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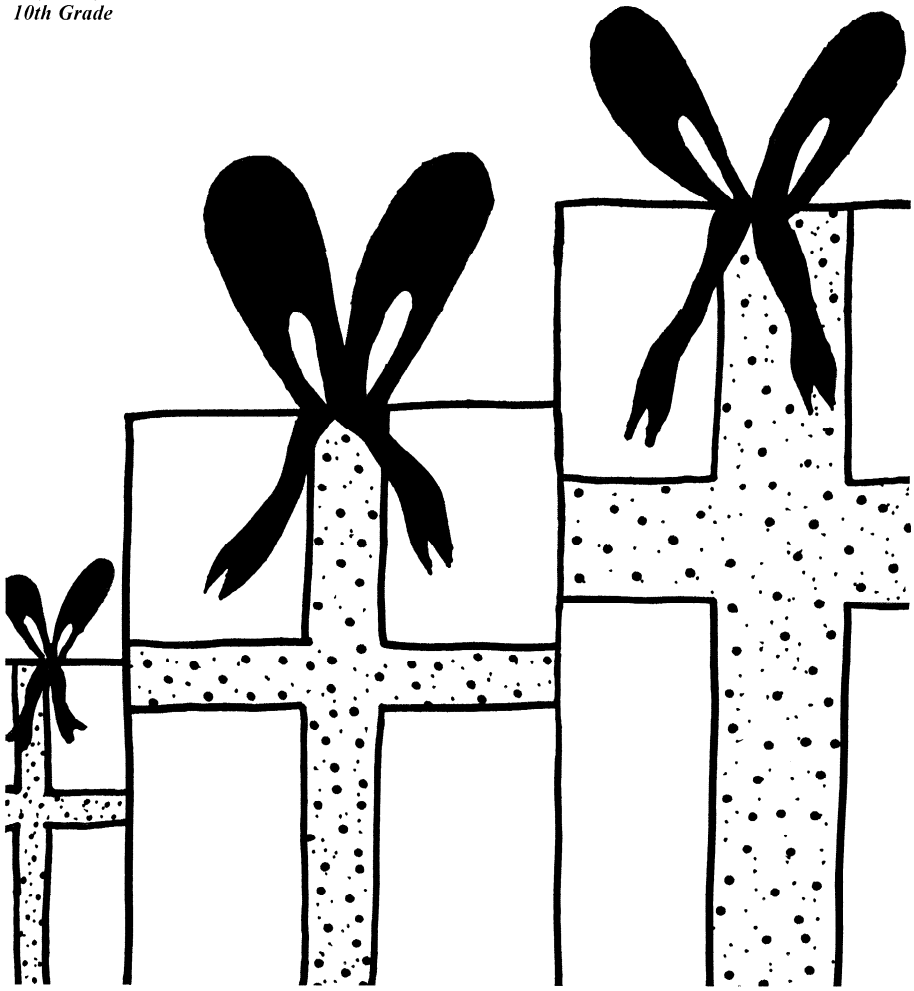
Haylee Dye
10th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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In This Issue

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1831, concerning Covered Drugs; §354.1867, concerning Refills; and §354.1921, concerning Addition of Drugs to the Texas Drug Code Index.

BACKGROUND AND PURPOSE

The amendments serve various purposes.

The amendment to §354.1867 implements, for purposes of the Texas Medicaid fee-for-service program, Texas Insurance Code provisions the Texas Legislature adopted in 2017 pertaining to medication synchronization plans for the filling or refilling of multiple prescriptions. *See* Act of May 23, 2017, 85th Leg., R.S., §1 (H.B. 1296) (enacting Tex. Ins. Code ch. 1369, subch. J). Texas Insurance Code §1369.456(b) requires a health benefit plan, such as coverage of medical or surgical expenses offered by a health maintenance organization or managed care organization, to "establish a process through which" a health benefit plan (the payor), the enrollee, the prescribing physician or health care provider, and a pharmacist "may jointly approve a medication synchronization plan for medication to treat an enrollee's chronic illness." *See* Tex. Ins. Code §1369.452(a)(3) (including coverage offered by a health maintenance organization within the scope of health benefit plans to which chapter 1369, subchapter J applies). An approved medication synchronization plan would coordinate the refill dates of multiple prescriptions for an enrollee with chronic illness so that the enrollee could pick up filled refills on a single day each month instead of having to make multiple pharmacy visits to obtain different prescription medications with different refill dates. Medications dispensed in accordance with a medication synchronization plan would be covered. The medication synchronization process will ensure enrollees can obtain medically necessary drugs used to treat chronic conditions.

Other amendments reflect the use of a drug's acquisition cost in calculating reimbursement. Under the current Medicaid State Plan and consistent with 42 CFR §447.512, HHSC calculates pharmacy reimbursement for all medications using a drug's acquisition cost or the usual and customary price charged to the general public. The proposed amendments are consistent with the current Medicaid State Plan and federal law. The proposed rule amendments do not constitute a change to current pharmacy reimbursement under Medicaid fee-for-service (FFS); reimbursement is calculated consistently with the Medicaid State Plan and federal law.

In addition, the amendments to Title 1, Chapter 354 of the Texas Administrative Code define the terms "NADAC," "retail Pharmacy Acquisition Cost," and "Specialty pharmacy acquisition cost." NADAC, retail Pharmacy Acquisition Cost and Specialty pharmacy acquisition cost are used in calculating reimbursement.

The purpose of the other proposed amendments is to clarify that a limited set of home health supplies is available through the pharmacy benefit and to align rule language with the Medicaid State Plan.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §354.1831, concerning Covered Drugs, clarifies that HHSC allows for certain home health supply products that are a covered Texas Medicaid benefit to be provided by pharmacies enrolled in the Vendor Drug Program (VDP). These products are classified as a Title XIX (Medicaid) home health benefit and as durable medical equipment or medical supplies, and are available to people enrolled in Medicaid, the Children's Health Insurance Program (CHIP), the Children with Special Health Care Needs (CSHCN) Services Program, and the Kidney Health Care (KHC) Program.

The proposed amendment of §354.1867, concerning Refills, allows, in the fee-for-service program, for early refills of drugs used to treat and manage chronic illness in accordance with a medication synchronization plan.

The proposed amendment of §354.1921, concerning Addition of Drugs to the Texas Drug Code Index, adds definitions for Acquisition Cost, National Average Drug Acquisition Cost, and Retail Pharmacy Acquisition Cost. The proposed amendment also revises the definition for specialty pharmacy acquisition cost. The definitional changes are necessary to define terms used in amendments proposed to Title 1, Chapter 355 of the Texas Administrative Code in this issue of the *Texas Register.*

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there is no anticipated impact to costs and revenues of state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand an existing rule;

(7) the proposed rules will increase the number of individuals subject to the rule; and

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the rules as proposed. The proposed amendments are consistent with the current Medicaid State Plan and implement a process in Texas fee-for-service Medicaid to allow for medication synchronization consistent with state law. Medication synchronization is a common pharmacy industry practice used today. Pharmacies submitting claims to synchronize medications are reimbursed using the same payment methodology as all other prescription. Dispensing fees will not be prorated. Managed care organizations and the fee-for-service claims processor have existing system capabilities to allow for medication synchronization.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no anticipated cost to persons required to comply with the rules as proposed because they will not be required to alter their business practices.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules is that Medicaid enrollees will find it easier to maintain and continue prescription drug treatment and management of chronic illnesses. Transportation needs and other barriers to obtaining medically necessary medications and refills will be reduced. In addition, the rules define terms used in proposed amendments to Title 1, Chapter 355 of the Texas Administrative Code. The rule also clarifies that a limited set of home health supplies is available through the pharmacy benefit, therefore increasing access to these products.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code 4102, Austin, Texas 78714-9030 or 4900 North Lamar Boulevard, Mail Code 4102, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. When emailing comments, please indicate "Comments on Proposed Rule 18R026" in the subject line.

ADDITIONAL INFORMATION

For further information, please call: (512) 462-6271.

DIVISION 2. ADMINISTRATION

1 TAC §354.1831

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which requires HHSC's Executive Commissioner to adopt rules to carry out HHSC's duties; Texas Government Code §531.302(a), which requires HHSC's Executive Commissioner to adopt rules for the state prescription drug program; and Texas Human Resources Code §32.021(c), which requires HHSC's Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The amendment implements Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program, and Texas Insurance Code ch. 1369, subch. J, which requires a process for adopting medical synchronization plans.

§354.1831. Covered Drugs.

(a) Only those drugs and Limited Home Health Supplies listed in the latest edition of the Texas Drug Code Index (TDCI) are covered by the program and are payable. Venosets, catheters, and other medical accessories are not covered and are not included when claiming for intravenous and irrigating solutions.

(b) The Commission may limit coverage of drugs listed in the TDCI. Procedures used to limit utilization may include prior approval, cost containment caps, or adherence to specific dosage limitations recommended by manufacturers. Limitations placed on the specific drugs are indicated in the TDCI.

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805315

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 462-6271

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DIVISION 4. LIMITATIONS

1 TAC §354.1867

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which requires HHSC's Executive Commissioner to adopt rules to carry out HHSC's duties; Texas Government Code §531.302(a), which requires HHSC's Executive Commissioner to adopt rules for the state prescription drug program; and Texas Human Resources Code §32.021(c), which requires HHSC's Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The amendment implements Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; and Texas Insurance Code ch. 1369, subch. J, which requires a process for adopting medical synchronization plans.

§354.1867. Refills.

(a) As many as eleven refills may be authorized by the prescriber, but the total amount authorized must be dispensed within one year of the original prescription. Refills for controlled substances must conform to Drug Enforcement Administration and Texas State Board of Pharmacy rules. All refills are counted when determining compliance with the authorized refill limitation. In the absence of specific refill instructions, the prescription must be interpreted as not refillable. If a prescription notes specific refill instructions, any future dispensings must be considered refills of the original prescription, unless the prescriber has been contacted for authorization to dispense a new supply of medication. If authorization is granted, a new and separate prescription is prepared.

(b) In accordance with Texas Insurance Code 1369, Subchapter J, early refills of drugs used to treat chronic conditions included in a Medication Synchronization Plan may be jointly approved by HHSC, the applicable pharmacist, enrollee, and the prescribing physician or health care provider. A pharmacist requesting an early refill for the purpose of medication synchronization must adhere to the process described in the Vendor Drug Program pharmacy provider procedure manual. Dispensing fees will not be prorated.

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

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DIVISION 7. TEXAS DRUG CODE INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

1 TAC §354.1921

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which requires HHSC's Executive Commissioner to adopt rules to carry out HHSC's duties; Texas Government Code §531.302(a), which requires HHSC's Executive Commissioner to adopt rules for the state prescription drug program; and Texas Human Resources Code §32.021(c), which requires HHSC's Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The amendment implements Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; and Texas Insurance Code ch. 1369, subch. J, which requires a process for adopting medical synchronization plans.

§354.1921. Addition of Drugs to the Texas Drug Code Index.

(a) A drug company that has a valid rebate agreement under 42 U.S.C. §1396r-8 may apply to the Health and Human Services Commission (Commission) to add a drug to the Texas Drug Code Index (TDCI). The term "drug company" includes any manufacturer, repackager, or private labeler.

