the state's public health districts.

Maryland: In 2023, Maryland qualified applicants and awarded each a conditional license. Each conditional licensee was entered into a lottery for final awards. Lottery winners will be given a limited to begin operations or other conditional operators will be selected.

Florida: In February 2023, Gov. Ron DeSantis announced that Florida would open new dispensary applications to allow for 22 new locations based on a data-driven analysis to determine the number of dispensaries per active patient. There was no regional or location restriction on new dispensaries (though dispensary locations were considered in scoring).

The process for evaluating and licensing additional locations can be informed by the processes in other states but will ultimately be a decision of DPS considering requirements of local law and procedure.

To overcome geographic barriers to access, we recommend DPS designate each of the underserved DPS Regions (1-5) for new DO locations. A more detailed analysis of patient and prescriber data by region is recommended to determine the number of licenses required and areas currently served or inaccessible for patients. At a minimum, we recommend that each region be designated for at least two separate licensees to avoid creating an overreliance on one operator in each region.

This would require a minimum of 10 new DO locations – either as new locations, existing DO expansions or a hybrid of both.

Once the number of new locations per region is determined, DPS can open applications to qualified applicants wishing to operate in those locations.

Considerations for scoring applicants should include:

1. An applicant's ability to assist in recruiting qualified specialists to meet patient access requirements, by region;
2. Whether an applicant has verifiable and sufficient access to capital to complete the planning, construction and operation of a vertically integrated operation to begin serving patients at scale by a prescribed date;
3. A mandate that new operators serve a minimum number or minimum percentage of active patients in the region (to avoid "license sitting" where an operator obtains a license but fails to serve a substantial portion of patients)[8].
4. The ability to pay sufficient licensing fees to cover the costs of expanded licensing, compliance and program support for IT (CURT), patient and physician education and program administration.

Once a qualified list of applicants by region is available, DPS could award new licenses according to a scoring system of their preference. Other states have used a lottery of qualified applicants, or simply relied on a scoring matrix to award licenses. Other industries, especially oil and gas, engage in an auction for licenses for qualified applicants.

> ***Is the number of patients per region predictive of the number of DOs required?*** *Because patients in more remote parts of Texas do not enjoy the same access to physicians and DOs as their fellow Texans in central Texas, we believe the number of active patients per region is an undercount of the potential number of patients who would participate were access achieved. For this reason, we recommend establishing a minimum number of new DOs per region and monitoring program activity for growth.*

Expanding Additional Dispensing Locations for Existing Licensees

By policy and practice, the CUP program currently only allows existing Dispensing Organizations one license where all licensed activity (cultivation, manufacturing and retail) must occur. But the Compassionate Use Law does not impose this limitation.

DOs have advocated for a modification of policy to allow for the existing organizations to add a second or more fully integrated facility, a standalone retail facility with overnight storage., or in the alternative, allow for overnight storage at secure remote pickup locations. We conclude that these options may be a part of a larger strategy to increase access, but we caution against relying solely on existing DO operations to meet statewide access requirements for the reasons discussed previously.

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[8] This mandate may require legislative action since minimum activity is not contemplated in the law, but DPS may consider imposing regulatory requirements on licensees to achieve this goal.

A NEW PROGRAM THREAT: HEMP-DERIVED MARKET

Introduction

While state-regulated cannabis programs have been the sole legal source for consumers to access THC products outside of the illicit market since 2017, that is no longer the case. A broad definition of hemp included in the 2018 federal Farm Bill opened the door for the legal production, manufacturing and sale of hemp-derived cannabinoids, including those that induce the same effects as delta-9 THC (the active cannabinoid in the *Cannabis sativa L*. plant that is regulated by federal and state controlled substances acts). [9]

“The overly broad federal definition of “hemp” in the farm bill has led to the exploitation of a seemingly endless permutation of loopholes. The resulting intoxicating so-called “hemp” products can be naturally occurring, partially synthetic, or totally synthetic and are produced under the guise of federal legality, making it extremely difficult for states to protect public health and maintain safe, well-regulated medical and adult-use marijuana markets.”[10]

> ***Hemp-derived products on the market today often contain THC levels that meet or exceed the levels permitted in state marijuana or cannabis marketplaces,*** *including products with high levels of delta-9 THC – the primary component in the cannabis plant that gets you high, and THCA – which readily converts to delta-9 THC when heated or combusted. Other intoxicating cannabinoids - like delta-8 THC, THC-O-Acetate, H4-CBD, THCP, and HHC, which are often prohibited in state-regulated marijuana markets due to safety, are also widely available in the hemp marketplace.* (US Cannabis Regulators Association, July 27, 2023)

Those products are prevalent on the shelves of hemp dispensaries, gas stations and retail stores across Texas. While many products are produced under the legal hemp program, federal legalization of these products allows for their interstate transport which expands the market even further.

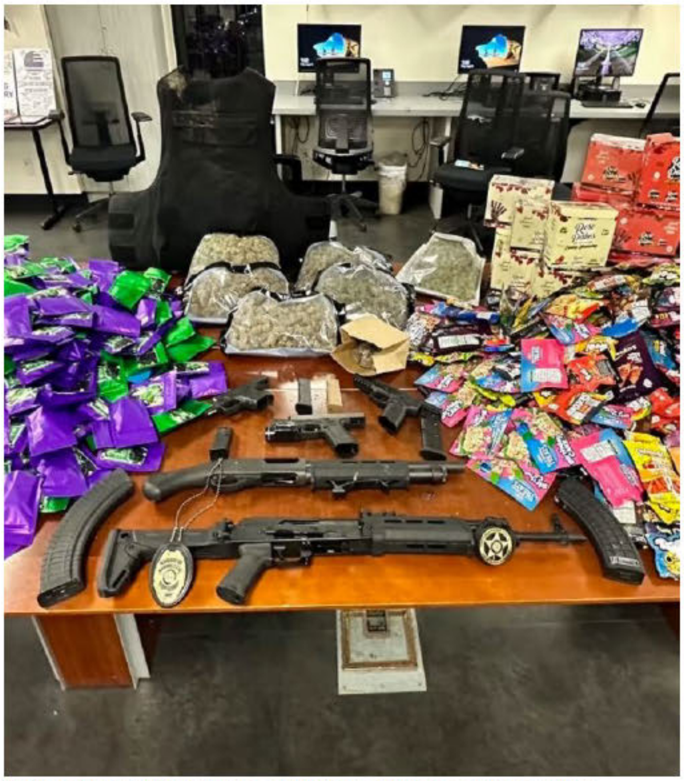
The Intersection of Hemp-derived and Illicit THC

Unlike the highly regulated low-THC program, the hemp-derived market provides an open invitation for exploitation by illicit operators illegally importing these products from other markets or comingling high-THC products with legal hemp-derived products on retail shelves.

[9] TAC Title 1, Part 1, Chap. 24, Subchapter A (17) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis.

[10] Gillian L. Schauer, PhD, MPH, Executive Director of the US Cannabis Regulators Association, written testimony to Congress July 27, 2023, available at https://oversight.house.gov/wp-content/uploads/2023/07/CANNRA-Written-Testimony_07-2023_Final59.pdf

In August 2023, Harris County officials seized 60 pounds of illicit THC cannabis and 57 pounds of illegal THC products, as well as firearms, from an unregulated dispensary in Houston[11]. In addition to the obvious public safety dangers from operators like these, illicit operators hiding in the unregulated hemp market are also competition for Texas' legitimate hemp and low-THC operators.



2More than 100 pounds of THC marijuana, THC edibles confiscated at illegal dispensary in SW Houston (Ted Heap, Harris County Constable Precinct 5)

In Texas, licensed DOs have specifically correlated the growth of unregulated hemp-derived products, now available at gas stations and hemp shops around the state, to the decline in the rate of growth of the low-THC market.

During a September meeting of the CUP Working Group, existing DO operators expressed specific concerns about the impact of hemp-derived products on licensed low-THC businesses and patient access. For example:

- *"We had to scale to support the [CUP] system [for future patient growth], but now the program is slowing because of unregulated competition"* - Current CUP licensed dispensing organization manager.
- *"Patients with a need for faster-acting options - options not available from the delayed onset from gummies [currently in the CUP program] are seeking options from the hemp program, especially THC-A which can be converted to THC when burned",* Dr. Robert Marks, M.D., medical member, CUP Working Group

Those concerns are not unfounded. Data from the CUP program shows that the program was expanding exponentially, as measured by the number of prescriptions issued, from 2019-2021 (See "Patient Participation Growth, Per Year" below). The number of prescriptions issued in the program showed year-over-year growth of 232% and 249% respectively in 2020 and 2021. That rate of growth slowed to 118% in 2022 and is on track to grow just 22% in 2023.

[11] https://www.click2houston.com/news/local/2023/08/15/more-than-100-pounds-of-marijuana-thc-edibles-confiscated-at-illegal-dispensary-in-sw-houston/, August 2023

In 2021, the number of businesses licensed by the Texas Department of State Health Services (DSHS) to manufacture or wholesale CBD and hemp-derived products for smoking exponentially increased from just 24 to 381. Closely correlated with that growth were the number of retailers licensed to sell those products. By 2022, the number of retailers registered to sell smokable hemp products had increased 247% since 2020, tracking with a decline in growth of the low-THC program over those same years.

	Licensed CUP Dispensaries (Active)	Retail Hemp Registrations	% Inc. Yr./Yr.	New Licensed Consumable Hemp Product Licenses	% Inc. Yr./Yr.
2020	2	710	-	24	-
2021	2	2110	197%	381	1487%
2022	2	2469	17%	485	27%
2023**	3	4468	81%	565	16%

**Hemp registration and licensing data is sourced from Whitney Economics, August 2023, as sourced from Texas State Health Services*

***Year to date, as of July 2023.*

As anyone who has been into a Texas gas station, bodega or corner store can tell you, the true number of hemp-derived retailers is likely far greater.

A 2023 industry report noted that, "there are 4,468 hemp retail permits issued in Texas. There are also many more retailers in operation that do not realize they need a permit to sell hemp derived products. For example, it is assumed that roughly two thirds of the 11,200 gas stations in Texas also sell hemp cannabinoid products."[12] That same report surveyed licensed Texas hemp retailers and found that 89.5% of hemp sales were from hemp-converted THC alternatives and those "cannabinoids generate total sales for all products of nearly $513,000 per store each year in Texas."

While those products are targeted at adult recreational consumers, there is evidence that at least some consumers who are eligible for the low-THC market are seeking alternatives in the illicit market to meet their needs. A 2021 survey of medical cannabis users in Texas found that 18% admitted to using illicit (non-CUP) products, even though their diagnosis made them eligible for CUP

[12] Whitney Economics report, see full citation in previous footnote.

prescriptions[13]. Anecdotally, more patients have moved to the hemp market as the number of hemp licensed businesses has expanded since 2021. In our own patient survey conducted in 2024, 27.4% of active CUP patients admitted to using hemp-derived Delta-8 THC and 25.3% admitted to using hemp-derived Delta-9 THC in addition to or as an alternative to prescribed low-THC products.

Put simply, patients, physicians and low-THC dispensaries have collectively raised concerns that the hemp-derived market provides a desirable alternative to the low-THC program for many patients seeking convenient access and product diversity. Data from the CUP and DSHS programs show a correlation between the increase in the number of licensed and registered hemp program businesses and the decline in growth of the CUP program.

Lax Regulation in the Hemp-Derived Market Creates a High-Risk to the CUP Program

Because Congress created this problem with the passage of a broad farm bill in 2018, many states have chosen to wait for Congress to take action to address concerns. But industry analysts warn that "the horse is out of the barn" with billions of dollars of legal hemp businesses having been established and growing. In Texas alone, the hemp industry boasts that it employs more than 50,000 Texans and total sales from hemp products exceeded $8 billion in 2022. Of those, an estimated $3.3 billion came from CBD and hemp-derived "THC-like" products[14],[15].

In response, 29 states have enacted some form of state regulation of these products. Other states, including New Mexico, have pointed to the explosion of these "non-THC, THC products" in arguments for expanding their regulated cannabis programs to include traditional THC products for adult consumers[16].

Hemp-derived businesses enjoy many advantages when competing with low-THC licensed operators. Primary among these is requirements that low-THC businesses must design, build, license and operate their entire seed-to-sale supply chain from a single location and are then limited to a

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[13] *How Texans Stop Pain with a Plant: Findings from a Survey of Medical Cannabis Users,* Baker Institute of Public Policy (Rice University), March 2021, https://www.bakerinstitute.org/research/findings-survey-medical-cannabis-users-highlights-and-recommendations

[14] Whitney Economics, *Hemp Derived Cannabinoids in the Lone Star State*, July 2023, at whitneyeconomics.com

[15] Whitney Economics is led by Beau Whitney. He currently serves as the chief economist for the National Industrial Hemp Council and National Cannabis Industry Association.

[16] New Mexico passed legislation expanding its regulated medical cannabis program to allow for adult-use cannabis in 2021, in part from pressure from existing medical cannabis companies seeking to blunt the impact of unregulated competition from hemp-derived products. New Mexico currently regulates traditional THC but does not regulate hemp-derived products.

small customer base which is dependent on legislative and medical restrictions outside of their control. By comparison, hemp businesses may open a single retail, manufacturing or cultivation facility and engage in traditional commerce with other businesses. The hemp market is also unrestricted and open to any adult in Texas (and other states if they sell their products across state lines).

In the 2023 legislative session, Texas legislators introduced SB264 and HB4238 to restrict the sale of CBD and hemp-derived products. Both bills died in committee without action.

The hemp-derived market is driven by consumer demand from the general public market which is currently rewarding innovation and expansion at record levels. As more consumer-friendly products are introduced to the market through more accessible retail outlets, the competition from the hemp-derived market is likely to increase.

CUP's licensees are required to help the program meet its statutory requirement for "statewide access" to low-THC products. Because of the long lead time required to expand the cultivation, manufacturing and logistics systems for new patients, licensees relied on prior year program growth to project future needs and they raised capital and invested accordingly to be able to meet expanding patient access needs.

The introduction of the hemp-derived market interrupted that growth and diverted some patients from the low-THC program to the "self-serve" hemp market. At least one DO publicly reported that they are concerned about the future of their business if current trends continue.

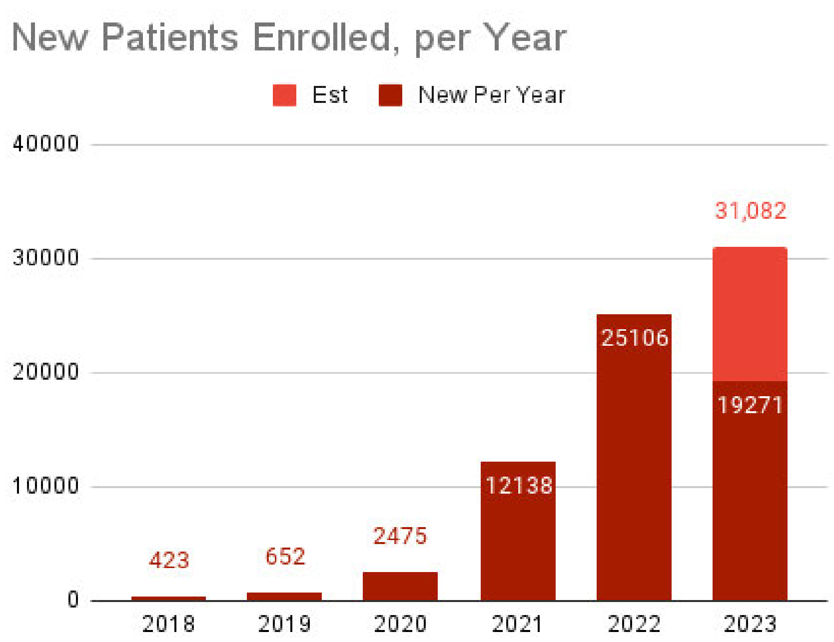
Based on current data and market trends, it is our assessment that the continued and mostly unregulated growth of the hemp-derived market creates a **high risk** to the sustainability of the CUP program.

DATA SUMMARY: PATIENT PARTICIPATION

Our analysis examines three common ways to measure activity, and thus participation, at key interaction points in the patient journey from program enrollment to fulfillment of a prescription.

Patient Participation Measured by New Patient Enrollment

First, we analyzed the number of new patients enrolled in the program each year, as determined by the date a new patient ID number was issued for a new enrolled patient in CURT.



As measured by the rate of growth, the program's patient participation increased significantly in 2020 and 2021 following the legislature's expansion of conditions in 2019, and again in 2022 following the addition of PTSD as an eligible condition in the 2021 legislative session.

The program enrolled 12,138 new patients in 2021 and 25,106 new patients in 2022 (an increase of 216% year-over-year).

As of mid-August 2023, the program had enrolled 19,271. At that rate, we expect the program to enroll 31,082 new patients in calendar year 2023 (a 24% increase over 2022)[17].

DATA NOTES: New Patient Enrollment Would Have Been Flat in 2022 Without the Addition of PTSD

CURT data shows that 48.8% of patients receiving at least 1 prescription in 2022 are enrolled with PTSD as their only or first qualifying condition. Taken together, these data points indicate that without the legislature's expansion, the program's active patient participation rate would have remained relatively stagnant in 2022.

Put another way, the program enrolled just under 13,000 new patients in 2022 following the addition of PTSD as a qualifying condition.

The rate of new patient growth into the program is significantly less in 2023 than in previous years. This matches the antidotal experience of physicians and DOs provided through the CUP Working Group who all expressed concern that the rate of new patient enrollment was less than in previous years.

Our finding show that new patients are continuing to enroll in the program, but not at the exponential rate that has followed the addition of new conditions in previous years.

Dispensing Organizations and some patient advocates have argued that competition from the mostly unregulated hemp-derived products market has slowed the rate of program growth over the past year. The impact is explored more fully in other sections.

Other factors, such as access to prescribing physicians for a qualifying condition and access to dispensing organizations for fulfillment, also have an impact on patient participation.

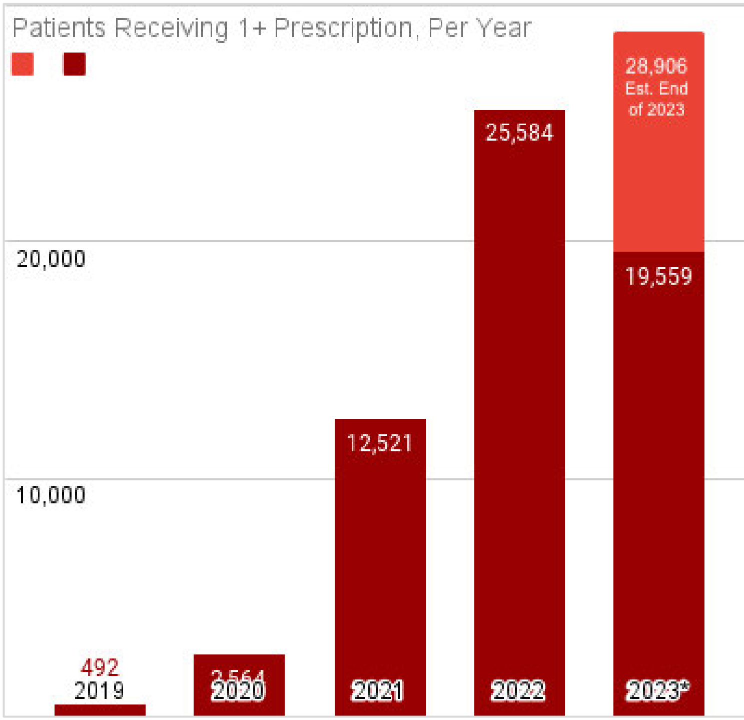
Because multiple outside factors have an influence on the enrollment of new patients, we believe this metric is most useful for planning purposes (i.e., predicting new patient counts per year) but it is a poor measure of program health or access overall.

Patient Participation Measured by Prescriptions Issued

Next, we examined the number of enrolled patients who received one or more new prescriptions in a calendar year.

[17] Available CURT data available as of 8/14/23 shows the most recent patient ID number is 63,315; however, not every patient ID from 1-63,315 contains patient information so a raw count of patients by year will be inaccurate.

For this analysis we filtered CURT prescription data for unique prescription ID numbers issued per year, then removed duplicate patient IDs in each annual data set (some patients receive more than one prescription per year which we evaluate in another section. This analysis is designed to test one measure of the number of active patients in a calendar year). It should be noted that many patients are enrolled in CUP for multiple conditions. Where multiple conditions are indicated we used the primary or first condition listed.



* Data note: 2023 data is available year-to-date as of August 24, 2023.
** 182 patients enrolled in 2019 and 2020 were not associated with a condition in the CURT database. TCUP officials confirm that during this period only one qualifying condition was allowed and, therefore, condition selection was not required.

By this count, 25,106 unique patients actively received a new prescription in 2022. At the current rate of new prescription issuance for individual patients, the CUP program can anticipate that 28,906 patients will receive a new prescription during the 2023 calendar year.

This measurement is a better tool for measuring patient participation across various conditions as engaged patients often seek a new prescription once or more per year. Program staff may find this metric helpful in evaluating which physicians to recruit for specific underserved conditions. (For example, PTSD enrollments grew by 195% last year, indicating a need to create infrastructure for those patients which would include expanding the number of enrolled prescribers and consulting with DOs and physicians to ensure that products appropriate for PTSD treatments are available through DOs).

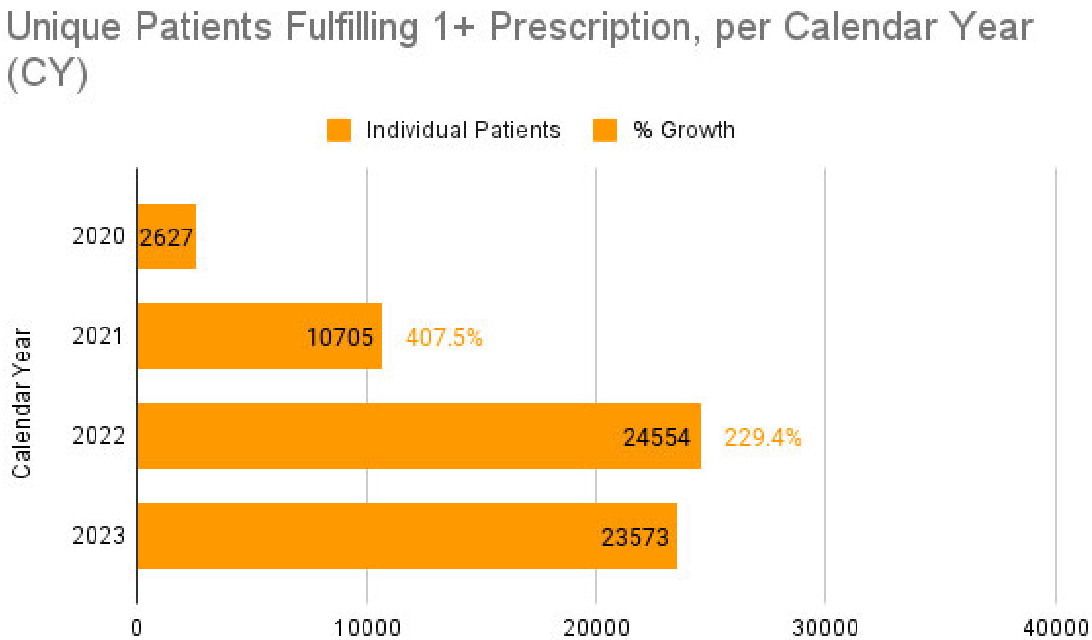
Patient Participation Measured by Unique Patients Fulfilling a Prescription, Per Year

Another approach to determining "active" status for patients is discernible by counting the number of patients fulfilling prescriptions during a given 12-month term. We believe this is the best metric for measuring the number of active patients because it shows the number of patients who have completed the entire program process (enrollment with a physician, prescribed a prescription, fulfilled a prescription with a DO).

As a determiner of program participation, the measure for number of unique patients fulfilling at least one prescription in a set 12-month fiscal year can be aligned to program budgets, staffing and annual goals. For these reasons, we also evaluated the number of patients fulfilling at least 1 prescription per fiscal year (September to August).

Because the FY23 fiscal year concluded at end of August 2023, this metric provides the most recent and complete picture of available data.

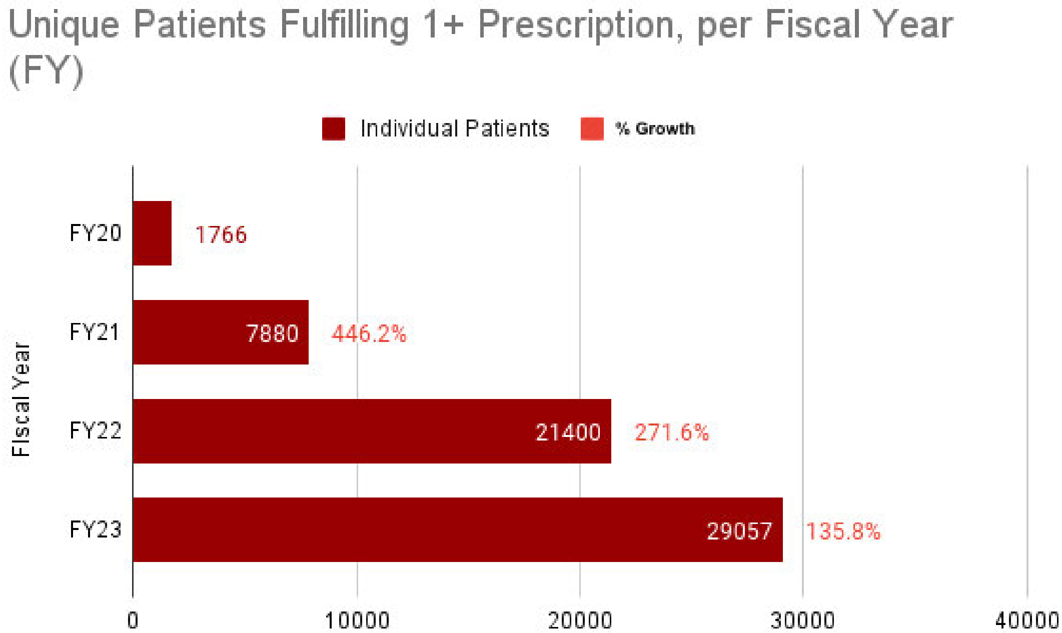
The CUP program has used calendar year data since inception. Here we present both options.