(b) To apply for the addition of a drug to the TDCI, a drug company must complete each section of the Certification of Information for the Addition of a Drug Product to the TDCI provided by the Commission.

(c) A drug company must also:

(1) update the Commission with changes to formulation, product status, or availability; and

(2) submit changes to the prices requested in the Price Certification section of the Certification of Information, if requested by the Commission, within 10 calendar days of receiving the request.

(d) Sources other than drug companies may request the addition of a drug not currently listed in the TDCI. If the request is not from a drug company, the Commission may request that the manufacturer submit a Certification of Information as described in subsection (b) of this section.

(e) The drug company and other sources, if applicable, are entitled to receive notification of approved or denied Certifications of Information. If a Certification of Information is denied, the Commission will state the reasons for the denial.

(f) Notwithstanding any other state law, pricing information reported by a drug company under this subchapter is confidential and must not be disclosed by the Commission, its agents, contractors, or any other State agency in a format that discloses the identity of a specific manufacturer or labeler, or the prices charged by a specific manufacturer or labeler for a specific drug, except as necessary to permit the Attorney General to enforce state and federal law.

(g) Definitions. The following words and terms, when used in this chapter and in Chapter 355 of this title (relating to Reimbursement Rates), have the following meanings unless the context clearly indicates otherwise.

(1) Acquisition Cost (AC)--HHSC's determination of the price pharmacy providers pay to acquire drug products marketed or

sold by specific manufacturers. AC is based on NADAC, wholesale acquisition cost (WAC), or pharmacy invoice, in accordance with the Medicaid state plan.

(2) [~~(1)~~] Average Manufacturer Price (AMP)--The average manufacturer price as defined in 42 USC §1396r-8(k)(1).

(3) [~~(2)~~] Average Wholesale Price (AWP)--The average wholesale price for a drug as published in a price reporting compendium such as First DataBank or Medispan.

(4) [~~(3)~~] Customary Prompt Pay Discount--Any discount off the purchase price of a drug routinely offered by the drug company to a wholesaler or distributor for prompt payment of purchased drugs within a specified time frame and consistent with customary business practices for payment.

(5) [~~(4)~~] Direct Price to Long Term Care Pharmacy--The amount paid by a pharmacy servicing a long term care facility, including a nursing facility, assisted living facility, and skilled nursing facility. The price should be net of price concessions. In reporting this price point to the Commission, if the price is reported as a range, the weighted average of these prices, based on unit sales, must be included. The following prices should be excluded from this price point:

(A) prices excluded from the determination of Medicaid Best Price at 42 C.F.R. §447.505; and

(B) prices to entities participating in the Health Resources and Services Administration (HRSA) 340b discount program.

(6) [~~(5)~~] Direct Price to Pharmacy--The amount paid for a product by a pharmacy when purchased directly from a drug company. This price should be net of Price Concessions. In reporting this price point to the Commission, if the price is reported as a range, the weighted average of these prices, based on unit sales, must be included. The following prices should be excluded from this price point:

(A) prices excluded from the determination of Medicaid Best Price at 42 C.F.R. §447.505;

(B) prices to entities participating in the Health Resources and Services Administration (HRSA) 340b discount program; and

(C) Direct Prices to Long Term Care Pharmacy.

(7) [~~(6)~~] Gross Amount Due--Has the meaning as defined by the National Council for Prescription Drug Programs.

(8) [~~(7)~~] Long term care facility--Facility that provides long term care services, such as a nursing home, skilled nursing facility, assisted living facility, group home, hospice facility, or intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID).

(9) [~~(8)~~] Long term care pharmacy--A pharmacy for which the total Medicaid claims for prescription drugs to residents of long term care facilities exceeds 50 percent of the pharmacy's total Medicaid claims per year. Long term care pharmacies are [~~typically~~] not open to the public for walk-in business.

(10) [~~(9)~~] Long term care pharmacy acquisition cost (LTC-PAC)--The acquisition cost determined by the Commission for a drug product purchased by a long term care pharmacy.

(11) [~~(10)~~] "May [~~may~~] apply to the Commission"--The act of applying to have a drug included on the TDCI. This includes completing the Certification of Information for the Addition of a New Drug Product to the Texas Drug Code Index, submitting National Drug Code (NDC) changes, submitting price updates, and submitting additional package sizes for a drug that is already included on the TDCI.

(12) NADAC--National Average Drug Acquisition Cost.

(13) [~~(11)~~] National Drug Code (NDC)--The 11-digit numerical code established by the U.S. Food and Drug Administration that indicates the labeler, product, and package size.

(14) [~~(12)~~] Pharmacy--An entity with an approved community pharmacy license or an institutional pharmacy license.

(15) [~~(13)~~] Price concession--An action by a manufacturer (other than a customary prompt-pay discount as defined in this section) that has the effect of reducing the net cost of a product to a purchaser. The term includes discounts, rebates, billbacks, chargebacks, or other adjustments to pricing or payment terms. Lagged price concessions must be accounted for in the Reported Manufacturer Pricing by operation of a 12-month average estimation methodology as described in 42 C.F.R. §414.804. For new, at launch products, if a manufacturer has forecasted price concessions, the initial Reported Manufacturer Pricing should reflect this internal business information.

(16) [~~(14)~~] Price to Wholesaler/Distributor--The amount paid by a wholesaler or a distributor. The price should be net of price concessions. In reporting this price point to the Commission, if the price is reported as a range, the weighted average of these prices, based on unit sales, must be included. The following prices should be excluded from this price point:

(A) prices excluded from the determination of Medicaid Best Price at 42 C.F.R. §447.505; and

(B) prices to entities participating in the Health Resources and Services Administration (HRSA) 340b discount program.

(17) [~~(15)~~] Reliable Sources--Sources including other state or federal agencies and pricing services, as well as verifiable reports by contracted providers and Vendor Drug Program formulary and field staff.

(18) [~~(16)~~] Reported Manufacturer Pricing--Pricing information submitted to the Commission by a drug company on a Certification of Information, or in subsequent price updates as described in subsections (b) and (c) of this section. This includes: Average Wholesale Price, Average Manufacturer Price, Price to Wholesaler/Distributor, Direct Price to Pharmacy, and Direct Price to Long Term Care Pharmacy. If a drug company does not have a single price for a price point, it must report a range of prices. If a drug company reports a range of prices, it must also provide the weighted average of these prices based on unit sales.

(19) Retail Pharmacy Acquisition Cost (RetailPAC)--HHSC's determination of the price a retail pharmacy pays to acquire drug products marketed or sold by specific manufacturers.

(20) [~~(17)~~] Specialty pharmacy--A pharmacy that meets all of the following criteria:

(A) total Medicaid claims for specialty drugs, as described in §354.1853 of this subchapter (relating to Specialty Drugs), exceeds 10 percent of the pharmacy's total Medicaid claims per year;

(B) obtains volume-based discounts or rebates on specialty drugs from manufacturers or wholesalers; and

(C) delivers at least 80 percent of dispensed prescriptions by shipment through the U.S. Postal Service or other common carrier to customers or healthcare professionals (including physicians and home health providers).

(21) [~~(18)~~] Specialty pharmacy acquisition cost (SPAC)--HHSC's determination of the price a retail pharmacy pays to acquire drug products marketed or sold by specific manufacturers. [~~The~~

~~acquisition cost determined by the Commission for a drug product purchased by a specialty pharmacy.~~]

(22) [~~(19)~~] Weighted AMP (Average Manufacturer Price)--The Weighted AMP (Average Manufacturer Price) as contemplated in 42 U.S.C. §1396r-8(b)(3) and (e), and as reported by the Centers for Medicare & Medicaid Services.

(23) [~~(20)~~] Wholesaler Cost--The net cost of a product to a wholesaler; equivalent to Price to Wholesaler/Distributor and cost to wholesaler.

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

Filed with the Office of the Secretary of State on December 12, 2018.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §§355.8541, 355.8548, 355.8551

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8541, concerning Legend and Nonlegend Medications; §355.8548, concerning 340B Covered Entities; and §355.8551, concerning Professional Dispensing Fee.

BACKGROUND AND PURPOSE

Under the current Medicaid State Plan and consistent with 42 CFR §447.512, HHSC calculates pharmacy reimbursement for all medications using a drug's acquisition cost or the usual and customary price charged to the general public. The proposed amendments are consistent with the current Medicaid State Plan and federal law. The proposed rule amendments do not constitute a change to current pharmacy reimbursement under Medicaid fee-for-service (FFS); reimbursement is calculated consistently with the Medicaid State Plan and federal law.

The terms "Acquisition Cost," "NADAC," "retail Pharmacy Acquisition Cost," and "Specialty pharmacy acquisition cost" are defined in proposed amendments to Title 1, Chapter 354 of the Texas Administrative Code, published in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §355.8541, concerning Legend and Nonlegend Medications, updates the definition of "acquisition cost (AC)" to align rule language with Texas Medicaid State Plan language and is a conforming change only. The amendment does not constitute a change to provider reimbursement for covered outpatient drugs.

The proposed amendment of §355.8548, concerning 340B Covered Entities, aligns rule language with Texas Medicaid State Plan language and is a conforming change only. The amendment does not constitute a change to provider reimbursement for covered outpatient drugs.

The proposed amendment of §355.8551, concerning Professional Dispensing Fee, updates the CFR references in the definition for "Professional Dispensing Fee." This amendment aligns rule language with Texas Medicaid State Plan language and is a conforming change only. The amendment does not constitute a change to provider reimbursement for covered outpatient drugs.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there is no anticipated impact to costs and revenues of state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand an existing rule;

(7) the proposed rules will increase the number of individuals subject to the rule; and

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed amendments bring Medicaid/CHIP Pharmacy rules into alignment with the current Medicaid State Plan and are conforming changes only.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be increasing clarity by aligning TAC language with Texas Medicaid State Plan language.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code 4102, Austin, Texas 78714-9030 or 4900 North Lamar Boulevard, Mail Code 4102, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. When emailing comments, please indicate "Comments on Proposed Rule 18R026" in the subject line.

ADDITIONAL INFORMATION

For further information, please call: (512) 462-6271.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which provides HHSC's Executive Commissioner with broad authority to adopt rules to carry out HHSC's duties; Texas Government Code §531.302(a), which requires HHSC's Executive Commissioner to adopt rules for the state prescription drug program; Texas Government Code §531.021(b-1), which requires HHSC's Executive Commissioner to adopt rules governing the determination of rates for Medicaid payments; and Texas Human Resources Code §32.021(c), which requires HHSC's Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The amendments implement Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; and Texas Government Code §531.021(d), which authorizes HHSC's Executive Commissioner to provide for payment of Medicaid rates in accordance with applicable federal law.

§355.8541. Legend and Nonlegend Medications.

(a) Legend and nonlegend drug reimbursement. A pharmaceutical provider is reimbursed for legend and nonlegend drugs based on the lesser of the:

(1) acquisition cost (AC) plus the Health and Human Services Commission's (HHSC's) currently established professional dispensing fee per prescription;

(2) usual and customary price charged the general public; or

(3) Gross Amount Due, if provided.

(b) AC [~~: Acquisition cost (AC). The AC is an estimate of prices generally and currently paid in the market~~].