Calendar Year: Patients Fulfilling 1+ Prescription

	CY20	CY21	CY22	CY23*
Patients Fulfilling 1+	2627	10,705	24,554	23,573*
% Change YTY	--	+407.5%	+229.4%	---

*YTD as of Aug. 24, 2023. At the current CY rate, the program may expect 36,832 unique patients to fulfill a prescription in 2023. However, other data indicates that the rate of patient fulfillment and new patient growth is slowing in 2023 which would shortcut this projection. We believe the rolling 12-month average (FY data below) provides a better picture of the current status of patient participation.



Fiscal Year: Patients Fulfilling 1+ Prescription

	FY20	FY21	FY22	FY23
Patients Fulfilling 1+	1766	7880	21,400	29,057
% Change YTY	--	+446.2%	+271.6%	+135.8%

By this metric, 29,057 patients were "active" in the program over the previous 12 months ending August 2023. This indicates a much smaller program than simple enrollment data indicates.

Potential Growth of Patient Enrollment by Condition

Because each state enacts and administers its medical cannabis and low-THC programs with vastly different standards, estimating the potential growth of CUP participation by conditions is complicated and imprecise. While the rates of eligible condition diagnosis across populations remains consistent from state-to-state, many other factors – the availability of medical advice, proximity to a dispensing organization, the stigma around using cannabis, just to name a few – impact a patient's decision to seek a consultation and prescription from a state medical cannabis program.

Most notably, comparisons between other cannabis-authorizing states are grossly imperfect because no other state has a medical cannabis program comparable to Texas.

Nonetheless, we attempted to provide an analysis between Texas' current low-THC program and Florida's low-THC and medical cannabis program.

	Florida	% of Pop.	Texas	% of Pop.	Texas Deviation	Additional Texas Patients if Equal to Florida
Cancer	66,457	0.31%	2,795	0.01%	0.30%	87,309
Epilepsy	16,921	0.08%	517	0.00%	0.08%	22,425
PTSD	695,592	3.19%	12,507	0.04%	3.15%	930,598
ALS	3,997	0.02%	76	0.00%	0.02%	5,343
MS	160,218	0.74%	573	0.00%	0.73%	216,656

Florida's Medical Board and State OMMU reports note that while the number of conditions did not change in 2022, the number of dispensing locations authorized was increased. In both states patients may be enrolled for multiple conditions but data in both states is provided based on individual patient counts for the primary or first enrolled condition.

The Florida Medical Board provides an annual report on the number of enrolled patients by qualifying condition[18]. We compared Florida's enrollment numbers (as a percent of total population) with current Texas enrollment by condition in order to compare enrollment in the two states.

For comparison, we also measured Texas' CUP program enrollment against the more mature medical program next door in New Mexico (although New Mexico transitioned to a hybrid medical-adult use program in 2021, the state still manages a medical program requiring prescriptions for eligible conditions that serves 102,000 patients per year).

By comparing the percentage of potentially eligible patients currently enrolled in Texas with the percentage of those enrolled in New Mexico, we were able to estimate a maximum enrollment for

[18] Florida Board of Medicine, https://flboardofmedicine.gov/pdfs/03022023-PCPR.pdf

each eligible condition. This assumes that the program continues to grow to provide similar access as New Mexico's does today with prescribers and dispensing organizations in each county.

Number of Potential Eligible Patients	% US Pop w Condition	NM Est Patients	NM Enrolled	NM % Eligible Who Enrolled	TX Est. Patients	TX Enrolled (2022)	% Enrolled	Est Addl Enrollment	Potential % Growth by Condition
ALS	0.01%	192.6	23	11.95%	2,687	76	2.83%	245	1065%
Autism	2.19%	46,340	180	0.39%	646,707	734	0.11%	1,778	988%
Cancer	0.38%	7,975	5089	63.81%	111,298	2795	2.51%	68,224	1341%
Epilepsy +Seizure Disorder	1.20%	25,392	1023	4.03%	354,360	995	0.28%	13,281	1298%
Multiple Sclerosis	0.21%	4,443	569	12.81%	62,013	573	0.92%	7,367	1295%
Neurodegenerative Disease	1.42%	30,	346	1.15%	420,578	5358	1.27%	-	0%
PTSD	5%	105,800	56844	53.73%	1,476,500	12507	0.85%	780,783	1374%
Spasticity	0.15%	3,187.70	234	7.34%	44,486.30	2068	4.65%	1,197.60	512%
								872,878.60	

Data source notes[19]

Both estimates should be taken with heavy caution. The methodology ignores many external factors which cannot be measured with the current data such as: proximity to medical advice supporting cannabis as a treatment option, proximity to a dispensing organization, quality and variety of products available to meet patient needs, product pricing, and the impact of different THC dosing limits (New Mexico's medical program has much higher limits than Texas and Florida has a high THC limit and more product diversity as well as more than 500 dispensary locations).

Even with those important caveats, the trend in the program matches the projection trend in the comparison data: Texas' medical cannabis program is growing rapidly in all eligible conditions and

19 Populations of New Mexico and Texas sourced from US Census Bureau, August 2024
Population condition rates sourced from the CDC and NIH (retrieved Aug. 2024):
https://www.cdc.gov/als/researchpublications/2023/Publication_Prevalance_2018.html; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9128411/; https://www.cancer.gov/about-cancer/understanding/statistics; https://www.cdc.gov/epilepsy/data/; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4799713/; https://www.niehs.nih.gov/research/supported/health/neurodegenerative/index.cfm; https://www.ptsd.va.gov/understand/common/common_adults.asp

appears poised to continue to do so even absent legislative changes that have been or may be proposed in the future.

DATA SUMMARY: PHYSICIAN ACCESS

Introduction

Our analysis examines multiple metrics relating to access to physicians.

Physicians Enrolled, By County

To visualize physician access statewide, we cross-referenced each physician's Texas Medical Board (TMB) registration to their CUP registration to map their primary practice location, by county. Of course, many physicians practice in multiple locations and or offer telemedicine and other remote access options for patient consultations, but this data mapping exercise helps to provide some data on the availability of prescribing physicians by region and county in Texas.

It should be noted that the Compassionate Use Act exempts doctors from being publicly listed in the CUP physician directory unless they explicitly opt-in. Because we used CURT data for all physicians these maps include physicians who prescribe but may not be listed on the public registry.

This data can help us determine the number of physicians in the program and their primary practice area, but this specific data set does not provide condition-level data a patient must use to find a prescriber qualified to create a treatment plan for their condition.

Exhibit: Registered Prescribing Physicians, by County

ANDERSON County, TX	1	GALVESTON County, TX	4	MIDLAND County, TX	3
ANDREWS County, TX	1	GILLESPIE County, TX	2	MONTGOMERY County,	19
BASTROP County, TX	1	GRAY County, TX	1	NACOGDOCHES County,	2
BELL County, TX	16	GRAYSON County, TX	1	NUECES County, TX	6
BEXAR County, TX	71	GREGG County, TX	4	ORANGE County, TX	1
BOWIE County, TX	1	HARRIS County, TX	173	PARKER County, TX	2
BRAZORIA County, TX	5	HAYS County, TX	5	POTTER County, TX	8

BRAZOS County, TX	1	HIDALGO County, TX	13	RANDALL County, TX	1
BURNET County, TX	1	HOOD County, TX	1	SHELBY County, TX	1
CALHOUN County, TX	1	HOPKINS County, TX	1	SMITH County, TX	6
CAMERON County, TX	6	HUNT County, TX	1	TARRANT County, TX	85
COLEMAN County, TX	1	JASPER County, TX	1	TAYLOR County, TX	2
COLLIN County, TX	59	JEFFERSON County, TX	1	TITUS County, TX	1
COMAL County, TX	2	JOHNSON County, TX	4	TOM GREEN County, TX	2
DALLAS County, TX	107	KENDALL County, TX	4	TRAVIS County, TX	88
DEAF SMITH County,	1	KERR County, TX	3	UVALDE County, TX	1
DENTON County, TX	20	LA SALLE County, TX	1	VAL VERDE County, TX	1
EL PASO County, TX	14	LAMAR County, TX	2	VICTORIA County, TX	1
ELLIS County, TX	3	LUBBOCK County, TX	7	WICHITA County, TX	2
FALLS County, TX	1	MCLENNAN County, TX	1	WILLIAMSON County, TX	21
FORT BEND County, TX	24	MEDINA County, TX	1	YOUNG County, TX	3

Enrolled Physicians by Specialty, By County

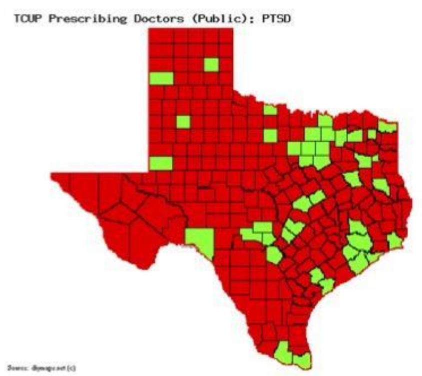
Because the CUP legislation limits participation by physicians to patients with their certified specialties, a simple tally of physicians by county is not a true representation of access for all patients.

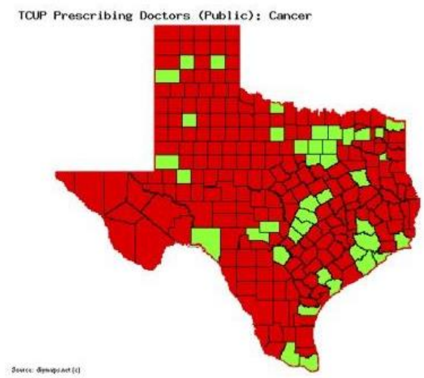
By matching enrolled physicians and their specialty to TMB license records we mapped enrolled physician locations by county for each eligible condition.

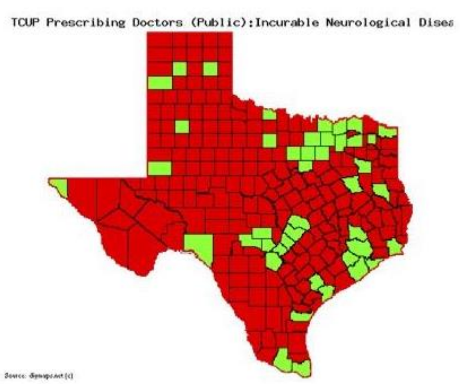
The resulting data shows huge gaps in access to physicians for every condition, corresponding to gaps in access or unmet demand for specialties identified in DSHS physician shortage data.

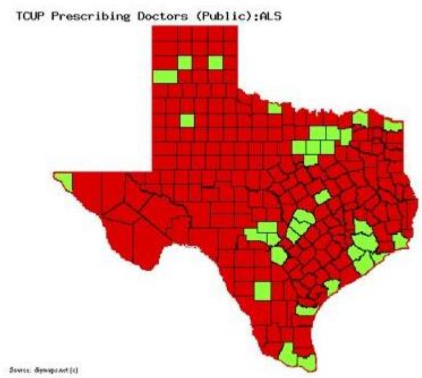
This data does not distinguish between publicly listed and non-public prescribers.

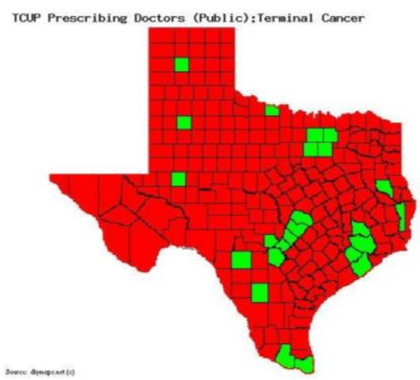
Exhibit: Counties with Enrolled Physicians, by Condition











Prescribing physician availability is not uniform across the state. Patients in rural and remote portions of the state may be required to travel a day or more to access a physician qualified and enrolled to consider them for a consultation to participate in the CUP program.

Prescriptions Issued, by Physician

Prescriber/Patient Ratio

Of 58,936 prescriptions granted to patients in 2022 by the 390 active physicians prescribing that year, the vast majority were from doctors prescribing relatively few prescriptions per year. However, 53.7% of prescriptions were issued by just 11 doctors who each issued more than 1,000 prescriptions in 2022. The highest prescribing doctor issued 10,145 (17% of all prescriptions issued statewide in that year).

Among prescribing physicians, the median number of prescriptions issued was 21. The lowest number was 1. The highest number was 10,145.

Similarly, the number of prescriptions issued per physician (a metric of program activity) varies widely across prescribers.

Exhibit: Number of Prescriptions Issued by Physician, 2022

Prescriptions issued	Number of Doctors	% of Doctors Prescribing
1-49	259	66.4%
50-99	35	8.9%
100-499	77	19.7%
500-1,000	7	1.8%
1,000+	11	2.8%

As with the number of patients per prescriber, the number of prescriptions issued per prescriber is skewed by the small percentage of prescribers who prescribe large numbers of prescriptions per year. 11 doctors each issued more than 1,000 prescriptions in 2022, or an average of 4 new prescriptions per working day.

DATA SUMMARY: PATIENT PARTICIPATION IN TEXAS VS. OTHER STATES

As noted throughout this report, the Texas low-THC program is unique in the country - even among other low-THC and medical-only cannabis program states. As just one example, Texas requires both a physician enrollment and a prescription with specific THC limits and dosage, while most other states only require a physician enrollment and allow patients to then seek their own treatment options at dispensaries. Texas' low-THC number and limited product offerings also impact patient participation rates.

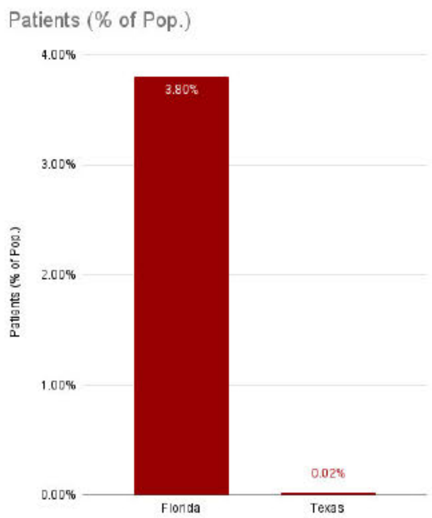
Nonetheless, national cannabis regulators and policy firms frequently reference the ratio of a state's total population to enrolled patient count as a measure for comparing state medical cannabis programs. We use this measure in this analysis because it provides a good yardstick for the potential growth of the CUP program if some of the proposed legislative program amendments were to be implemented in future years.

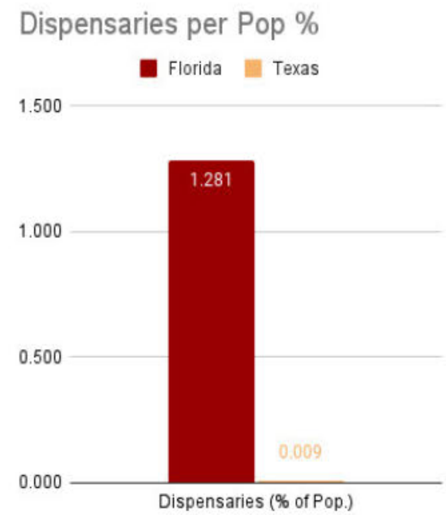
Comparing Texas to Other State Programs

Florida provides perhaps the closest analogous program for Texas' comparison. Both programs were established in the mid-2010s with limited conditions and low-THC, and both share regulatory and legislative histories.

As of August 30, 2023, Florida reports 841,580 enrolled patients (3.8% total population) served by 588 dispensary locations statewide. Texas currently serves 66,250 enrolled patients (0.02%) served by 3 dispensaries.

Exhibit: Patients and Dispensaries Per Capita, Texas vs. Florida





The national Marijuana Policy Project uses a similar metric to track this data on an annual basis.

Exhibit: Medical Cannabis Participation Numbers, by State. Note: 20

State	State Population (2022)	Patient Numbers	Current Through	Percent of State Population Who Are Patients in Program
Alabama	5,074,296	N/A	N/A	N/A
Alaska	733,583	175	2022	0.03%
Arizona	7,359,197	127,162	Jun-23	1.73%
Arkansas	3,045,637	94,373	7/8/2023	3.10%
California	39,029,342	3,199	2022	0.01%
Colorado	5,839,926	67,502	Jun-23	1.16%
Connecticut	3,626,205	42,179	6/30/2023	1.16%
Delaware	1,018,396	16,800	Jul-23	1.65%
Florida	22,244,823	831,775	7/7/2023	3.74%
Hawaii	1,440,196	31,886	6/30/2023	2.21%
Illinois	12,582,032	64,170	May-23	0.51%
Kentucky	4,512,310	N/A	N/A	N/A
Louisiana	4,590,241	25,482	5/31/2023	0.56%
Maine	1,385,340	106,164	2022	7.66%
Maryland	6,164,660	162,401	7/1/2023	2.63%
Massachusetts	6,981,974	94,136	7/13/2023	1.35%

[20] https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/

Michigan	10,034,113	151,940	5/31/2023	1.51%
Minnesota	5,717,184	40,345	3/31/2023	0.71%
Mississippi	2,940,057	18,000	7/10/2023	0.61%
Missouri	6,177,957	163,787	6/30/2023	2.65%
Montana	1,122,867	30,045	7/6/2022	2.68%
Nevada	3,177,772	12,512	May-23	0.39%
New Hampshire	1,395,231	13,364	6/30/2022	0.96%
New Jersey	9,261,699	102,593	7/3/2023	1.11%
New Mexico	2,113,344	100,921	May-23	4.78%
New York	19,677,151	122,960	7/1/2023	0.62%
North Dakota	779,261	7,950	6/30/2022	1.02%
Ohio	11,756,058	174,591	5/31/2023	1.49%
Oklahoma	4,019,800	368,679	6/1/2023	9.17%
Oregon	4,240,137	16,799	1/1/2023	0.40%
Pennsylvania	12,972,008	712,421	5/15/2022	5.49%
Rhode Island	1,093,734	16,552	6/30/2022	1.51%
South Dakota	909,824	10,914	7/10/2023	1.20%
Utah	3,380,800	71,850	Jun-23	2.13%
Vermont	647,064	4,302	6/13/2022	0.66%
Virginia	8,683,619	12,334	7/18/2023	0.58%
Washington	7,785,786	N/A	N/A	N/A
West Virginia	1,775,156	25,119	7/7/2023	1.42%
AVERAGE (All States)				1.96%
AVERAGE (Medical-Only States)				**5.32%**
TEXAS	**30,029,572**	**66,205**		**0.22%**

Compared to medical-only program states, Texas' patient participation rate is a fraction of comparison states. Patients, physicians, and DOs in the program all identify similar limiting factors to Texas' program including a lack of diverse products, lack of convenient access to dispensaries and the relatively low THC cap imposed by Texas statute.

While those factors currently make Texas' program more restrictive than comparator states, proposals in the legislature have sought to remove or lower those barriers through legislation. Some factors, such as product diversity, can be addressed by existing Dos and/or regulatory changes at the department level.

While the current state comparison data should not be used as an “apples-to-apples” comparison of programs, this data review identifies data sets that are available in other states to guide policy makers in evaluating the potential impact of future changes on patient participation. Further data analysis would be required for those proposals.

ABOUT OUR TEAM

Weeds Consulting Services (Weeds LLC) got its start in 2019 with New Mexico's program to update and transition the state's successful medical cannabis program to a hybrid medical/adult-use program.

Governor Michelle Lujan Grisham appointed former police officer and Albuquerque City Council President Pat Davis to head a statewide working group of cabinet secretaries, legislative analysis, patients, medical dispensary operators, law enforcement and local government representatives to evaluate best practices for medical and adult-use programs across the country.

The resulting report became the roadmap for New Mexico's program transformation. The process, led by Davis and supported by experienced policy analysts Matt Kennicott and Patricia Mattioli, launched Weeds consulting group.

Together they recruited a team of former legislative analysts, executive policy leaders, industry operators and former cannabis regulators to craft licensing, compliance, and public policy strategies for the ever-changing landscape of cannabis regulation.

In addition to licensing more than 300 locations in New Mexico, the team helped to secure New Mexico's first Schedule 1 research pharmacy license in 2022 and the country's first federally authorized cannabis research permit from the DEA in 2023. Today the team continues to work with the team building a 100,000 square foot DEA-permitted medical cannabis research facility in Grants, New Mexico.

OUR TEAM

Pat Davis, Co-Founder. CEO. pat@weeds.team

Pat Davis was appointed in 2019 by New Mexico Governor Lujan Grisham to serve as chair of the governor's cannabis legalization working group. He led a group of more than 20 industry experts, State cabinet secretaries, regulators, and advocates to produce a roadmap for the state's transition from medical cannabis to adult-use legalization based on best practices across 14 states.

A former police officer and graduate of the FBI National Academy, Pat traded in his badge to work on public policy, and specifically drug policy. In 2009, he received a Master's Degree in Criminal Justice Policy from New Mexico State University. He also serves as an elected member of the Albuquerque City Council where he wrote and passed the State's first cannabis zoning codes and legislation decriminalizing cannabis.

Pat has appeared as an expert on New Mexico's cannabis industry in dozens of state and national media outlets.

Chris Lee. *Licensing Specialist***.** chris@weeds.team

Chris came to Weeds after more than 5 years working as a grower and wholesale manager in New Mexico's medical cannabis program. As a licensing specialist, Chris has helped to hundreds of applicants build successful applications to license new facilities, renew state licensing, consumption lounges, and local zoning variances.

Bobbi Martinez *Compliance & Education Program Manager. bobbi@weeds.team*

No one knows cannabis compliance better than the state's first cannabis division compliance manager, Bobbi Martinez. Bobbi is one of the leading Hispanic women in cannabis and a proud seventh-generation New Mexican passionate about food systems, horticulture, and sustainability. With an education in Controlled Environment Agriculture, Bobbi has spent her career working on high tech vertical farms, doing research and development for horticultural technology, farm operations, CEA consulting, and working for the local cannabis industry.

Bobbi has done almost every job in the industry, starting from the bottom as a trimmer in the grow room, she worked her way up to the compliance team for a large operator. Most recently, she worked as Compliance Manager for the State of New Mexico's medical and recreational cannabis program, overseeing all licensed cannabis establishments and a team of compliance officers. Bobbi's focus has been on strategic planning, data collection and operational efficiency. With Bobbi's education, experience, and love for the cannabis industry, she will bring value to any cannabis business she works with.

APPENDIX: PATIENT SURVEY RESPONSES

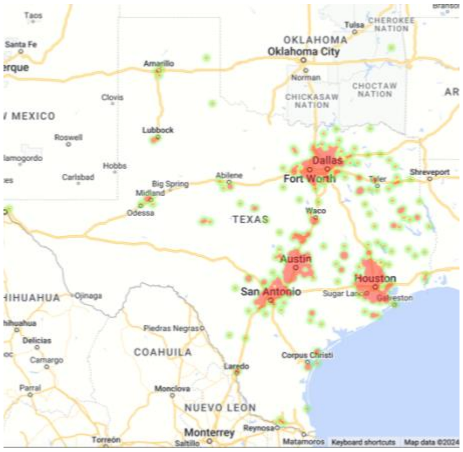
The CUP program staff distributed the survey to members and organizations affiliated with the CUP working group, licensed dispensing organizations (DOs), and to the public via an online link on the program's website.

The survey was conducted using HIPAA-compliant survey tools through SurveyMonkey. We did not solicit or capture any personally identifiable health information. Survey results are based on the respondents' self-reported demographics and experiences and cannot be independently verified.

We received 980 responses between May 13 and June 12, 2024. 323 responses were incomplete or abandoned during the survey, leaving 657 valid responses for this analysis.

The analysis shows that 94.9% of respondents are current patients (or guardians of a patient).

Respondent demographics



The majority of respondents (94.9%) report that they are active CUP patients or guardians of enrolled patients.

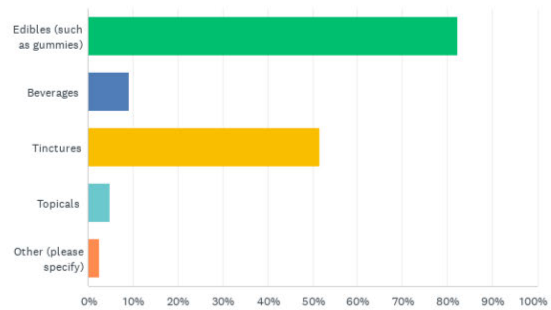
Complete survey responses were received from 99 of 254 with most responses coming from zip codes in the major metropolitan areas of Austin, San Antonio, Houston, Dallas and Fort Worth.

48% of respondents report that they were first prescribed medical cannabis within the past year. Only 16% have been in the CUP for more than two years.

91% of respondents report fulfilling a prescription (purchasing medical cannabis from a dispensing organization) at least once within the past six months (Notably, this survey was primarily distributed through licensed DOs)

Edibles (such as gummies) (82.3%) and tinctures (51.6%) are the most popular methods for medical cannabis consumption.