[~~(1) The AC is defined as the:~~]

[~~(A) wholesale estimated acquisition cost (WEAC);~~]

[~~(B) direct estimated acquisition cost (DEAC), according to the pharmacist's usual purchasing source and the pharmacist's usual purchasing quantity;~~]

[~~(C) long term care pharmacy acquisition cost (LTC-PAC); or~~]

[~~(D) specialty pharmacy acquisition cost (SPAC).~~]

[~~(2)~~] The AC is verifiable by invoice audit conducted by HHSC to include necessary supporting documentation that will verify the final cost to the provider.

[~~(3) The WEAC, LTCPAC, and SPAC are established using market or government sources, which include, but are not limited to:~~]

[~~(A) Reported Manufacturer Pricing;~~]

[~~(B) First Databank;~~]

[~~(C) Redbook;~~]

[~~(D) Weighted AMP, as published by the Centers for Medicare & Medicaid Services (CMS);~~]

[~~(E) National Average Drug Acquisition Cost (NADAC), as published by the CMS; or~~]

[~~(F) Gold Standard.~~]

[~~(4) The DEAC is established by HHSC using direct price information supplied by a drug company. Providers are reimbursed only at the DEAC on all drug products that are available from select manufacturers/distributors who actively seek and encourage direct purchasing.~~]

(c) Public hearing. Notice of a public hearing to receive comments on proposed changes to general pricing determinations derived under this section will be published in the *Texas Register.*

(d) Definitions. The terms used in this section have the meanings as defined for the same terms in §354.1921(g) of this title (relating to Addition of Drugs to the Texas Drug Code Index).

§355.8548. 340B Covered Entities.

(a) Scope. This section applies to each manufacturer of outpatient drugs that has executed an agreement with the Secretary of the United States Department of Health and Human Services under Section 340B of the Public Health Service Act (42 U.S.C. §256b).

(b) Definitions. For purposes of this section, the following terms are defined as follows:

(1) 340B covered entity--A health-care organization enrolled in the 340B Program.

(2) 340B covered outpatient drug--A drug eligible for purchase through the 340B Program, as defined in 42 C.F.R. §10.20 and §10.21.

(3) 340B price--The maximum price that the United States Health Resources and Services Administration will allow a drug manufacturer to charge a 340B covered entity for a 340B covered outpatient drug purchased through the 340B program. The 340B price is also known as the "ceiling price."

(4) 340B program--A drug-pricing program established under Section 340B of the Public Health Service Act (42 U.S.C.

§256b) under which a manufacturer of covered outpatient drugs agrees that it will not charge a 340B covered entity more than the 340B price for a 340B covered outpatient drug.

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

(c) Reimbursement methodology. HHSC reimburses a 340B covered entity for a 340B covered outpatient drug purchased through the 340B program and dispensed to a patient of a 340B covered entity based on HHSC's estimate of the 340B price plus a professional dispensing fee assigned by HHSC in accordance with §355.8551 of this division (relating to Professional Dispensing Fee). [~~HHSC establishes the estimate of the 340B price using market or government sources, which include, but are not limited to:~~]

[~~(1) Reported manufacturer pricing;~~]

[~~(2) Weekly data from national drug pricing publishers; and~~]

[~~(3) Quarterly data from the Centers for Medicare and Medicaid Services.~~]

§355.8551. Professional Dispensing Fee.

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

(1) Acquisition Cost--As defined in §355.8541 of this division (relating to Legend and Nonlegend Medications).

(2) Delivery Incentive--An incentive for offering no-charge prescription delivery to all Medicaid recipients, in accordance with subsection (d) of this section.

(3) Professional Dispensing Fee--The portion of the reimbursement paid to a pharmacy under §355.8541 of this division, in accordance with 42 C.F.R., Subpart I and the Medicaid State Plan [~~42 C.F.R. §50.504 and 42 C.F.R. §447.502~~], to provide a reasonable payment for the cost of dispensing a prescription drug, including the pharmacist's professional services, and which may include incentive amounts for providers that qualify under this section.

(4) Fixed Component--A component that provides the base reimbursement to a pharmacy for the cost of dispensing a prescription; it includes reimbursement for professional services costs and overhead costs.

(5) Preferred Generic Incentive--An incentive to fill a Medicaid prescription with a premium preferred generic drug for which a drug manufacturer has agreed to pay a supplemental rebate.

(6) Variable Component--A component that is expressed as a percentage of the acquisition cost, and provides an incentive to a pharmacy to stock and dispense higher-cost drugs by covering additional expenses incurred when providing those drugs.

(b) The Texas Health and Human Services Commission (HHSC) reimburses contracted Medicaid pharmacy providers according to the following formula: Professional Dispensing Fee = (((AC + Fixed Component) divided by (1 - the percentage used to calculate the Variable Component)) - AC) + Delivery Incentive + Preferred Generic Incentive. [~~Professional Dispensing Fee = (((Acquisition Cost + Fixed Component) divided by (1 - the percentage used to calculate the Variable Component)) - Acquisition Cost) + Delivery Incentive + Preferred Generic Incentive.~~]

(c) A delivery incentive is paid to approved providers who certify in a form prescribed by HHSC that the delivery services meet minimum conditions for payment of the incentive. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and publicly displaying the availability of prescription delivery services at no charge. The delivery incentive is to be paid on all Medicaid prescriptions filled for legend drugs. This delivery incentive is not to be paid for over-the-counter drugs that are prescribed as a benefit of this program.

(d) Preferred generic drugs are subject to the Preferred Drug List requirements.

(e) The total professional dispensing fee will not exceed $200 per prescription.

(f) Notwithstanding other provisions of this section, HHSC may adjust the dispensing fee to address budgetary constraints in accordance with the provisions of §355.201 of this division (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805318
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 462-6271

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.37, §3.38

The Railroad Commission of Texas proposes amendments to 16 TAC §3.37, relating to Statewide Spacing Rule, and §3.38, relating to Well Densities. The amendments are proposed to incorporate a specific timeline for notice by publication when an operator seeks an exception to §3.37 or §3.38.

Currently, if an operator seeks an exception to §3.37 or §3.38 and is unable, after due diligence, to identify the address of any person entitled to notice, the operator must publish notice of the exception application. Because a specific notice by publication provision is not included in §3.37 and §3.38, the Commission's general publication rule, §1.43, relating to Notice by Publication, applies. The proposed amendments would add a specific notice by publication provision in §3.37 and §3.38 such that §1.43 would no longer apply. The proposed notice by publication provisions in §3.37(a)(4) and §3.38(h)(2) would state that if, after diligent efforts, an applicant for an exception is unable to ascertain the name and address of one or more persons required to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The proposed amendments would require that the notice

be published once each week for two consecutive weeks in a newspaper of general circulation in the county where the well will be located, with the first publication taking place at least 14 days before the protest deadline in the notice of application. The proposed amendments would also require that the applicant file a publisher's affidavit or other evidence of publication. As with other Commission notice by publication processes, the Commission may request additional information to show the applicant engaged in diligent efforts to locate persons to be notified.

The Commission also proposes other nonsubstantive amendments to correct outdated language.

Jason Clark, Assistant Director of Administrative Compliance, Oil and Gas Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be minimal fiscal implications to the Commission as a result of enforcing or administering the amendments. Any costs associated with the amendments would be due to minor programming to update online systems. There will be no fiscal effect on local government.

Mr. Clark has determined that for the first five years the proposed amendments are in effect, the primary public benefit will be clarification of the notice by publication process when an operator seeks an exception to §3.37 or §3.38.

Mr. Clark has determined that for each year of the first five years that the amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments. The amendments decrease the number of weeks a notice must be published in a newspaper of general circulation as currently required by §1.43.

The Commission has determined that the proposed amendments to §3.37 and §3.38 will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the state's economy. The proposed amendments incorporate a specific process for notice by publication when an exception to §3.37 or §3.38 is required.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday, January 28, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Clark at (512) 463-2655. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments to §3.37 and §3.38 pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, and 85.202.

Cross reference to statute: Texas Natural Resources Code Chapters 81 and 85.

§3.37. Statewide Spacing Rule.

(a) Distance requirements.

(1) No well for oil, gas, or geothermal resource shall hereafter be drilled nearer than 1,200 feet to any well completed in or drilling to the same horizon on the same tract or farm, and no well shall be drilled nearer than 467 feet to any property line, lease line, or subdivision line; provided the commission, in order to prevent waste or to prevent the confiscation of property, may grant exceptions to permit drilling within shorter distances than prescribed in this paragraph when the commission shall determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of property.

(2) When an exception to this section is desired, application shall be made by filing the proper fee as provided in §3.78 of this title (relating to Fees and Financial Security Requirements) and the appropriate form according to the instructions on the form, accompanied by a plat as described in subsection (c) of this section. A person acquainted with the facts pertinent to the application shall certify that all facts stated in it are true and within the knowledge of that person.

(A) When an exception to only the minimum lease-line spacing requirement is desired, the applicant shall file a list of the mailing addresses of all affected persons, who, for tracts closer to the well than the greater of one-half of the prescribed minimum between-well spacing distance or the minimum lease-line spacing distance, include:

(i) the designated operator;

(ii) all lessees of record for tracts that have no designated operator; and

(iii) all owners of record of unleased mineral interests.

(B) When an exception to the minimum between-well spacing requirement of this section is desired, the applicant is required

to file the mailing addresses of those persons identified in subparagraph (A)(i)-(iii) of this paragraph for each adjacent tract and each tract nearer to the well than the greater of one-half the prescribed minimum between-well spacing distance or the minimum lease-line spacing.

(3) An exception may be granted pursuant to subsection (h)(2) of this section, or after a public hearing held after at least 10 days notice to all persons described in paragraph (2) of this subsection. At any such hearing, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to prevent the confiscation of property. For purposes of giving notice of an application for an exception, the commission will presume that every person described in paragraph (2) of this subsection will be affected by the application, unless the Oil and Gas Division director or the director's delegate determines they are unaffected. Such determination will be made only upon written request and a showing by the applicant that:

(A) competent, conclusive geological or engineering data indicate that no drainage of hydrocarbons from the particular tract(s) subject to the request will occur due to production from the applicant's proposed well; and

(B) notice to the particular operator(s), lessee(s) of record, or owner(s) of record of unleased mineral interest would be unduly burdensome or expensive.

(4) If, after diligent efforts, the applicant is unable to ascertain the name and address of one or more persons required by this subparagraph to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation in the county where the well will be located. The first publication shall be published at least 14 days before the protest deadline in the notice of application. The applicant shall file with the Commission a publisher's affidavit or other evidence of publication.

(b) The distances mentioned in subsection (a) of this section are minimum distances to provide standard development on a pattern of one well to each 40 acres in areas where proration units have not been established.

(c) - (l) (No change.)

(m) Wells that were deviated, whether intentionally or otherwise, prior to April 1, 1949, and are bottomed on the lease where permitted, are legal wells. The Rule 37 department will develop the record in each reapplication for such deviated wells so that the commission can determine the condition of each such well. The following will be adduced from sworn testimony and authenticated data at each such hearing.

(1) That such well was deviated before April 1, 1949. Proof of completion of the well prior to that date and its subsequent producing status is not adequate proof of deviation.