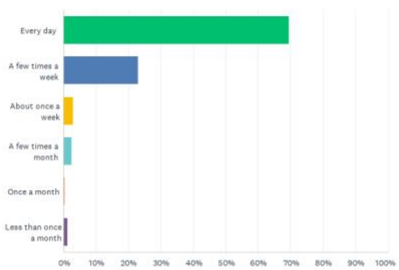
Q17 How do you typically consume CUP prescribed medical cannabis? (Check all that apply)



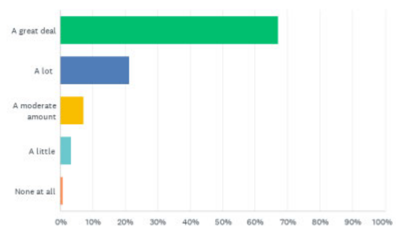
69.4% of respondents reported using medical cannabis daily. 92% use medical cannabis more than once per week, on average.

88% of patients say medical cannabis is effective at managing their medical condition “a great deal” or “a lot.”

Q18 On average, how often do you consume CUP prescribed medical cannabis?



Q21 How effective do you find medical cannabis in managing your medical condition(s)?



31.5% of patients report spending less than $100 per month on medical cannabis. 45.5% spend between $100 and $200 per month. 6% of respondents reported spending more than $300 per month.

Patient access analysis

One goal of the survey was to determine if physical distance from a qualified, enrolled specialist or dispensing organization was a barrier to patient access. The survey responses were overwhelmingly from those who are current patients served by the three licensed DOs in central Texas. Among those who are current patients:

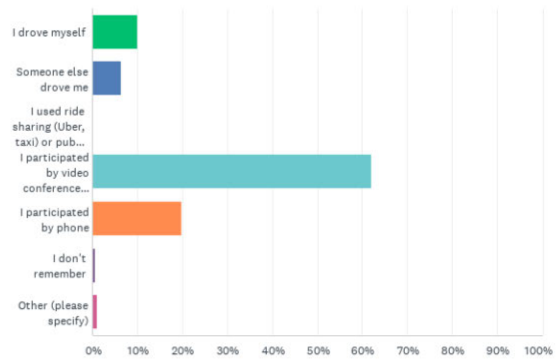
- 78% travel less than 30 minutes to a traditional pharmacy (Q8).
- 76% travel less than 30 minutes to see a general medical practitioner (Q9)
- 92% of current patients said finding a qualified CUP prescriber and making an appointment for a CUP evaluation was easy. Another 12% said finding a physician was easy but more difficult than a traditional medical evaluation (Q31).
- 61% of patients report waiting less than one week between their initial outreach to a physician and their initial physician consultation (Q32).

Among respondents who are not currently patients (23), only 4% reported driving more than 1 hour from home to access a traditional pharmacy.

Both patients and physicians reported widespread use of telemedicine and phone consultations for medical program evaluations.

- 81.7% of patients reported using telemedicine (62.0%) or phone (19.7%) to complete their initial CUP consultation.
- Similarly, 80.1% of physicians with required specialties report using telemedicine for CUP patients.
-

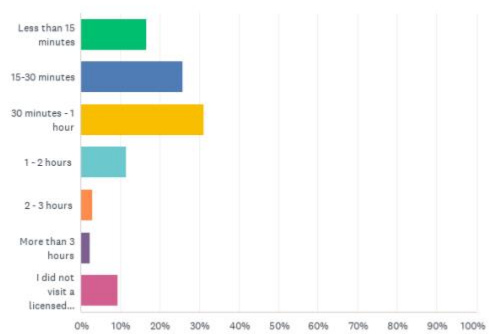
Q34 How did you participate in your CUP consultation/exam? (If you have had multiple consultations, think of your most recent experience)



Patient responses relating to access to dispensing organizations, however, showed slightly different results:

- 16.6% reported having to travel 1 hour or more to reach to their nearest dispensary to access medical cannabis (Q38)
- 42.5% travel less than 30 minutes

Q38 Thinking of your most recent visit to a licensed dispensary location, I had to travel:



- 40% of respondents said they visit a dispensary once or "a few times" a month., but no respondents said they visited as often as daily.

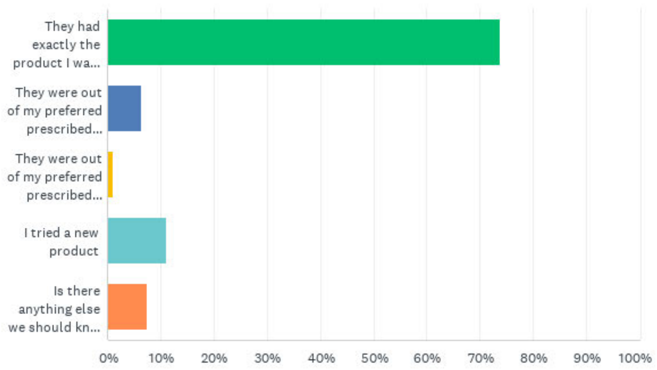
- 28.9% of patients reported using remote pickup options exclusively (a reminder that there are no licensed DOs outside of the Austin area, but remote pickup/delivery is available in the Houston and Dallas/Fort Worth areas).

*A reminder that the overwhelming majority of responses were only received from existing patients in major metropolitan areas in and between Austin, San Antonio, Houston, Dallas and Fort Wort currently served by the 3 licensed DOs. There was insufficient response data to evaluate the experience of Texans in other parts of the state.

When asked about their most recent experience with dispensing organizations, the large majority of patients are satisfied with options available for medical cannabis:

- 74% of patients reported being able to access the medical cannabis product they were looking for (Q40)
- 6.4% reported not being able to access their preferred product and having to choose a different option

Q40 Thinking of your most recent visit to your licensed dispensary:

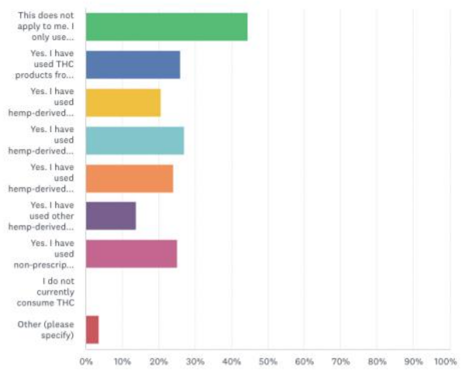


Use of non-medical THC and hemp-derived products

- 55% of CUP patients report supplementing their medical cannabis use with cannabis products from sources outside of a licensed dispensing organization.
- 16.7% of eligible patients report that they no longer use prescribed medical cannabis and only use products from outside the medical cannabis program.

Despite eligibility for the Texas Compassionate Use Program (CUP), have you ever sought out hemp-derived (Delta-8, THC-A) alternatives or THC cannabis from a source other than the three licensed CUP dispensaries to treat a condition covered by the CUP? (Check all that apply)

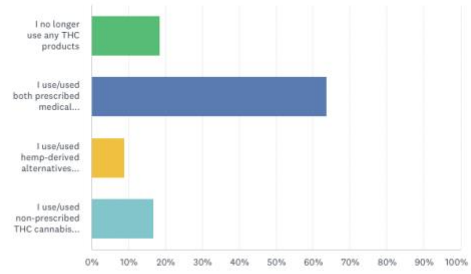
Answered: 621 Skipped: 1



ANSWER CHOICES		RESPONSES	
This does not apply to me. I only use medical cannabis products purchased from a licensed dispensary in Texas		44.61%	277
Yes. I have used THC products from a licensed dispensary in another state such as OK or NM		26.09%	162
Yes. I have used hemp-derived THC-A alternatives		20.61%	128
Yes. I have used hemp-derived Delta-8 alternatives		27.05%	168
Yes. I have used hemp-derived Delta-9 alternatives		24.15%	150
Yes. I have used other hemp-derived alternatives		13.85%	86
Yes. I have used non-prescription THC products		25.12%	156
I do not currently consume THC		0.16%	1
Other (please specify)	Responses	3.54%	22
Total Respondents: 621			

If you use/used non-prescribed THC products, do you use them along with or as a substitute for prescribed medical cannabis? (Check all that apply)

Answered: 453 Skipped: 169



ANSWER CHOICES	RESPONSES	
I no longer use any THC products	18.54%	84
I use/used both prescribed medical cannabis products and one or more of those alternatives	63.80%	289
I use/used hemp-derived alternatives instead of CUP prescribed medical cannabis products	9.05%	41
I use/used non-prescribed THC cannabis instead of CUP prescribed medical cannabis products	16.78%	76
Total Respondents: 453		

- Of patients who supplement their medical cannabis with products from a source not including a DO, 55% prefer smoking or vaping as a consumption method. Those methods are not currently available for CUP products.

Analysis

The responses received from patients indicate that those living in the state's large metro areas served by DOs and remote pickup options have ready access to physicians and dispensaries. However, most still use telemedicine to participate with their enrolled prescriber:

- Telemedicine is a popular method for both physicians and patients to access each other for medical cannabis screening. 80% of physicians with required specialties and 81% of patients seeking an evaluation for CUP used telemedicine for their first consultation.

A large majority of patients seem satisfied with the medical cannabis options available to them through licensed dispensing organizations. However, almost ⅔ also say they supplement their medical cannabis with THC products or hemp-derived products from other sources outside the program.

APPENDIX: PHYSICIAN SURVEY RESPONSES

The survey was distributed via email by the CUP program to physicians enrolled in the program and to other physicians by the Texas Medical Board (TMB) through their regular licensee updates and alert system.

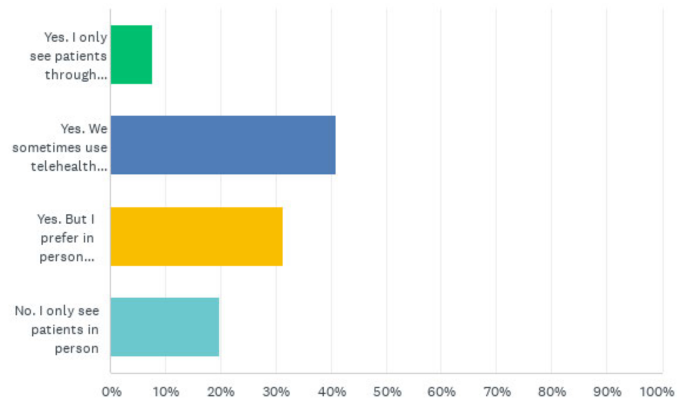
We received 514 responses between May 13 and May 30, 2024. Twenty responses were incomplete or abandoned during the survey, leaving 494 valid responses for this analysis.

Physician demographics

The majority of respondents (97.7%) report that they have practiced medicine for five or more years. 59.6% have practiced for more than 20 years. Just 2.8% have practiced medicine for less than two years.

12.6% of respondents indicated that they do not have a physical presence in Texas and only practice via telemedicine (Learn more about Texas interstate medical reciprocity).

Q2 In your practice, do you offer telehealth consultations with patients?



Q2: In your practice, do you offer telehealth consultations with patients?

Answered: 261 Skipped: 1

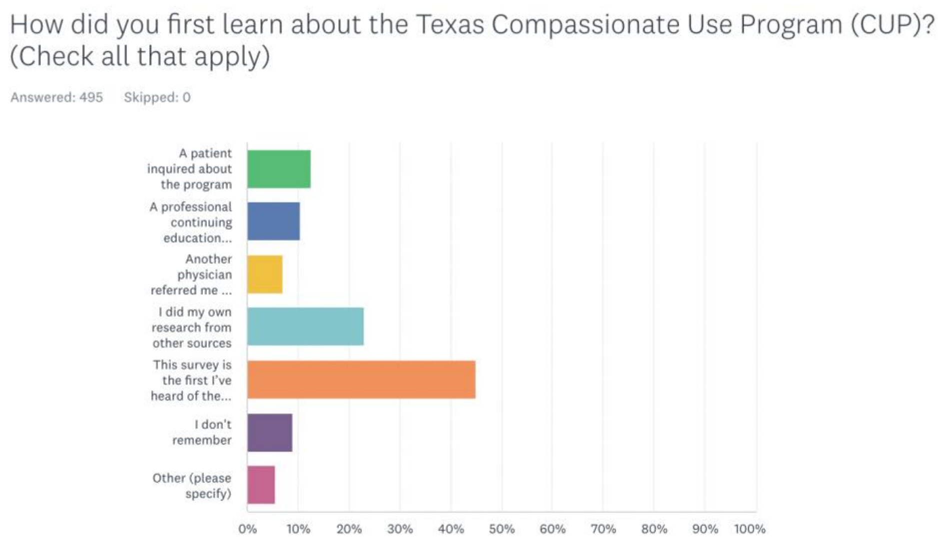
ANSWER CHOICES	RESPONSES	
Yes. I only see patients through telehealth.	7.66%	20
Yes. We sometimes use telehealth options to connect with patients	41.00%	107
Yes. But I prefer in person appointments when feasible	31.42%	82
No. I only see patients in person	19.92%	52
TOTAL		261

Program awareness among physicians

Among all physicians responding:

- 45% of total respondents indicated that this survey from CUP was the first time they had been aware of Texas' medical marijuana program (Q7). Of those familiar with the program, 12.3% first learned of it in response to a patient inquiry, 7.2% through a colleague referral and 22.9% through their independent research.