(2) That such well was completed on the lease where the surface location was permitted. Such bottom hole location must be proven by the submission of an acceptable authenticated directional survey.

(3) That such bottom hole location is one that either is not in direct violation of a condition or limitation placed in the permit to drill, or is not in violation of a specific commission order. Example: Denial order for a Rule 37 application for a comparable location.

(4) That the present operator of such well or its [~~his~~] predecessor has not filed either a false inclination or a false directional survey with the commission.

(5) A well that is either bottomed off the lease, deviated after April 1, 1949, drilled in direct violation of a specific condition or limitation placed in the Rule 37 permit, or is in violation of a specific commission order, is an illegal well and it shall not be permitted, and such well where permit is refused shall not be considered a replaceable well under commission replacement-well regulation.

(6) The provisions of this section do not preclude an operator from applying for approval of the bottom hole location of a deviated well as a reasonable location under the rules and regulations now applicable, provided, that such bottom hole location shall not be approved unless the applicant proves that a vertical projection of the permitted surface location for such well is within the productive limits of the reservoir.

§3.38. Well Densities.

(a) - (f) (No change.)

(g) Filing requirements.

(1) Application. An application for permit to drill shall include the fees required in §3.78 of this title (relating to Fees and Financial Security Requirements) and shall be certified by a person acquainted with the facts, stating that all information in the application is true and complete to the best of that person's knowledge.

(2) Plat. When filing an application for an exception to the density requirements of this section, in addition to the plat requirements in §3.5 of this title (relating to Application to Drill, Deepen, Reenter, or Plug Back) (Statewide Rule 5), the applicant shall attach to each copy of the application a plat that:

(A) depicts the lease, pooled unit, or unitized tract, showing thereon the acreage assigned to the drilling unit for the proposed well and the acreage assigned to all current applied for, permitted, or completed oil, gas, or oil and gas wells in the same field or reservoir which are located within the lease, pooled unit, or unitized tract;

(B) on large leases, pooled units, or unitized tracts, if the established density is not exceeded as shown on the face of the application, outlines the acreage assigned to the well for which the permit is sought and the immediately adjacent wells on the lease, pooled unit, or unitized tract;

(C) on leases, pooled units, or unitized tracts from which production is secured from more than one field, outlines the acreage assigned to the wells in each field that is the subject of the current application;

(D) corresponds to the listing required under subsection (g)(1)(A) of this section.

(E) is certified by a person acquainted with the facts pertinent to the application that the plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(3) Substandard acreage. An application for a permit to drill on a lease, pooled unit, or unitized tract composed of substandard acreage must include a certification in a prescribed form indicating the date the lease, or the drillsite tract of a pooled unit or unitized tract, took its present size and shape.

(4) Surplus acreage. An application for permit to drill on surplus acreage pursuant to subsection (c) of this section must include a certification in a prescribed form indicating the date the lease, pooled unit, or unitized tract took its present size and shape.

(5) Certifications. Certifications required under paragraphs (3) and (4) of this subsection shall be filed on Form W-1A, Substandard Acreage Certification.

(A) The operator shall file the Form W-1A with the drilling permit application and shall indicate the purpose of filing. The operator shall accurately complete all information required on the form in accordance with instructions on the form.

(B) The operator shall list the field or fields for which the substandard acreage certification applies in the designated area on the form. If there are more than three fields for which the certification applies, the operator shall attach additional Forms W-1A and shall number the additional pages in sequence.

(C) The operator shall file the original Form W-1A with the Commission's Austin office and a copy with the appropriate district office, unless the operator files electronically [~~through the Commission's Electronic Compliance and Approval Process (ECAP) system~~].

(D) The operator or the operator's agent shall certify the information provided on the Form W-1A is true, complete, and correct by signing and dating the form, and listing the requested identification and contact information.

(E) Failure to timely file the required information on the appropriate form may result in the dismissal of the application.

(h) Procedure for obtaining exceptions to the density provisions.

(1) Filing requirements. If a permit to drill requires an exception to the applicable density provision, the operator must file, in addition to the items required by subsection (g) of this section:

(A) a list of the names and addresses of all affected persons. For the purpose of giving notice of application, the Commission presumes that affected persons include the operators and unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral interest owners of all tracts nearer to the proposed well than the prescribed minimum lease-line spacing distance. The Commission designee may determine that such a person is not affected only upon written request and a showing by the applicant that:

(i) competent, convincing geological or engineering data indicate that drainage of hydrocarbons from the particular tracts subject to the request will not occur due to production from the proposed well; and

(ii) notice to the particular operators and unleased mineral interest owners would be unduly burdensome or expensive;

(B) engineering and/or geological data, including a written explanation of each exhibit, showing that the drilling of a well on substandard acreage is necessary to prevent waste or to prevent the confiscation of property;

(C) additional data requested by the Commission designee.

(2) Notice of application. Upon receipt of a complete application, the Commission will give notice of the application by mail to all affected persons for whom signed waivers have not been submitted. If, after diligent efforts, the applicant is unable to ascertain the name and address of one or more persons required by this subsection to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation in the county where the well will be located. The first publication shall be published at least 14 days before the protest deadline in the notice of application. The applicant shall file with the Commission a publisher's affidavit or other evidence of publication.

(3) Approval without hearing. If the Commission designee determines, based on the data submitted, that a permit requiring an exception to the applicable density provision is justified according to subsection (f) of this section, then the Commission designee may issue the exception permit administratively if:

(A) signed waivers from all affected persons were submitted with the application; or

(B) notice of application was given in accordance with [~~paragraph (2) of~~] this subsection and no protest was filed within 21 days of the notice; or

(C) no person appeared to protest the application at a hearing scheduled pursuant to paragraph (4)(A) of this subsection.

(4) Hearing on the application.

(A) If a written protest is filed within 21 days after the notice of application is given in accordance with paragraph (2) of this subsection, the application will be set for hearing.

(B) If the application is not protested and the Commission designee determines that a permit requiring an exception to the applicable density provision is not justified according to subsection (f) of this section, the operator may request a hearing to consider the application.

(i) Duration. A permit is issued as an exception to the applicable density provision shall expire two years from the effective date of the permit; unless drilling operations are commenced in good faith within the two year period.

(j) The requirements for density exceptions for wells in a designated unconventional fracture treated (UFT) field are set forth in §3.86(k) of this title (relating to Horizontal Drainhole Wells).

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805303
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 475-1295

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.315

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.315 ("Mega Millions" Draw Game Rule). The purpose of the proposed amendments is to facilitate the potential future sale of Mega Millions tickets using Commission-approved third-party point-of-sale systems (in-lane sales) by removing the requirement that the drawing date be printed on

the ticket, updating language regarding a player's selection of a Quick Pick, and making other conforming and non-substantive changes, including a recent clarification by the Multi-State Lottery Association regarding cancellation of plays. These changes complement rule amendments adopted by the Commission in December 2017 that also facilitated in-lane sales, but ongoing product development has necessitated small, additional updates to the rule language. The December 2017 rule amendment order noted that the term "third-party point-of-sale systems" refers to the industry terminology used by traditional brick and mortar retailers, such as grocery stores and chain retail stores, to describe their self-contained equipment that performs sales-related tasks at the in-lane check-out counter. These point-of-sale systems are basically cash registers at the checkout counter utilized by the retailers' sales clerks, or self-checkout terminals. A definition of "third-party point-of-sale systems" is already included in the Commission's rules at 16 TAC §401.301(50) and states these systems do not include any gambling device.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is increased convenience to Mega Millions ticket purchasers through the availability of an in-lane sales purchase option.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §401.315 ("Mega Millions" Draw Game Rule). For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments rule from any interested person. Comments on the proposed amendments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery; §466.451, which authorizes the Commission to adopt rules relating to a multi-jurisdiction lottery game; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401. 315. "Mega Millions" Draw Game Rule.

(a) Mega Millions. The Multi-State Lottery Association ("MUSL") has entered into an Agreement ("Cross-Sell Agreement") with those U.S. lotteries operating under an agreement to sell a draw game known as Mega Millions ("Mega Millions Lotteries") to permit the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group ("Product Group"), including the Texas Lottery Commission (commission), to sell the Mega Millions lottery game. The purpose of the Mega Millions game is the generation of revenue for Mega Millions Lotteries and Product Group members participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. The Mega Millions game is authorized to be conducted by the commission executive director (executive director) under the conditions of the Cross-Sell Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of the Mega Millions game to the requirements of the MUSL rules and the Cross-Sell Agreement, if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. To be clear, the authority to participate in the Mega Millions game is provided to the commission [~~Texas Lottery~~] by MUSL through the Cross-Sell Agreement. The conduct and play of the Mega Millions game must conform to the Product Group's Mega Millions game rules ("MUSL MM Rules"). Further, if a conflict arises between this section and §401.304 of this chapter, this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the MUSL MM Rules adopted by the Product Group.

(b) Definitions. In addition to the definitions provided in §401.301 of this subchapter (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) "Agent" or "retailer" means a person or entity authorized by the commission [~~Texas Lottery Commission~~] to sell lottery Plays.

(2) "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers that determine the number

of winning Plays for each prize level of the Mega Millions game and Megaplier Promotion.

(3) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the MUSL rules or the rules of each Selling Lottery, and is a physical representation of the Play or Plays sold to the player as described in subsection (g) of this section (Ticket Validation).

(4) "Just the Jackpot™ Play" ("JJ Play") shall refer to a wager purchased which includes two (2) Plays as part of the Just the Jackpot Promotion as described in subsection (l) of this section.

(5) "Megaplier Plays" shall refer to Plays purchased as part of the Megaplier Promotion described in subsection (k) of this section.

(6) "Mega Millions Lotteries" refers to those lotteries that have joined under the Mega Millions Lottery Agreement and that have entered into the Cross-Sell Agreement with MUSL for the selling of the Mega Millions game by the Product Group. "Mega Millions Finance Committee" refers to a Committee of the Mega Millions Lotteries that determines the Grand Prize amount (cash value option and annuity).

(7) "Mega Millions Plays" ("MM Plays") shall refer to Plays purchased as part of the Mega Millions game, but shall not include JJ Plays or Megaplier Plays.

(8) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(9) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery.

(10) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and, in the context of the Product Group rules, has joined in selling the games offered by the Product Group. "Selling Lottery" or "Participating Lottery" shall mean a state lottery or lottery of a political subdivision or entity that is participating in selling the Mega Millions game and that may be a member of either the Product Group or the Mega Million Lotteries.

(11) "Play" means a set of six (6) numbers, the first five (5) from a field of seventy (70) numbers and the last one (1) from a field of twenty-five (25) numbers, that appear on a ticket [~~as a single lettered selection~~] and are to be played by a player in the game. As used in this section, unless otherwise indicated, "Play" includes both Mega Millions Plays ("MM Plays") and Just the Jackpot Plays ("JJ Play"). "Megaplier Plays" are separately described in subsection (k) of this section.

(12) "Playslip" means a physical or electronic means by which a player communicates their intended Play selection to the retailer as defined and approved by the commission [~~Texas Lottery~~]. A playslip [~~Playslip~~] has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(13) "Prize" means an amount paid to a person or entity holding a winning ticket. The terms "Grand Prize" or "Jackpot" may be used interchangeably and shall refer to the top prize in the Mega Millions game. "Advertised Grand Prize" or "Advertised Jackpot" shall mean the estimated annuitized Grand Prize amount as determined by the Mega Millions Finance Committee and communicated through the Selling Lotteries prior to the next Mega Millions Drawing. The Advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount, except in circumstances where there is a guaranteed Grand Prize amount as described in subsection (f)(1) of this section.

(14) "Product Group" means the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group and who offer the Mega Millions game product pursuant to the terms of the Cross-Sell Agreement between MUSL and the Mega Millions Lotteries, and in accordance with the Multi-State Lottery Agreement and the MUSL MM Rules.

(15) "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize and, except in instances outlined in this section, or the MUSL MM Rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(16) "Terminal" means a device authorized by the commission [~~Texas Lottery~~] for the purpose of issuing Mega Millions game tickets and as defined in §401.301 (General Definitions) of this chapter.

(17) "Winning Numbers" means the indicia or numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Mega Millions game contained on a game ticket.

(c) Game Description. Mega Millions is a five (5) out of seventy (70) plus one (1) out of twenty-five (25) lottery game drawn on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries, and which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions Finance Committee on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis. During the Drawing event, five (5) numbers shall be drawn from the first set of seventy (70) numbers, and one (1) number shall be drawn from the second set of twenty-five (25) numbers, which shall constitute the Winning Numbers.

(1) Mega Millions Play. To play Mega Millions, a player shall select (or request a Quick Pick) five (5) different numbers, from one (1) through seventy (70) and one (1) additional number from one (1) through twenty-five (25). The additional number may be the same as one of the first five numbers selected by the player. MM Plays can be purchased for two dollars (U.S. $2.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery Play. Plays may be purchased from a Party Lottery approved sales outlet in a manner as approved by the Party Lottery and in accordance MUSL rules.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the commission [~~Texas Lottery~~] or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip [~~Playslip~~] has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. In all instances, a Play recorded on the computer gaming system may not be voided or cancelled by returning the ticket to the selling agent or to the commission, including tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. [~~A Play may not be voided or canceled by returning the ticket to the selling sales agent or to the Texas Lottery, including tickets that are printed in error.~~] A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery and not prohibited by the Mega Millions Product Group. No Play that

is eligible for a prize can be returned to the commission [~~lottery~~] for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal keypad or touch screen, by means of a commission-approved playslip [~~Playslip approved by the Texas Lottery~~], or by such other means as approved by the commission [~~Texas Lottery~~], including entry using authorized third-party point-of-sale ("POS") systems. Retailers shall not permit the use of playslips [~~Playslips~~] that are not approved by the commission [~~Texas Lottery~~]. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission [~~Texas Lottery~~]. A ticket generated using a selection method that is not approved by the commission [~~Texas Lottery~~] is not valid. A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection may include:

(A) using a self-service terminal;

(B) using a playslip [~~Playslip~~];

(C) using a previously-generated "Mega Million" ticket provided by the player;

(D) selecting [~~requesting a retailer to use~~] a Quick Pick [~~to select numbers~~];

(E) requesting a retailer to manually enter numbers; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission [~~Texas Lottery~~].

(6) Maximum Purchase. The maximum number of consecutive drawings on a single Play purchase is ten (10).

(7) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Mega Millions Prize Pool. The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a MM Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based upon the number of winning Plays at each prize level, as well as the funding required to meet a guaranteed Annuity Grand Prize as may be required by subsection (f)(1) of this section.

(1) Mega Millions Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the Prize Pool and Prize Reserve Accounts established by this section.

(A) The following Prize Reserve Account for the Mega Millions game is hereby established: the Prize Reserve Account (PRA) which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason, to fund deficiencies in the Set-Aside Pool, and to fund pari-mutuel prize deficiencies as defined and limited in subsections (d)(3)(A) and (k)(9)(B)(i) of this section.

(B) The following Prize Pool Accounts for the Mega Millions game are hereby established:

(i) The Grand Prize Pool (GPP), which is used to fund the current Grand Prize;

(ii) The Set Prize Pool (SPP), which is used the fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories. The source of the SPP is the Party Lottery's weekly prize contributions less actual Set Prize liability; and

(iii) The Set-Aside Pool (SAP), which is used to fund the payment of the awarded minimum starting Annuity Grand Prizes and the minimum Annuity Grand Prize increase, if necessary (subject to the limitations in this section or the MUSL MM Rules), as may be set by the Product Group. The source of the SAP funding shall accumulate from the difference between the amount in the Grand Prize Pool at the time of a Grand Prize win and the amount needed to fund Grand Prize payments as determined by the Mega Millions Lotteries.

(C) The above Prize Reserve Account shall have maximum balance amounts or balance limiter triggers that are set by the Product Group and are detailed in the *Comments* to MUSL MM Rule 28. The maximum balance amounts and balance limit triggers are subject to review by the MUSL Board Finance and Audit Committee. The Finance and Audit Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance and Audit Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Product Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Grand Prize win.

(D) The contribution rate to the GPP from MM Plays shall be 37.6509% of sales. An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery play, shall be added to a Party Lottery's Mega Millions Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. Details shall be noted in the *Comments* to MUSL MM Rule 28.

(E) The Product Group may determine to expend all or a portion of the funds in the prize pools (except the GPP) and the prize reserve accounts:

(i) for the purpose of indemnifying the Party Lotteries in the payment of prizes to be made by the Selling Lotteries; and

(ii) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance & Audit Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full Board by the Product Group.

(F) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(G) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a reserve account, a Party Lottery is responsible for its full sales percentage share of the prize reserve account, whether or not it has been paid in full.

(H) Any amount remaining in the Mega Millions prize pool accounts or prize reserve accounts when the Product Group declares the end of the game shall be returned to the lotteries participating in the prize pool and prize reserve accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment prizes. All prize payouts are made with the following expected prize payout percentages, which does not include an additional amount held in prize reserves, although the prize payout percentages per draw may vary:
Figure: 16 TAC §401.315(d)(2) (No change.)

(A) The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.

(B) The SPP (for payment of single payment prizes of one million dollars ($1,000,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(3) Pari-mutuel Prize Determinations. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(A) If the total of the Mega Millions Set Prizes (as multiplied by the respective Megaplier multiplier, if applicable) awarded in a drawing exceeds the percentage of the prize pool allocated to the Mega Millions Set Prizes, then the amount needed to fund the Mega Millions Set Prizes, including Megaplier prizes, awarded shall be drawn from the following sources, in the following order:

(i) the amount available in the SPP and the Megaplier Prize Pool, if any;

(ii) an amount from the PRA, if available, not to exceed forty million dollars ($40,000,000.00) per drawing.

(B) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes, including Megaplier prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, including Megaplier prizes, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts. The Party Lotteries and the Mega Millions Lotteries shall than agree to set the pari-mutuel prize amount for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(4) Except as may be required by subsection (f)(1) of this section, the official advertised Grand Prize annuity amount is subject to change based on sales forecasts and/or actual sales.

(5) Subject to the laws and rules governing each Party Lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions Lotteries, for promotional purposes. Such change shall be announced by Mega Millions Lotteries.

(e) Probability of Winning Mega Millions Prizes. The following table sets forth the probability of winning and the probable distribution of winning Plays in and among each prize category for MM Plays, based upon the total number of possible combinations in Mega Millions.
Figure: 16 TAC §401.315(e) (No change.)

(f) Mega Millions Prize Payment.

(1) Mega Millions Grand Prize. The prize money allocated from the current Mega Millions prize pool for the Grand Prize, plus any previous portions of prize money allocated to the Grand Prize category in which no matching MM Plays or JJ Plays were sold will be divided equally among all Grand Prize winning MM Plays and JJ Plays in all Participating Lotteries. The Annuity Grand Prize amount will be paid in thirty (30) graduated annual installments. Grand Prizes won shall be funded by the Selling Lotteries in accordance with the formula set by the Mega Millions Lotteries. The Mega Millions Lotteries may set a minimum guaranteed annuitized Grand Prize amount that shall be advertised by the Selling Lotteries as the starting guaranteed annuitized Grand Prize amount. At the time of ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Grand Prize if the Play is a winning Play. A player's selection of the payment option at the time of purchase from the commission [~~Texas Lottery~~] is final and cannot be revoked, withdrawn, or otherwise changed. If no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.315(f)(1) (No change.)

(2) Mega Millions Prize Rollover. If in any Mega Millions Drawing there are no MM Plays or JJ Plays that qualify for the Grand Prize category, the portion of the prize fund allocated to such Grand Prize category shall remain in the Grand Prize category and be added to the amount allocated for the Grand Prize category in the next consecutive Mega Millions Drawing.

(3) A player(s) who elects a cash value option payment shall be paid his/her share(s) in a single cash payment upon completion of validation procedures determined by the commission [~~Texas Lottery~~]. The cash value option amount shall be determined by the Mega Millions Lotteries.

(4) All annuitized prizes shall be paid annually in thirty (30) graduated annual installments upon completion of validation procedure determined by the commission [~~Texas Lottery~~]. The initial payment shall be paid upon completion of the validation procedures and the subsequent twenty-nine (29) payments shall be paid annually to coincide with the winning draw date, and shall escalate by a factor of 5% annually. Prize payments may be rounded down to the nearest one thousand dollars ($1,000) increment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts.

(5) If individual shares of the Grand Prize Pool funds held to fund an annuity is less than $250,000.00, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize Pool.

(6) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full cash

value option payment amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(7) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(8) Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(9) Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(10) Limited to Highest Prize Won. The holder of a winning MM Play may win only one (1) prize per Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. A JJ Play is not eligible to win non-Grand Prize category prizes. All liabilities for a Mega Millions prize are discharged upon payment of a prize claim.

(11) Claim Period. Prizes must be claimed no later than 180 days after the draw date, or in accordance with Texas Government Code §466.408(e).

(g) Ticket Validation.

(1) To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the commission [~~Texas Lottery~~] for validation of winning Plays sold through the computer gaming system, as well as any other validation requirements adopted by the Product Group, the MUSL Board and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Party Lotteries shall not be responsible for Plays or tickets that are altered in any manner.

(2) Under no circumstances will a claim for any prize be paid without an official Mega Millions ticket issued as authorized by the commission [~~Texas Lottery~~] and matching all game Play, serial number and other validation data residing in the commission's [~~Texas Lottery 's~~] computer gaming system and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming such prize.