- Even among those with knowledge of the CUP program, 45.9% say they do not know any of the program's specifics (Q8). When asked to list the biggest hurdle for physician enrollment (Q36), 30.5% indicated "not enough training or information." 66% of responding physicians say they are unfamiliar with the program or "are not familiar with the specifics" (Q8).



ANSWER CHOICES		RESPONSES	
A patient inquired about the program		12.53%	62
A professional continuing education course		10.51%	52
Another physician referred me to the program		7.07%	35
I did my own research from other sources		23.03%	114
This survey is the first I've heard of the program		45.05%	223
I don't remember		8.89%	44
Other (please specify)	Responses	5.45%	27
Total Respondents: 495			

- Most physicians (53.8%) say they would be comfortable referring eligible patients to enrolled CUP prescribers but do not know how to find those specialists (Q19).
- 31.8% of all physicians indicated that they were not comfortable referring patients to a medical cannabis program (Q19).

Of respondents reporting that they are board-certified to treat a CUP-authorized condition:

- 32% were unaware of the program until they received this survey.

Q7: How did you first learn about the Texas Compassionate Use Program (CUP)? (Check all that apply)

Answered: 262 Skipped: 0

ANSWER CHOICES	RESPONSES	
A patient inquired about the program	16.41%	43
A professional continuing education course	11.83%	31
Another physician referred me to the program	10.69%	28
I did my own research from other sources	32.06%	84
This survey is the first I've heard of the program	32.44%	85
I don't remember	8.78%	23
Other (please specify)	4.58%	12
TOTAL		306

Crosstab: Physician survey; Physicians reporting a qualifying specialty. Respondents were able to indicate more than one answer, if applicable.

- Of those who reported having researched the CUP program, 56.9% found information about how to participate difficult to access (Q18).
- 64.7% would participate in a continuing education course on the CUP program if offered in the next year (Q20).

Physician participation in CUP

Texas' medical cannabis program does not automatically publish the names of enrolled physicians. However, physicians can opt into a public directory of enrolled physicians published on the CUP program website.

Among physicians who reported being an enrolled CUP prescriber:

- 39.3% did not opt-in to the public listing (Q26).
- 82.5% of all enrolled physicians do not advertise their participation elsewhere (Q27).
- 73% indicated that the process to enroll in the CUP program was easy or very easy (Q28).

Among physicians who indicated reservations about participating in the program, the most common reasons were a concern for “abuse” and answers related to conflicts between state and federal law on cannabis (Q30).

In the patient survey, 27.5% of patients and potential patients reported it was not possible or "not as easy" to find a specialist for a medical cannabis consultation. Increasing the number of publicly identifiable enrolled physicians may assist patients in overcoming those challenges.

Opportunities to increase physician participation

66% of total respondents say they would participate in professional medical continuing education on the CUP program, if offered, in the next year.

47.5% of respondents say they have participated in some professional continuing education (CE) on medical cannabis in the past five years (including but not limited to the Texas program, expressly) (Q20). Physicians were asked to provide details on the specifics of those continuing education courses as best they could recall. Of those who provided details, the most popular education sources were national medical specialty conferences, mandatory CE in psychiatry, pain management and drug management. These responses indicate that training on medical cannabis may be widely available for physicians interested in participating in the Texas medical cannabis program and already be required for some specialties.

Analysis

Texas' program is unique in that it limits physician participation in the medical cannabis program to those with enumerated specialties correlating to legislature-authorized conditions for medical cannabis use. Our analysis indicates that many counties (and entire DPS and DSHS regions) lack access to locally practicing CUP-enrolled specialists. However, the popularity of telemedicine and phone consultations with both physicians and patients may minimize the importance of physical proximity in determining reasonable patient access to qualified and enrolled physicians.

- Just 40 of 211 responding physicians with qualified specialties (18.9%) report that they serve patients statewide, but 80.1% of the same group report using telemedicine in their practice (see below). Notably, of those reporting a "statewide" practice, 55% also report not having any in-state physical location.
- Telemedicine is a popular method for both physicians and patients to access each other for medical cannabis screening. 80% of physicians with required specialties and 81% of patients seeking an evaluation for CUP used telemedicine for their first consultation. (An additional 11.6% of patients reported using a telephone consultation instead of an in-person or video visit).

Taken together, this indicates that statewide access to qualified specialists may be achieved through telemedicine options, though some specialties still have very few enrolled physicians. Our initial assumption that a lack of access to physicians locally or regionally may negatively impact patient participation does not bear out in patient and physician experiences.

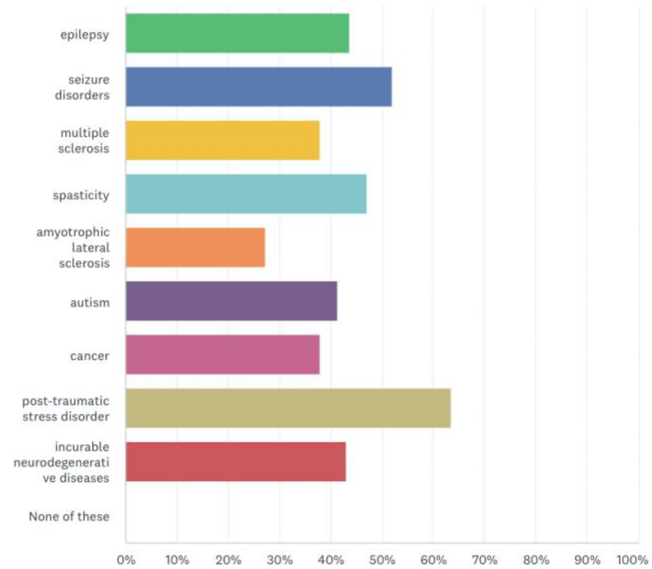
The CUP physician survey found that 65% of physicians with those required specialties who are not already enrolled prescribers are interested in and would participate in continuing education on CUP if offered. This points to an accessible and high-impact tactic to expand the number of participating physicians available for patients.

Among physicians enrolled in CUP, the overwhelming majority (73%) rated the process "easy," and 60% chose to list themselves publicly in the CUP prescriber directory. When these factors are considered alongside the interest in education about medical cannabis and the CUP from certified specialists, a strategy for increasing patient access to specialists emerges.

When respondents were filtered for physicians with CUP-qualified specialties and those interested in participating in continuing education on the CUP program, we found 121 certified specialists (across all specialties) who are strong recruits to become prescribers in the CUP program.

Are you board certified to treat any of these medical conditions? (select all that apply)

Answered: 121 Skipped: 0



ANSWER CHOICES	RESPONSES	
epilepsy	43.80%	53
seizure disorders	52.07%	63
multiple sclerosis	38.02%	46
spasticity	47.11%	57
amyotrophic lateral sclerosis	27.27%	33
autism	41.32%	50
cancer	38.02%	46
post-traumatic stress disorder	63.64%	77
incurable neurodegenerative diseases	42.98%	52
None of these	0.00%	0
Total Respondents: 121		

Crosstab: Physician survey; Filtered for physicians who self-report a qualified CUP-required specialty AND who report interest in participating in continuing education on the CUP program within the next year

Exhibit I

TCUP Product Listings and Laboratory Records

— including Texas Original product-catalog excerpts; Goodblend Texas Orange 5 mg THC Gummies; Goodblend Grape 10 mg THC Beverage; and July 10, 2026 COA for Goodblend Batch TXSWR-20260710-002

Next-Day Order Cutoff: 3 pm • Click here for help accessing your account

TEXAS ORIGINAL

SHOP NOW

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Texas Original Products

Shop by Category

Explore medical cannabis products grown for Texans by Texans. Whether you're looking for vaporization devices, gummies or another option, Texas Original offers medical-grade products made locally for patients under the Texas Compassionate Use Program.

EDIBLES

CONCENTRATES

TOPICALS

TINCTURES

BEVERAGES

VAPORIZATION

0:1 10 mg Blueberry Lemonade Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy

0:1 10 mg Flower Rosin Wild Plum Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy

0:1 10 mg RSO Cherry Limeade Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy
10 Count

$25.00

0:1 10 mg RSO Sweet Pineapple Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy
10 Count

$25.00

SHOP CATEGORY

SHOP CATEGORY

0:1 10 mg Sour Apple Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy
10 Count

$25.00

SHOP CATEGORY

0:1 10 mg Sugar-Free Watermelon Kiwi Gummies (100 mg)

100 mg THC per Bag
10 mg THC per Gummy
10 Count

$25.00

SHOP CATEGORY

NEW

SATIVA

0:1 Distillate Sativa 0.5 g Syringe (Blue Dream)

447-459 mg THC per Syringe
8-9 mg THC per 0.01 mL
0.5 g Syringe

$45.00

SHOP CATEGORY

HYBRID

0:1 Hybrid 0.5 g Vaporization Cartridge (OG Kush)

456 mg THC per Cartridge
3-5 mg THC per Draw
0.5 g Cartridge

$45.00

SHOP CATEGORY

0:1 Hybrid 0.5 g Vaporization Cartridge (Zelato)

432 mg THC per Cartridge
3-5 mg THC per Draw
0.5 g Cartridge

$45.00

0:1 Indica 0.5 g Vaporization Cartridge (Rainbow Belts)

425 mg THC per Cartridge
3-5 mg THC per Draw
0.5 g Cartridge

$45.00

0:1 Indica Vaporization Cartridge (Blackberry Kush)

0:1 Pink Lemonade Beverage (50 mg)

10 mg THC per 6 mL
50 mg THC per Bottle (30 mL)

440 mg THC per Cartridge
3-5 mg THC per Draw
0.5 g Cartridge

$45.00

SHOP CATEGORY

$18.00

SHOP CATEGORY

0:1 RSO Dark Chocolate Bites (100 mg)

100 mg THC per Jar
10 mg THC per Piece
10 Count Jar

$30.00

SHOP CATEGORY

0:1 RSO Indica 0.5 g Syringe (Texas OG)

410-412 mg THC per Syringe
8 mg THC per 0.01 mL
0.5 g Syringe

$45.00

SHOP CATEGORY

0:1 RSO Unflavored Tincture (900 mg)

0:1 Sativa 0.5 g Vaporization Cartridge (Blue Dream)

0:1 Unflavored Tincture (300 mg)

300 mg THC per Bottle
10 mg THC per mL
30 mL Bottle

$50.00

SHOP CATEGORY

1:1 Cherry Tincture (600 mg)

300 mg CBD, 300 mg THC per Bottle
10 mg CBD, 10 mg THC per mL
30 mL Bottle

$75.00

SHOP CATEGORY

1:1 Elevate Fruit Punch Gummies (200 mg)

100 mg CBG, 100 mg THC per Bag
10 mg CBG, 10 mg THC per Gummy
10 Count

$25.00

SHOP CATEGORY

1:1 Elevate Turmeric Ginger Beverage (50 mg)

5 mg CBG, 5 mg THC per 6 mL
25 mg CBG, 25 mg THC per Bottle (30 mL)

$12.00

SHOP CATEGORY

1:1 Elevate Unflavored Tincture (1,800 mg)

900 mg CBG, 900 mg THC per Bottle

7.5 mg CBG, 7.5 mg THC mg THC per 0.25 mL

30 mL Bottle

$145.00

SHOP CATEGORY

1:1 Strawberry Passion Fruit Gummies (200 mg)

100 mg CBD, 100 mg THC per Bag
10 mg CBD, 10 mg THC per Gummy
10 Count

$25.00

SHOP CATEGORY

1:1 Topical Balm (200 mg)

100 mg CBD, 100 mg THC per Jar
2 oz Jar

$30.00

SHOP CATEGORY

1:1 Unflavored Tincture (600 mg)

300 mg CBD, 300 mg THC per Bottle
10 mg CBD, 10 mg THC per mL
30 mL Bottle

$75.00

SHOP CATEGORY

1:1:1 Sweet Dreams Dewberry Gummies (300 mg)

100 mg CBN, 100 mg CBD, 100 mg THC per Bag

10 mg CBN, 10 mg CBD, 10 mg THC per

1:1:1 Sweet Dreams Unflavored Tincture (2,700 mg)

900 mg CBN, 900 mg CBD, 900 mg THC per Bottle

7.5 mg CBN, 7.5 mg CBD, 7.5 mg THC mg THC

20:1 Cherry Tincture (3,150 mg)

3000 mg CBD, 150 mg THC per Bottle
100 mg CBD, 5 mg THC per mL
30 mL Bottle

3:1 Peach Mango Gummies (400 mg)

300 mg CBD, 100 mg THC per Bag
30 mg CBD, 10 mg THC per Gummy
10 Count

$50.00

SHOP CATEGORY

$25.00

SHOP CATEGORY

3:1 Unflavored Tincture (600 mg)

450 mg CBD, 150 mg THC per Bottle
15 mg CBD, 5 mg THC per mL
30 mL Bottle

$45.00

SHOP CATEGORY

Medical Vaporization Battery – M4B Pro

$10.00

SHOP CATEGORY

Texas Original Medical Cannabis Gummies

Texas Original™ fast-acting gummies are the first of their kind in Texas, offering a quicker onset and more efficient absorption.