(3) In addition to the above, in order to be deemed a valid, winning Mega Millions Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the applicable drawing date(s) [~~printed on the ticket~~];

(B) The ticket must be intact;

(C) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner;

(D) The ticket must not be counterfeit or an exact duplicate of another winning ticket;

(E) The ticket must have been issued by an authorized [~~Texas Lottery~~] sales agent[~~,~~] on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission [~~Texas Lottery~~], printed on paper stock or otherwise issued in a manner approved by the commission [~~Texas Lottery~~] to provide tangible evidence of participation in a lottery game;

(F) The ticket must not have been stolen, to the knowledge of the commission [~~Texas Lottery~~];

(G) The ticket must be submitted for payment in accordance with the prize claim procedures of the commission [~~Texas Lottery~~] as set out in §401.304 of this subchapter and any internal procedures used by the commission [~~Texas Lottery~~];

(H) The Play data on the ticket must have been recorded on the computer gaming system prior to the drawing and the Play data must match this computer record in every respect. In the event of a contradiction between information as printed on the ticket and as accepted by the commission's [~~Texas Lottery 's~~] computer gaming system, the wager accepted by the commission's [~~Texas Lottery 's~~] computer gaming system shall be the valid wager;

(I) The player or Quick Pick number selections, validation data and the drawing date(s) of an apparent winning Play must appear [~~on~~] in the official file of winning Plays, and a Play with that exact data must not have been previously paid;

(J) The Play must not be misregistered, and the Play's ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the commission [~~Texas Lottery~~];

(K) The ticket must pass confidential validation tests in accordance with the MUSL MM Rules. In addition, the ticket must pass all other confidential security checks of the commission [~~Texas Lottery~~];

(L) In submitting a ticket for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director of the commission [~~Texas Lottery~~];

(M) There must not be any other breach of the MUSL MM Rules, or this subchapter, in relation to the Play, which, in the sole and final opinion of the executive director of the commission [~~Texas Lottery~~], justifies invalidation; and[~~.~~]

(N) The Ticket must be submitted to the commission [~~Texas Lottery~~], or the Selling Lottery that issued it.

(4) A Play submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the commission [~~Texas Lottery~~] shall be final and binding; however, the commission [~~Texas Lottery~~] may, at its option, replace an invalid Play with a Mega Millions Play of equivalent sales price;

(B) In the event a defective ticket is purchased or in the event the commission [~~Texas Lottery~~] determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with a Mega Millions Play of equivalent sales price; and

(C) In the event a Mega Millions Play is not paid by the commission [~~Texas Lottery~~] and a dispute occurs as to whether the Play is a winning Play, the commission [~~Texas Lottery~~] may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(h) Ticket Responsibility.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the commission [~~Texas Lottery~~]. The MUSL and the Selling Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the commission [~~Texas Lottery~~].

(2) Stolen Plays. The Product Group, the MUSL, the Party Lotteries and the commission [~~Texas Lottery~~] shall not be responsible for lost or stolen Plays.

(3) The Party Lotteries shall not be responsible to a prize claimant for Mega Millions Plays redeemed in error by a Texas Lottery sales agent.

(4) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Mega Millions draw. MUSL, the Party Lotteries and the commission [~~Texas Lottery~~] are not responsible for Mega Millions winning numbers reported in error.

(i) Ineligible Players.

(1) A Play, or share of a Play, for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such Play, or share of a Play, shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subsections (a), (b), and (c) of this section and residing in the same household.

(2) Those persons designated by the State Lottery Act, Texas Government Code, Chapter 466, as ineligible to play its games shall also be ineligible to play any MUSL lottery game sold in the state of Texas.

(3) A Play, or share of a Play, of the Mega Millions game may not be purchased in any lottery jurisdiction by any Party Lottery board member; commissioner; officer; employee; or spouse, child brother, sister or parent residing as a member of the same household in the principle place of residence of any such person. Prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular jurisdiction by rules, governing law, or any contract executed by the Selling Lottery.

(j) Applicable Law.

(1) In purchasing a Play, or attempting to claim a prize, purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the commission [~~Texas Lottery~~] and by directives and determinations of the commission's executive director [~~of the Texas Lottery~~]. Additionally, the player shall be bound to all applicable provisions in the MUSL MM Rules.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Play can only be pursued against the Party Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Party Lottery that issued the Play. No claim shall be made against any other Party Lottery or against the MUSL.

(3) Nothing in this section or the MUSL MM Rules shall be construed as a waiver of any defense or claim the commission [~~Texas Lottery~~], which issued the Play, any other Party Lottery, or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against a Party Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by the commission [~~Texas Lottery~~], including the declaration of prizes and the payment thereof and the interpretation of MUSL MM Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the commission [~~Texas Lottery~~], which issued the Play, provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of this section, the MUSL MM Rules, or the laws, rules, regulations, procedures, and decisions of the commission [~~Texas Lottery~~]; any such prize claimed but unpaid shall constitute an unclaimed prize under this section and the laws, rules, regulations, procedures, and decisions of the commission [~~Texas Lottery~~].

(k) Mega Millions Megaplier Promotion.

(1) Promotion Description. The Mega Millions Megaplier Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein. The Promotion will begin at a time announced by the commission [~~Texas Lottery~~] and will continue until discontinued by the commission [~~Texas Lottery~~]. The Promotion will offer to the owners of a qualifying Megaplier Play a chance to multiply or increase the amount of any of the Set Prizes (the prizes normally paying two dollars ($2.00) to one million dollars ($1,000,000.00) won in a Drawing held during the Promotion. The Grand Prize is not a Set Prize and will not be multiplied or increased by means of the Megaplier Promotion or the Just the Jackpot Promotion.

(2) Qualifying Megaplier Play. A qualifying Megaplier Play is any single Mega Millions Play for which the player pays an extra one dollar ($1.00) for the Megaplier option and that is recorded at on the commission's [~~Texas Lottery's~~] computer gaming system as a qualifying Megaplier Play. Just the Jackpot Plays do not qualify to purchase a Megaplier Play.

(3) Prizes To Be Multiplied Or Increased. A qualifying Megaplier Play that wins one of the Set Prizes will be multiplied by the number selected, either two, three, four, or five (2, 3, 4, or 5), in a separate random Megaplier Drawing announced in a manner approved by the Product Group.

(4) Megaplier Draws. MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier" Drawing. Before each Mega Millions Drawing a single number (2, 3, 4 or 5) shall be drawn. The Product Group may change one or more of the multiplier features for special promotions from time to time. In the event the Megaplier Drawing does not occur prior to the Mega Millions Drawing, the multiplier number will be a 5 (five), which shall solely be determined by the lottery authorized to conduct the "Megaplier" Drawing.

(5) Megaplier Prize Pool.

(A) The Megaplier Prize Pool (MPP) is hereby created, and shall be used to fund Megaplier prizes. The MPP shall hold the temporary balances that may result from having fewer than expected winning Megaplier Plays. The source of the MPP is the Party Lottery's weekly prize contributions less actual Megaplier Prize liability.

(B) Up to fifty-five percent (55%) of each Drawing period's sales, as determined by the Product Group, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be collected for the payment of Megaplier prizes.

(C) Prize payout percentages per draw may vary. The MPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Megaplier prizes awarded in the current draw and held in the MPP.

(6) End of Game. Any amount remaining in the MPP when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction law.

(7) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment Set Prizes. Instead of the Mega Millions Set Prize amounts, qualifying Megaplier Plays will pay the amounts shown below when matched with the Megaplier number drawn. In certain rare instances, the Mega Millions Set Prize amount may be less than the amount shown. In such case, the Megaplier prizes will be a multiple of the changed Mega Millions prize amount announced after the draw. For example, if the Match 4+1 Mega Millions set prize amount of ten thousand dollars ($10,000.00) becomes two thousand dollars ($2,000.00) under the rules of the Mega Millions game, then a Megaplier player winning that prize amount with a 4X multiplier would win eight thousand dollars ($8,000): two thousand dollars multiplied by four ($2,000.00 x 4).
Figure: 16 TAC §401.315(k)(7) (No change.)

(8) Probability of Winning. The following table sets forth the probability of the various Megaplier numbers being drawn during a single Mega Millions Drawing. The Product Group may elect to run limited promotions that may modify the multiplier features.
Figure: 16 TAC §401.315(k)(8) (No change.)

(9) Limitation on Payment of Megaplier Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Megaplier Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw or may be held in a prize reserve account.

(B) Pari-Mutuel Prizes--All Prize Amounts. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(i) If the total of the original Mega Millions Set Prizes and the Megaplier prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the Set Prizes (including the Megaplier prize amounts) awarded shall be drawn from the following sources, in the following order:

(I) the amount available in the SPP and the MPP, if any;

(II) an amount from the PRA, if available in the account, not to exceed forty million dollars ($40,000,000.00) per drawing.

(ii) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Megaplier prize amounts), then the highest Set Prize (including the Megaplier prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize (including the Megaplier prize amount) shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Megaplier prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(10) Prize Payment. All Megaplier prizes shall be paid in one single payment through the Party Lottery that sold the winning Megaplier Play(s). A Party Lottery may begin paying Megaplier prizes after receiving authorization to pay from the MUSL central office. Prizes that, under this section, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the MPP for the next drawing.

(l) Just the Jackpot™ Promotion.

(1) Promotion Description. The Mega Millions Just the Jackpot Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein, and any other lottery rules applicable to this Promotion. All rules applicable to the Mega Millions game in subsections (a) through (j) of this section are applicable to the Just the Jackpot Promotion unless otherwise indicated. The Promotion will begin at a time announced by the commission [~~Texas Lottery~~] and will continue until discontinued by the commission [~~Texas Lottery~~]. The Promotion will offer to players a chance to purchase a Just the Jackpot Play ("JJ Play") which will qualify a player for two (2) chances (each a "Play") to win the Grand Prize, and no other prize levels. If the player matches any non-Grand Prize (any prize level other than the Grand Prize) numbers with his or her JJ Play(s), the player who purchased the JJ Play is not eligible to win or claim the non-Grand Prizes in the Just the Jackpot Promotion.

(2) Winning JJ Plays will be paid the Mega Millions Grand Prize, at the election of the player made in accordance with subsection (f) of this section or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined in accordance with subsection (f)(4) of this section. All provisions in subsections (a) through (j) of this section regarding payment of the Mega Millions Grand Prize are applicable to winning JJ Play(s). The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.

(3) Just the Jackpot shall use the Mega Millions winning numbers. Mega Millions winning numbers applicable to determine Just the Jackpot prizes will be determined on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries.

(4) To play Just the Jackpot, a player shall select (or request a Quick Pick) two (2) sets of five (5) different numbers, from one (1) through seventy (70) and one (1) additional number from one (1) through twenty-five (25). The additional number may be the same as one of the first five numbers selected by the player. Each set of numbers shall constitute a [~~single lettered selection, or~~] single "Play" as that term is defined in subsection (b)(11) of this section. The two (2) Plays for each three dollar ($3.00) JJ Plays purchase shall be for the same drawing, although the commission [~~Texas Lottery~~] may sell multi-draw JJ Plays as well.

(5) The purchase price of a single JJ Play shall be three dollars (US $3.00) for two (2) [~~single lettered selection of~~] Plays, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery JJ Play. JJ Plays must be printed on separate tickets from MM Plays and must clearly indicate the Plays are for the Just the Jackpot Promotion. Each JJ Play is played separately in determining matches to winning numbers and prize amounts. JJ Plays may be purchased from any authorized Texas Lottery sales agent in a manner as approved by the commission [~~Texas Lottery~~] and in accordance with this section and the MUSL rules. The winning numbers for the JJ Plays will be the winning numbers drawn in the applicable Mega Millions Drawing. The Grand Prize will not be multiplied or increased by means of the Megaplier Promotion.

(6) Just the Jackpot Prize Pool Contributions.

(A) Mega Millions Prize Pool. The prize pool for JJ Plays shall consist of up to fifty-five percent (55%) of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery's JJ Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based the funding required to meet a guaranteed Annuity Grand Prize as may be required by the MUSL MM Rules.

(B) Mega Millions Prize Pool Account and Prize Reserve Account contributions. The Product Group shall set the contribution rates to the Just the Jackpot prize pool and prize reserve accounts established by this section.

(i) The contribution rate for JJ Plays to the GPP shall be 50.2012% of sales. An amount up to five percent (5%) of a Party Lottery's JJ Play sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery's JJ Play, shall be added to a Party Lottery's Just the Jackpot Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. Details shall be noted in the Comments to the MUSL MM Rule JJ5.2.

(ii) All provisions regarding the Grand Prize Pool and Prize Reserve Account as described herein are applicable to JJ Play contributions to the Grand Prize Pool and Prize Reserve Account.

(7) Expected Prize Payout Percentage. The Mega Millions Grand Prize payout shall be determined on a pari-mutuel basis. The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Mega Millions Grand Prize. All prize payouts are made with the following expected prize payout percentages, which does not include any additional amount held in prize reserves:

Figure: 16 TAC §401.315(l)(7) (No change.)

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805427
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 344-5012

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16 TAC §401.317

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.317 ("Powerball®" Draw Game Rule). There are two purposes for the proposed amendments. The first purpose is to facilitate the potential future sale of Powerball tickets using Commission-approved third-party point-of-sale systems (in-lane sales) by removing the requirement that the drawing date be printed on the ticket, updating language regarding a player's selection of a Quick Pick, and making other conforming and non-substantive changes, including a recent clarification by the Multi-State Lottery Association regarding cancellation of plays. These changes complement rule amendments adopted by the Commission in December 2017 that also facilitated in-lane sales, but ongoing product development has necessitated small, additional updates to the rule language. The December 2017 rule amendment order noted that the term "third-party point-of-sale systems" refers to the industry terminology used by traditional brick and mortar retailers, such as grocery stores and chain retail stores, to describe their self-contained equipment that performs sales-related tasks at the in-lane check-out counter. These point-of-sale systems are basically cash registers at the checkout counter utilized by the retailers' sales clerks, or self-checkout terminals. A definition of "third-party point-of-sale systems" is already included in the Commission's rules at 16 TAC §401.301(50) and states these systems do not include any gambling device.

Second, the proposed amendments delete references to "Winner Take All®", a promotional play option adopted in 2017 by the Multi-State Lottery Association (MUSL) and reflected in the Commission's current Powerball rule (in amendments also adopted in December 2017), but which MUSL declined to implement.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is increased convenience to Powerball ticket purchasers through the availability of an in-lane sales purchase option. In addition, the public will benefit from greater clarity of the rule language by deleting references to a promotional play option that will not be implemented.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §401.317 ("Powerball®" Draw Game Rule). For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments rule from any interested person. Comments on the proposed amendments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery; §466.451, which authorizes the Commission to adopt rules relating to a multi-jurisdiction lottery game; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.317. "Powerball®" Draw Game Rule.

(a) Powerball. Powerball is a Multi-State Lottery Association (MUSL) lottery draw game offered by all Lotteries that have agreed to MUSL's Powerball Group Rules. The purpose of the Powerball game is the generation of revenue for MUSL Party Lottery members and Mega Millions Party Lotteries participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders of validated winning tickets matching specified combinations of numbers randomly selected in regularly scheduled Drawings. The Powerball game is authorized to be conducted by the commission executive director (executive director) under the conditions of the MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of the Powerball game to the requirements of the MUSL rules if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. To be clear, the authority to participate in the Powerball game is provided to the Texas Lottery Commission (commission) by MUSL. The conduct and play of the Powerball game must conform to the MUSL Powerball Group Rules. Further, if a conflict arises between this section and §401.304 of this chapter (relating to Draw Game Rules (General)), this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the rules adopted by the MUSL or the MUSL Powerball Group.

(b) Definitions.

(1) "Agent" or "retailer" means a person or entity authorized by the commission to sell lottery Plays.

(2) A "Drawing" refers collectively to the formal draw event for randomly selecting the Winning Numbers that determine the number of winning Plays for each prize level of the Powerball game and Power Play promotion. [~~or a Powerball game promotion as described in this section.~~]

[~~(A) The Powerball Drawing (PB Drawing) shall determine the Winning Numbers for the Powerball game and the Power Play multiplier.~~]

[~~(B) A Winner Take All® Drawing (WTA Drawing) is a separate Drawing event from the PB Drawing and shall determine the Winning Numbers for the Winner Take All® promotion.~~]

[~~(C) The PB Drawing Winning Numbers shall not be used for the WTA promotion, and shall not be used to determine winning Winner Take All Play(s) (WTA Plays) or prizes. Similarly, the WTA Winning Numbers shall not be used as the Winning Numbers for the Powerball game or to determine the Powerball winning Play(s) or prizes.~~]

(3) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the rules of the Selling Lottery and subsection (g) of this section, and is a physical representation of the Play or Plays sold to the player.

(4) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(5) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery. "MUSL Finance and Audit Committee" shall mean the committee of that name established by the MUSL Board.

(6) "MUSL Annuity Factor" shall mean the annuity factor as determined by the MUSL central office through a method approved by the MUSL Finance and Audit Committee and which is used as described in this rule.

(7) "Pari-Mutuel" or "pari-mutuel" as used in this section shall mean wagered funds that are pooled and then paid in equal shares to the holders of winning Plays as described in this section and the MUSL Rules.

(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and is authorized to sell the Powerball game. "Licensee Lottery" shall mean a state lottery or lottery of a governmental unit, political subdivision, or entity thereof that is not a Party Lottery but has agreed to comply with all applicable MUSL and Product Group requirements and has been authorized by the MUSL and by the Powerball Product Group to sell the Powerball game. "Selling Lottery" or "Participating Lottery" shall mean a lottery

authorized by the Product Group to sell Plays, including Party Lotteries and Licensee Lotteries.

(9) "Play" means the six (6) numbers, the first five (5) from a field of sixty-nine (69) numbers and the last one (1) from a field of twenty-six (26) numbers, that appear on a ticket [~~as a single lettered selection~~] and are to be played by a player in the Powerball game. [~~as well as in the WTA promotion if the WTA promotion is selected by the player. As used in this section, unless otherwise indicated, "Play" includes both Powerball Plays and Winner Take All Plays.~~]

(A) "Powerball Plays" (PB Plays) shall refer to Plays purchased as part of the Powerball game, but shall not include [~~WTA Plays or~~] Power Play Plays.

(B) "Power Play Plays" shall refer to Plays purchased as part of the Power Play promotion described in subsection (k) of this section.

[~~(C) "Winner Take All Plays" (WTA Plays) shall refer to Plays purchased as part of the WTA promotion as described in subsection (l) of this section.~~]

(10) "Playslip" means a physical or electronic means by which a player communicates their intended Play selection to the retailer as defined and approved by the Selling Lottery. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(11) "Power Play" shall refer to the Power Play promotion as described in subsection (k) of this section.

(12) "Powerball Group" or "Product Group" means the MUSL member group of lotteries which have joined together to offer the Powerball product pursuant to the terms of the Multi-State Lottery Agreement and the Powerball Group's rules, including the MUSL Powerball Drawing Procedures. In this rule, wherever either term is used it is referring to the MUSL Powerball Group.

(13) "Prize" means an amount paid to a person or entity holding a winning ticket.

(A) "The Grand Prize" shall refer to the top prize in the Powerball game.

[~~(B) The "Winner Take All Prize" (WTA Prize) means the Prize established by the Product Group for the WTA promotion set forth in subsection (l) of this section.~~]

(B) [~~(C)~~] The Advertised Grand Prize shall mean the estimated annuitized Grand Prize amount as determined by the MUSL Central Office by use of the MUSL Annuity Factor and communicated through the Selling Lotteries prior to the Grand Prize Drawing. The Advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount, except in circumstances where there is a guaranteed Grand Prize amount as described in paragraph (6) of subsection (f) of this section.

(C) [~~(D)~~] The "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize [~~and WTA Prize~~], and, except in instances outlined in this section, will be equal to the prize amount established by the Product Group for the prize level.

(14) "Terminal" means a device authorized by the commission for the purpose of issuing Powerball game tickets and as defined in §401.301 (General Definitions) of this chapter.

[~~(15) "Winner Take All" (WTA) shall refer to the Winner Take All® promotion as described in subsection (l) of this section.~~]

(15) [~~(16)~~] "Winning Numbers" means the numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Powerball game or the Powerball game promotion being drawn.

(c) Game Description.

(1) Powerball Game. Powerball is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) numbers lottery game drawn every Wednesday and Saturday, as part of the Powerball Drawing, which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for the winning Drawing on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis.

(A) Powerball Winning Numbers applicable to determine Powerball prizes will be determined in the Powerball Drawing. During the Powerball Drawing, five (5) numbers shall be drawn from the first set of sixty-nine (69) and one (1) number shall be drawn from the second set of twenty-six (26) numbers, which shall constitute the Powerball Winning Numbers.

(B) To play Powerball, a player shall select five (5) different numbers, from one (1) through sixty-nine (69) and one (1) additional number from one (1) through twenty-six (26), or request the retailer to generate a Quick Pick selection of numbers from the lottery terminal. The additional number may be the same as one of the first five numbers selected by the player.

(C) Powerball Plays can be purchased for two dollars (U.S. $2.00), including any specific statutorily-mandated tax of a Selling Lottery to be included in the price of a PB Play. PB Plays may be purchased from a Selling Lottery approved sales outlet in a manner as approved by the Selling Lottery and in accordance with MUSL Rules.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the issuing Selling Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. [~~A Play may not be voided or canceled by returning the ticket to the selling agent or to the lottery, including tickets that are printed in error.~~] In all instances, a Play recorded on the computer gaming system may not be voided or cancelled by returning the ticket to the selling agent or to the commission, including tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery and not prohibited by the Powerball Product Group. No Play that is eligible for a prize can be returned to the commission [~~lottery~~] for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal keypad or touch screen, by means of a commission-approved [~~an approved~~] playslip, or by such other means

as approved by the commission, including entry using authorized third-party point-of-sale ("POS") systems. Retailers shall not permit the use of playslips that are not approved by the commission. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission.

[~~(A)~~] A ticket generated using a selection method that is not approved by the commission is not valid.

[~~(B)~~] A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection may include:

(A) [~~(i)~~] using a self-service terminal;

(B) [~~(ii)~~] using a playslip;

(C) [~~(iii)~~] using a previously-generated "Powerball" ticket provided by the player;

(D) [~~(iv)~~]selecting [~~requesting a retailer to use~~] a Quick Pick;

(E) [~~(v)~~] requesting a retailer to manually enter numbers; or

(F) [~~(vi)~~] using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(6) Subscription Sales. A subscription sales program may be offered, at the discretion of the executive director.

(7) Maximum Purchase. The maximum number of consecutive Drawings on a single PB Play purchase is ten (10), including Power Play Plays if purchased. [~~Advanced purchases are prohibited for the WTA promotion described in subsection (l).~~]

(d) Powerball Prize Pool.

(1) Powerball Prize Pool.