Shop All Gummies

Texas Original Medical Cannabis Tinctures

Made with no added sugar and only three simple ingredients, Texas Original™ tinctures are designed for long-lasting relief with precise, drop-by-drop dosing.

Shop All Tinctures

How Do You Take The Medicine?

Gummies

Chew one gummy at bedtime or as prescribed by your physician. For most patients, we recommend consuming with food.

Tinctures

Administer your dose by applying the syringe under the tongue or in the cheek pouch and holding the medicine for 30 seconds to one minute before swallowing. If swallowed immediately, the medicine will still be effective, but the onset time may be delayed. Texas Original™ tinctures are designed for oral consumption only and not for inhalation.

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By signing up you agree to our terms and conditions.

SIGN UP

Patients

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Medical Cannabis 101

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Our Mission

The Texas Original Promise

Careers

Contact Us

GO TEXAN

SAVE WITH OUR LOYALTY PROGRAM

goodblend

Menu Search Login 0

OPEN Medical

Back All Products / Edibles / Gummies

HEIGHTS

Texas Orange (THC) - Gummies - 5mg - 40ct

$50.00

1 ADD TO CART

Sativa | TAC: 0.28% | THC: 200 mg

Each package contains 40 gummies formulated with 5 mg of THC each.

Tart, sweet, and bursting with juicy flavor, these gummies are as energizing as a desert sunrise and just as creatively inspiring. Your mind and body will be uplifted and ready for whatever comes your way.

Store your edible product in its original sealed container in a cool, dry, and dark place away from children and pets.

Ingredients: Cannabis Oil; Sugar; Tapioca Syrup; Water; Gelatin; Sorbitol; Citric Acid; Natural Flavoring; Natural Food Coloring; Naturally-Occuring Terpenes; Carnauba Wax

Certificate of Analysis

Effects

Creative | Energetic | Focused | Happy | Inspired

Rewards

Earn points on every purchase and unlock exclusive rewards. Sign up today and start earning points!

Continue with Google

Continue with Apple

[Log in or sign up with email]

Related Items

Blue Raspberry (Sativa) - Gummies - 10mg -...
Heights
Sativa THC: 200 mg

$50.00

ADD TO CART

Blackberry (Sativa) - FSO Gummies - 10m...
Heights
Sativa

$50.00

ADD TO CART

Tropical Paradise (THC) - Gummies -...
Heights
Indica THC: 200 mg

$50.00

ADD TO CART

Sour Limeade (Hybrid) - Gummies - 10mg -...
Heights
Hybrid THC: 200 mg

$50.00

ADD TO CART

Texas Orange (1 CB THC) - Gummies - 5.
Heights
1 to 1 THC: 100 mg
CBD: 100 mg

$30.00

ADD TO CART

goodblend™

THE GOOD STUFF

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THE USEFUL STUFF

FIND A LOCATION

FIND A MEDICAL MARIJUANA DOCTOR

BECOME A PATIENT

CUSTOMER CARE

PRODUCT TEST RESULTS

CAREERS

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THE EXCITING STUFF

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EVENTS

THE BORING STUFF

TERMS & CONDITIONS

PRIVACY & SECURITY

LOYALTY TERMS & CONDITIONS

FOLLOW US

Certificate of Analysis

Texas CUP License #	0006	**Product**	Texas Orange (THC, Sativa) - 5mg, 40pk (200mg)
Report #	TXSWR-20260710-002		
Test Date	7/10/2026	**Manufacture Date**	7/10/2026
Batch #	TXSWR-20260710-002		

Test Summary

Potency	Pass
Visual Inspection	Pass
Heavy Metals	Pass
Pesticides	Pass
Microbial Impurities	Pass
Residual Solvents	Pass

Potency

	Results (w/w%)	mg
THC	0.28%	5.04
CBD	0.00%	0.00
CBG	0.00%	0.00
CBN	0.00%	0.00
Total (TAC)	0.28%	5.04
Avg Wt (g):	1.8	

Heavy Metals

	Results (ppm)	Limits (ppm)
Arsenic (As)	ND	10 ppm
Cadmium (Cd)	ND	4 ppm
Lead (Pb)	ND	6.1 ppm
Mercury (Hg)	ND	2 ppm

Pesticides

Pesticides Tested[1]	ND

Microbial Impurities

	Results (CFU/g)	Limits (CFU/g)
Campylobacter	ND	100
Escherichia coli	ND	100
Listeria	ND	100
S. dysenteriae	ND	100
Salmonella	ND	100
Staphylococcus	ND	100
Yersinia	ND	100
TYMC	ND	10,000

Residual Solvents

	Results (ppm)	Limits (ppm)
Class I[2]	ND	
Class II		
Hexane	ND	290 ppm
Methanol	ND	3,000 ppm
Class III		
Acetone	ND	5,000 ppm
Butane	ND	5,000 ppm
Ethanol	ND	5,000 ppm
Heptane	ND	5,000 ppm
Isopropanol	ND	5,000 ppm
Pentane	ND	5,000 ppm
Propane	ND	5,000 ppm

Signature: Adam Richardson
Name: Adam Richardson
Title: Lab Manager, Analytical Processing
Date: 7/20/2026

Analytical tests were performed using the following analytical equipment and associated methods: Shimadzu High Performance Liquid Chromatogram (HPLC), Shimadzu Inductively-Coupled Plasma Optical Emission Spectrophotometer (ICP-OES), and Shimadzu Gas Chromatography Mass Spectrophotometer (GC-MS).

1. A comprehensive list of all pesticides tested is available upon request.
2. A comprehensive list of all solvents tested is available upon request.

ND: Not Detected
CFU/g: Colony Forming Units per gram
TYMC: Total Yeast and Mold Count

HEIGHTS

Grape (THC) - Beverage - 10mg - 2fl oz

$5.00

1

ADD TO CART

THC

TAC: 0.02%

THC: 10 mg

Price - $5.00

Heights Grape (THC) Beverage – 10mg – 2fl oz

This new 2oz Heights beverage tastes fresh off the vine. Sweet, crisp grape flavor is juiced together with 10 mg of THC for a tasty treat that's as relaxing as it is refreshing. It's the easiest, sweetest way to bring more relief to your routine. And it's only at goodblend.

Ingredients: Proprietary Nano-Drops Cannabis Formulation (Cannabis Oil, Polysorbate 80, Ethanol), Water, Sugar, Natural Flavoring, Lemon Concentrate, Citric Acid, Salt, Xanthan Gum, Sodium Citrate, Sodium Benzoate, Potassium Sorbate

Certificate of Analysis

goodblend
MEDICAL CANNABIS

Certificate of Analysis

Texas CUP License #	0006	**Product**	Grape (THC) - [2fl oz] - (10mg)
Report #	TXWSR-20260603-011		
Test Date	6/3/2026	**Manufacture Date**	6/3/2026
Batch #	TXWSR-20260603-011		

Test Summary

Potency	Pass
Visual Inspection	Pass
Heavy Metals	Pass
Pesticides	Pass
Microbial Impurities	Pass
Residual Solvents	Pass

Potency

	Results (w/w%)	mg
THC	0.018%	10.08
CBD	0.00%	0.00
CBG	0.00%	0.00
CBN	0.00%	0.00
Total	0.018%	10.08
Avg Wt (g):	56	

Heavy Metals

	Results (ppm)	Limits (ppm)
Arsenic (As)	ND	10 ppm
Cadmium (Cd)	ND	4 ppm
Lead (Pb)	ND	6.1 ppm
Mercury (Hg)	ND	2 ppm

Pesticides

Pesticides Tested[1]	ND

Microbial Impurities

	Results (CFU/g)	Limits (CFU/g)
Campylobacter	ND	100
Escherichia coli	ND	100
Listeria	ND	100
S. dysenteriae	ND	100
Salmonella	ND	100
Staphylococcus	ND	100
Yersinia	ND	100
TYMC	ND	10,000

Residual Solvents

	Results (ppm)	Limits (ppm)
Class I[2]	ND	
Class II		
Hexane	ND	290 ppm
Methanol	ND	3,000 ppm
Class III		
Acetone	ND	5,000 ppm
Butane	ND	5,000 ppm
Ethanol	ND	5,000 ppm
Heptane	ND	5,000 ppm
Isopropanol	ND	5,000 ppm
Pentane	ND	5,000 ppm
Propane	ND	5,000 ppm

Signature: Adam Richardson
Name: Adam Richardson
Title: Lab Manager, Analytical Processing
Date: 6/8/2026

Analytical tests were performed using the following analytical equipment and associated methods: Shimadzu High Performance Liquid Chromatogram (HPLC), Shimadzu Inductively-Coupled Plasma Optical Emission Spectrophotometer (ICP-OES), and Shimadzu Gas Chromatography Mass Spectrophotometer (GC-MS).

1. A comprehensive list of all pesticides tested is available upon request.
2. A comprehensive list of all solvents tested is available upon request.

ND: Not Detected
CFU/g: Colony Forming Units per gram
TYMC: Total Yeast and Mold Count

Exhibit J

DSHS Notice Reinstating Clarifications to the Definitions of Tetrahydrocannabinols and Marihuana Extract to the 2021 Schedule of Controlled Substances

51 Tex. Reg. 4597 (July 10, 2026)
TRD-202602610

Notice Reinstating Clarifications to the Definitions of Tetrahydrocannabinols and Marihuana Extract to the 2021 Schedule of Controlled Substances, Pursuant to the Opinion Delivered by the Supreme Court of Texas on May 1, 2026.

On November 8, 2021, in the case *Sky Marketing Corp., et al. v. Texas Department of State Health Services, and Dr. Jennifer Shuford, in her official capacity as Commissioner of the Texas DSHS*, Travis County District Court Judge Jan Soifer ordered the Department to "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." DSHS published a notice of compliance with this order on January 21, 2022, 47 *TexReg* 175.

On May 1, 2026, the Supreme Court of Texas delivered its opinion reversing the judgment of the court of appeals as to the ultra vires and APA claims and reversing the trial court's order that granted the temporary injunction. On June 5, 2026, the mandate was issued dismissing Plaintiffs' claims.

DSHS therefore issues this notice reinstating previous modifications made to the definitions of tetrahydrocannabinols and marihuana extract in the 2021 Schedules of Controlled Substances. These modifications resulted from the Commissioner's objection to changes made by the Drug Enforcement Agency to the definitions to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-tetrahydrocannabinol, including isomers and variants which may have pharmacological or psychoactive properties.

In the capacity as interim Commissioner of the Texas Department of State Health Services, Imelda Garcia, MPH, reinstates the definitions of tetrahydrocannabinols and marihuana extract as modified prior to the temporary injunction issued by the trial court.

Note: Changes are marked by an asterisk (*).

-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, positional, 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 name: 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 name: *N*-hydroxy MDA);
(14) 3,4,5-Trimethoxyamphetamine (Other name: 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);
(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 (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% 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 (Other name: 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 (Other names: PB-22; QUPIC);

(52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (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 (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 (Other name: 4-MEC);

(60) 4-Methyl-α-pyrrolidinopropiophenone (Other name: 4-MePPP);

(61) α-Pyrrolidinopentiophenone (Other name: [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);

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

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

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

(83) 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);

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

(85) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(86) 1-(1,3-Benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (Other names: *N*-ethylpentylone; ephylone);

(87) Methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) (Other names: 4F-MDMB-BINACA; 4F-MDMB-BUTINACA);

(88) 1-(4-Methoxyphenyl)-*N*-methylpropan-2-amine (Other names: *p*-methoxymethamphetamine; PMMA);

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

(90) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA; 5F-MDMB-2201);

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

(92) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(93) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

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

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

(96) 4-Methyl-α-ethylaminopentiophenone (Other names: 4–MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(97) 4′-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP; 4′-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(98) α-Pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one);

(99) 4′-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4′-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one);

(100) 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (Other names: methoxetamine; MXE);

(101) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)butan-1-one (Other names: eutylone; bk-EBDB); and

(102) 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)pentan-1-one (other names: dipentylone, *N*,*N*-dimethylpentylone).

Exhibit K

DSHS Consumable Hemp Program and Consumable Hemp Products Frequently Asked Questions

captured August 10, 2026

The Department of State Health Services is currently undergoing Sunset review. Learn more about the Sunset process and provide feedback. (https://www.dshs.texas.gov/about-dshs/legislative-information/sunset-review).

Provide feedback on your experience with DSHS facilities, staff, communication, and services. Please take this short survey. (http://HHSC.2026dshs-customersurvey.alchemer.com/s3/)
Denos su opinión sobre sus experiencias con las instalaciones, el personal, la comunicación y los servicios del DSHS. Por favor, responda a esta breve encuesta. (http://HHSC.2026dshs-encuestaalcliente.alchemer.com/s3/).

Consumable Hemp Program (/consumable-hemp-program)

Consumable Hemp Products - Frequently Asked Questions (/consumable-hemp-program/consumable-hemp-products-frequently-asked-questions)

DSHS Consumable Hemp Product License Process (/consumable-hemp-program/dshs-consumable-hemp-product-license-process)

Licensing and Registration (/consumable-hemp-program/licensing-and-registration)

Consumable Hemp Program - Open Records (/consumable-hemp-program/open-records)

Consumable Hemp Program - Labeling (/consumable-hemp-program/labeling)

Laws and Rules (/consumable-hemp-program/laws-and-rules)

Current Licensees and Registrants (/consumable-hemp-program/current-licensees-and-registrants)

Get in Touch

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Consumable Hemp Program

The Supreme Court of Texas confirmed in *Texas Department of State Health Services v. Sky Marketing Corp.* (https://www.txcourts.gov/media/1462654/230887.pdf), that delta-8 tetrahydrocannabinol (THC) is a controlled substance and only naturally occurring trace amounts in a hemp plant are exempt from controlled status.

Only trace amounts of delta-8 THC naturally produced by the hemp plant from which the consumable hemp product was manufactured are permissible.

The Texas schedule affecting delta-8 THC (https://www.dshs.texas.gov/drug-manufacturers-distributors/schedules-controlled-substances-drug-manufacturers-distributors) becomes effective July 31, 2026. This scheduling action reinstates clarifications to the definitions of tetrahydrocannabinols and marihuana extract made to the 2021 Schedule of Controlled Substances.

The department intends to amend the consumable hemp product rules pursuant to the Administrative Procedure Act to include this definition.

Consumable hemp products labeled to contain delta-8 THC or shown to contain more than trace amounts of tetrahydrocannabinols, including delta-8 THC, may be detained and referred to law enforcement. In accordance with Texas Health and Safety Code 443, consumable hemp products may contain delta-9 tetrahydrocannabinol at a concentration of not more than 0.3 percent on a dry weight basis.

The Consumable Hemp Product license fee has been restored to $10,000 annually per location, plus the applicable Texas Online (TOL) fee. The Retail Hemp Registration has been restored to $5,000 annually per location, plus the applicable TOL fee. These fees and other requirements are available in 25 TAC 300 (https://texas-sos.appianportalsgov.com/rules-and-meetings?interface=SEARCH_TAC).

On Oct. 2, 2025, the Texas Department of State Health Services adopted emergency rules to prohibit Consumable Hemp Licensees and Retail Hemp Registrants from selling consumable hemp products to customers under the age of 21 and require a valid proof of government-issued identification prior to purchase. Businesses found in violation of the rules may have their Consumable Hemp License or Retail Hemp Registration permit revoked. The emergency rules can be found in the Texas Register at Rule §300.701 (https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftexas-sos.appianportalsgov.com%2Frules-and-meetings%3Finterface%3DVIEW_TEXAS_REGISTER_SUMMARY%26recordId%3D455364&data=05%7C02%7CJustin.Zamudio%40dshs.texas.gov%7C9a8da8957b2e4a8d97af08de05ed3672%7C9bf9773282b9499bb16aa93e8ebd536b%7C0%7C0%7C638954713530203627%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=%2FoRyyxzpAS6iwBomZjilOXZX6jrlKBPCIo5pKIJ9Td0%3D&reserved=0) and Rule §300.702 (https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftexas-sos.appianportalsgov.com%2Frules-and-meetings%3Finterface%3DVIEW_TEXAS_REGISTER_SUMMARY%26recordId%3D455365&data=05%7C02%7CJustin.Zamudio%40dshs.texas.gov%7C9a8da8957b2e4a8d97af08de05ed3672%7C9bf9773282b9499bb16aa93e8ebd536b%7C0%7C0%7C638954713530224953%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=RzVnTqz%2Bn%2BZMSvF5004xIwPWIAjASPp7uONEWyut2oA%3D&reserved=0).

On June 24, 2022, the Texas Supreme Court upheld the Texas statute that prohibits the "processing or manufacturing of a consumable hemp product for smoking" (Health and Safety Code, Section 443.204(4)) (https://statutes.capitol.texas.gov/docs/HS/htm/HS.443.htm#:~:text=(4)%20%20the%20processing%20or%20manufacturing%20of%20a%20consumable%20hemp%20product%20for%20smoking%20is%20prohibited.) in Texas. At the same time, the lower court's injunction remains, which allows the distribution and retail sale of consumable hemp products for smoking. For more information, view the Frequently Asked Questions webpage (https://www.dshs.texas.gov/consumable-hemp-program/consumable-hemp-products-frequently-asked-questions).

Adopted Consumable Hemp Rule Text

The adopted Consumable Hemp Program rule text is now available to view (https://www.dshs.texas.gov/sites/default/files/CP-Hemp/docs/chapter-300-chp-rules-3.31.26.pdf) . (/sites/default/files/hemp/pdf/dshs-26-0009-manufacture-distribution-and-retail-sale-of-consumable-hemp-products-attachment-2-rule.pdf) This text will be published for adoption in the March 20, 2026, issue of the *Texas Register*. The rules will be effective March 31, 2026.

Public Hearing Notice

Texas Department of State Health Services (DSHS) Manufacture, Distribution, and Retail Sale of Consumable Hemp Products on Proposed Rule Pertaining to Hemp and Hemp-Derived Products

Time/Date

9 a.m. - 1 p.m. Jan. 9, 2026

Meeting Site:

Texas Health and Human Services Commission (HHSC)

John H. Winters Building

Public Hearing Room 125, First Floor

701 W. 51st Street

Austin, Texas 78751

To learn more about the public hearing, view the meeting agenda (https://www.hhs.texas.gov/about/communications-events/meetings-events/2026/01/09/texas-department-state-health-services-dshs-manufacture-distribution-retail-sale-consumable-hemp).

Rule Update: Manufacture, Distribution, and Retail Sale of Consumable Hemp Products on Proposed Rule Pertaining to Hemp and Hemp-Derived Products

DSHS has started the rulemaking process and the proposed rules are now available in the *Texas Register* (Volume 50, Number 52) for review and public comment. To learn more, visit the Texas Register's main webpage (https://www.sos.state.tx.us/texreg/index.shtml).

FDA alert regarding recall of *all* Diamond-Shruumz-brand products, including chocolate bars, cones, gummies

The U.S. Food and Drug Administration issued an alert on June 11, 2024 regarding its ongoing investigation of a series of illnesses and adverse reactions related to the consumption of Diamond Shruumz-brand chocolate bars, cones and gummies. On June 27, 2024, the manufacturer recalled **all** Diamond Shruumz-brand products because of possible health risk. These products should not be sold, consumed or served. To learn more, view the FDA alert (https://www.fda.gov/food/outbreaks-foodborne-illness/investigation-illnesses-diamond-shruumz-brand-chocolate-bars-cones-gummies-june-2024).

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 (https://texas-sos.appianportalsgov.com/rules-and-meetings?$locale=en_US&interface=VIEW_TAC_SUMMARY&queryAsDate=03%2F26%2F2025&recordId=200570).

Rules and Regulations

To view the law, visit the Texas Health and Safety Code webpage (https://statutes.capitol.texas.gov/docs/HS/htm/HS.443.htm).

To view the rules, visit the Texas Administrative Code webpage (https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=300&interface=VIEW_TAC&part=1&title=25).

Age Verification

To download an age verification checklist for the sale, service or delivery of consumable hemp products, view the CHP Flyer (/sites/default/files/hemp/pdf/chp-flyer-11.7.25.pdf) .

Consumable Hemp Program Final Compliance Actions Trend and Analysis Reports

2025 ANNUAL ANALYSIS (/sites/default/files/hemp/pdf/fy25-analysis-hemp.pdf)

YEAR TO YEAR ANALYSIS AND TRENDS (/sites/default/files/hemp/pdf/fy25-trends-hemp.pdf)

FAQs (/hemp/Consumable-Hemp-Products---Frequently-Asked-Questions/)

Contact

To learn more and for questions, email the DSHS Hemp Program (mailto:DSHSHempProgram@dshs.texas.gov).

For questions about the CHP licensing or retail hemp registration processes, email the Hemp Licensing and Registration Program (mailto:hemplicensing@dshs.texas.gov).

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Email Updates

Sign up to receive email updates about important notices to the Consumable Hemp Program.

Sign up for Updates (https://public.govdelivery.com/accounts/TXHHSC/subscriber/new?topic_id=TXHHSC_754&sub=horizo

Consumable Hemp Program (/consumable-hemp-program)

Consumable Hemp Products - Frequently Asked Questions (/consumable-hemp-program/consumable-hemp-products-frequently-asked-questions)

DSHS Consumable Hemp Product License Process (/consumable-hemp-program/dshs-consumable-hemp-product-license-process)

Licensing and Registration (/consumable-hemp-program/licensing-and-registration)

Consumable Hemp Program - Open Records (/consumable-hemp-program/open-records)

Consumable Hemp Program - Labeling (/consumable-hemp-program/labeling)

Laws and Rules (/consumable-hemp-program/laws-and-rules)

Current Licensees and Registrants (/consumable-hemp-program/current-licensees-and-registrants)

Get in Touch

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Phone

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512-834-6681 (tel:512-834-6681)

Mailing Address

Texas Department of State Health Services - Consumable Hemp Branch
MC 1987
PO Box 149347
Austin, TX 78714-9347

Assistance with Licensing or Registration

Email: DSHS Consumable Hemp Licensing
(mailto:hemplicensing@dshs.texas.gov)
Phone: 512-834-6626
Fax: 512-206-3783

Consumable Hemp Products - Frequently Asked Questions

Are CHP beverages that are canned or bottled exempt from child-resistant packaging requirements?

Are CHP beverages in a single-serving "shot" container exempt from the child-resistant packaging requirements?

Do hemp retailers, manufacturers, and distributors have to destroy products that don't meet all requirements in the regulations on March 31, 2026?

How does the ruling of the Texas Supreme Court in Texas Department of State Health Services v. Crown Distributing LLC; America Juice Co., LLC; Custom Botanical Dispensary, LLC; 1937 Apothecary, LLC affect consumable hemp products for smoking?

What happens if I white-label (private-label) consumable hemp products for smoking from out-of-state?

If I am currently manufacturing or processing consumable hemp products for smoking, how soon must I cease operations?

How does the court ruling affect licenses and registrations?

Does the court ruling affect consumable hemp products that are not used for smoking?

Can I still sell hemp flower in bulk?

What are the statutes and rules that pertain to consumable hemp products?

Consumable hemp products must follow the following statutes and regulations:

- Health and Safety Code, Chapter 443, Manufacture, Distribution, and Sale of Consumable Hemp Products (https://statutes.capitol.texas.gov/docs/HS/htm/HS.443.htm)

- Health and Safety Code, Chapter 431, Texas Food, Drug, and Cosmetic Act (https://statutes.capitol.texas.gov/Docs/HS/htm/HS.431.htm)
- 25 Texas Administrative Code, Chapter 300, Manufacture, Distribution, and Retail Sale of Consumable Hemp Products (https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=300&interface=VIEW_TAC&part=1&title=25)
- 25 Texas Administrative Code, §§ 229.210-225, Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing, or Holding Human Food (https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=229&interface=VIEW_TAC&part=1&subchapter=N&title=25)

Is there an age requirement to buy consumable hemp products including smokable hemp?

What about the prohibition against distribution and retail sales of consumable hemp for smoking products that is contained in 25 Texas Administrative Code, §300.104?

Which one is required: A DSHS Consumable Hemp Product License or DSHS Hemp Retail Registration?

What is DSHS required to do because of House Bill (HB) 1325?

What is DSHS' role?

Can CHPs be manufactured in Texas?

What are the requirements to sell CHPs in retail?

Where can GIS coordinates and the legal description of a property be found for the DSHS Consumable Hemp Product License process?

What should a consumer know?

What is the process for a retailer to open additional locations selling CHPs?

What is the process for a retailer to close locations selling CHPs?

Where can inquiries, comments and questions be sent about CHPs and farming hemp?

If my retail business is located outside of Texas, will I need to register with DSHS?

If my manufacturing business is located outside of Texas, will I need to register with DSHS?

Can I make pet foods that contain consumable hemp?

Can I sell consumable hemp products at a farmer's market?

Can I sell consumable hemp products from a mobile unit?

Can I sell consumable hemp products under cottage food rules?

Can I manufacture/retail sell from my house?

What requirements does my facility need to have?

Do I need an additional license if I am going to manufacture consumable hemp products?

What if I don't manufacture but only wholesale consumable hemp products?

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kyler Rucker on behalf of David Sergi
Bar No. 18036000
kyler@sergilaw.com
Envelope ID: 118849878
Filing Code Description: Petition
Filing Description: PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF
Status as of 8/19/2026 4:54 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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