(A) The prize pool for all Powerball prize categories shall consist of fifty percent (50%) of each Drawing period's Powerball sales, inclusive of any specific statutorily-mandated tax of a Selling Lottery to be included in the price of a PB Play, and including contributions to the prize pool accounts and prize reserve accounts.

(B) Powerball Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the prize pool and to one or more prize reserve or pool accounts established by the MUSL Powerball Group Rules.

(i) Prize Reserve Accounts. The Product Group has established the following prize reserve accounts for the Powerball game: the Powerball Prize Reserve Account (PRA), which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason; and the Powerball Set Prize Reserve Account (SPRA), which is used to fund deficiencies in low-tier Powerball prize payments, subject to the limitations of the MUSL rules.

(ii) Prize Pool Accounts. The Product Group has established the following prize pool accounts for the Powerball game: the Grand Prize Pool, which is used to fund the current Grand Prize; the Powerball Set Prize Pool, which is used to fund the Powerball Set Prizes; the Powerball Set-Aside Pool, which is used to fund the payment of the awarded minimum starting annuity Grand Prizes and minimum annuity Grand Prize increase, if necessary (subject to the limitations in the MUSL Powerball Group Rules), as may be set by the Product Group; and the Grand Prize Carry Forward Pool (GPCFP), which is used to fund the starting minimum annuity Grand Prize, as may be set by the Product Group, if such funds are available, and if sales do not fund the Grand Prize. The Power Play Prize Pool is described in subsection (k)(4) of this section. The Powerball Set Prize Pool shall hold the temporary balances that may result from having fewer than expected winners in the Powerball Set Prize (aka low-tier prize) categories and the source of the Powerball Set Prize Pool is the Party Lottery's weekly prize contributions less actual Powerball Set Prize liability.

(iii) The above prize reserve accounts, the GPCFP and the Set-Aside Pool shall have maximum balance amounts or balance limiter triggers that are set by the Product Group and are detailed in the Comments to the MUSL Rule. The maximum balance amounts and balance limiter triggers are subject to review by the MUSL Board Finance and Audit Committee. The Finance and Audit Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance and Audit Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Grand Prize win.

(iv) The maximum contribution rate to the Grand Prize Pool shall be 68.0131% of the prize pool (34.0066% of sales). An amount up to five percent (5%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in one or more prize pool accounts and prize reserve accounts held by the Product Group (hereinafter the "prize pool and reserve deduction") at any time that the prize pool accounts and Party Lottery's share of the prize reserve accounts is below the amounts designated by the Product Group. An additional amount up to twenty percent (20%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in the GPCFP to be held by the Product Group at a time as determined by the Product Group.

(v) The Product Group may determine to expend all or a portion of the funds in the Powerball prize pool accounts (except the Powerball Grand Prize Pool account and the GPCFP) and the prize reserve accounts: (1) for the purpose of indemnifying the Selling Lotteries for the payment of prizes to be made by the Selling Lottery; and, (2) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance and Audit Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full MUSL Board by the Product Group. The GPCFP may only be expended to fund the starting minimum annuity Grand Prize.

(vi) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(vii) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a prize reserve account, a Party Lottery is responsible for its full sales percentage share of the prize reserve account, whether or not it has been paid in full.

(viii) Any amount remaining in the Powerball prize pool accounts or prize reserve accounts when the Product Group declares the end of this game shall be returned to the lotteries participating in the accounts after the end of all claim periods of all Selling Lotter-

ies, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Powerball Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment set cash prizes. All prize payouts are made with the following expected prize payout percentages, although the prize payout percentage per draw may vary:
Figure: 16 TAC §401.317(d)(2) (No change.)

(A) The prize money allocated to the Powerball Grand Prize category shall be divided on a pari-mutuel basis by the number of PB Plays winning the Powerball Grand Prize.

(B) Powerball Set Prize Pool Carried Forward. For Party Lotteries, the Powerball Set Prize Pool (for single payment prizes of $1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw.

(C) Pari-Mutuel Powerball Prize Determinations. Except as otherwise provided, if the total of the Powerball Set Prizes (as multiplied by the respective Power Play multiplier, if applicable) awarded in a Drawing exceeds the percentage of the prize pool allocated to the Powerball Set Prizes, then the amount needed to fund the Powerball Set Prizes, including Power Play prizes, awarded shall be drawn first from the amount available in the Powerball Set Prize Pool and the Power Play Prize Pool, if any; second from the SPRA, if available, not to exceed forty million dollars ($40,000,000.00) per Drawing; and, third from other amounts as agreed to by the Product Group in their sole discretion.

(D) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, including Power Play Prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including Power Play prizes, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning PB Plays in proportion to their respective prize percentages. Powerball Set Prizes and Power Play Prizes will be reduced by the same percentage.

(E) By agreement, the Licensee Lotteries shall independently calculate their Set Prize pari-mutuel prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(e) Probability of Winning Powerball Plays. The following table sets forth the probability of winning PB Plays and the probable distribution of winning PB Plays in and among each prize category, based upon the total number of possible combinations in the Powerball game. The Set Prize Amount shall be the prizes set for all Selling Lotteries unless prohibited or limited by a jurisdiction's statute or judicial requirements.
Figure: 16 TAC §401.317(e) (No change.)

(f) Powerball Prize Payment.

(1) Powerball Grand Prizes. The Advertised Grand Prize in a Powerball game is not a guaranteed amount; it is an estimated amount, and all advertised prizes, even advertised Set Prizes, are estimated amounts. At the time of ticket purchase, a player must select a payment option of either a single lump sum payment (cash value option or CVO) or annuitized payments (Annuity) of a share of the Grand Prize if the PB Play is a winning Play. If no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.317(f)(1) (No change.)

(A) A player's selection of the payment option at the time of purchase is final and cannot be revoked, withdrawn, or otherwise changed.

(B) The Grand Prize available in the Grand Prize Pool shall be determined on a pari-mutuel basis among all winning PB Plays of the Grand Prize. A player(s) who elects a cash value option payment shall be paid their share(s) in a single lump sum payment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The MUSL Annuity Factor will not be used for Texas Lottery players. Neither MUSL nor any Selling Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL.

(C) In certain instances announced by the Powerball Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to paragraph (6) of this subsection.

(D) If individual shares of the Grand Prize Pool funds held to fund an annuity is less than $250,000.00, the Powerball Group, in its sole discretion, may elect to pay the winners their share of the funds held in the Grand Prize Pool. All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in a single payment, to be followed by twenty-nine (29) payments funded by the annuity.

(E) All annuitized prizes shall be paid annually in thirty (30) graduated payments, as provided by the MUSL rules, (increasing each year) at a rate as determined by the MUSL Product Group. Prize payments may be rounded down to the nearest one thousand dollars ($1,000).

(F) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Selling Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the Drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash value option payment amount may be delayed pending receipt of funds from the Selling Lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas. If the State of Texas purchases the securities, or holds the prize payment annuity for a Powerball prize won in this state, the prize winner will have no recourse on the MUSL or any other Party Lottery for payment of that prize.

(2) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(3) Powerball Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A

Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(4) Powerball Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(5) Powerball Prize Rollover. If the Grand Prize is not won in a Drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize Pool for the following Drawing.

(6) Funding of Guaranteed Powerball Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between Drawings or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between Drawings is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows:

(A) If there are multiple Grand Prize winning PB Plays during a single Drawing, each selecting the annuitized option prize, then a winning PB Play's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of Grand Prize winning PB Plays.

(B) If there are multiple Grand Prize winning PB Plays during a single Drawing and at least one of the Grand Prize ticket holders has elected the annuitized option prize, then the MUSL Annuity Factor may be utilized to determine the cash pool. The cost of the annuitized prize(s) will be determined at the time the annuity is purchased through a process as approved by the MUSL Board. If the annuitized option prize is selected by a Texas Lottery player, the amount shall be determined by multiplying the winning PB Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The MUSL Annuity Factor will not be used for Texas Lottery players.

(C) If there are multiple Grand Prize winning PB Plays during a single Drawing, and no claimant of the Grand Prize has elected the annuitized option prize, then the amount of cash in the Grand Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the MUSL Annuity Factor.

(D) Minimum guaranteed prizes or increases may be waived upon approval of the Powerball Group if the alternate funding mechanism set out in subsection (d)(2)(D) of this section becomes necessary.

(7) Limited to Highest Powerball Prize Won. The holder of a winning PB Play may win only one (1) prize per PB Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. All liabilities for a Powerball game or Powerball game promotional prize are discharged upon payment of a prize claim.

(8) Powerball Prize Claim Period. Prizes must be claimed no later than 180 days after the draw date.

(g) Play Validation. To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the commission for validation of winning tickets sold through its lottery gaming system and any other validation requirements adopted by the Powerball Group, the MUSL Board, and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Selling Lotteries shall not be responsible for tickets which are altered in any manner.

(1) Under no circumstances will a claim be paid for any prize without an official ticket matching all game Play, serial number and other validation data residing in the selling Party Lottery's lottery gaming system and such ticket shall be the only valid proof of the wager placed and the only valid evidence for purposes of claiming or redeeming such prize.

(2) In addition to the above condition, in order to be deemed a valid winning Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the applicable Drawing date(s) [~~printed on the ticket~~].

(B) The ticket must be intact.

(C) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner.

(D) The ticket must not be counterfeit or an exact duplicate of another winning ticket.

(E) The ticket must have been issued by an authorized sales agent, selling agent or retailer on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

(F) The ticket must not have been stolen, to the knowledge of the commission.

(G) The Play data must have been recorded on the commission's lottery gaming system prior to the Drawing and the Play data must match this lottery record in every respect. In the event of a conflict between information as printed on the ticket and as accepted by the commission's lottery gaming system, the wager accepted by the commission's lottery gaming system shall be the valid wager.

(H) The player or [~~computer pick~~] Quick Pick number selections, validation data and the Drawing date(s) of an apparent winning Play must appear in [~~on~~] the official file of winning Plays, and a Play with that exact data must not have been previously paid.

(I) The play must not be misregistered, and the Play's ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the commission.

(J) In submitting a Play for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director.

(K) There must not be any other breach of the Powerball Game Rules in relation to the Play that, in the opinion of the executive director, justifies invalidation.

(L) The Play must be submitted to the Selling Lottery that issued it.

(3) A Play submitted for validation that fails any of the validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the commission shall be final and binding; however, the commission may, at its option, replace an invalid Play with a Play of equivalent sales price;

(B) In the event a defective ticket is purchased or in the event the commission determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with a Play of equivalent sales price;

(C) In the event a Play is not paid by the commission and a dispute occurs as to whether the Play is a winning Play, the commission may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

(2) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(3) Stolen Tickets. The Powerball Group, the MUSL and the Party Lotteries shall not be responsible for lost or stolen tickets.

(4) Prize Claims. Prize claim procedures shall be governed by the rules of the commission as set out in §401.304 of this subchapter and any internal procedures used by the commission. The MUSL and the Party Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the Selling Lottery.

(5) The MUSL and the Participating Lotteries shall not be responsible to a prize claimant for Plays redeemed in error by a selling agent, sales agent or retailer.

(6) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Drawing. MUSL and the Participating Lotteries are not responsible for Winning Numbers reported in error.

(i) Ineligible Players.

(1) A Play or share for a MUSL game issued by the MUSL or any of its Selling Lotteries shall not be purchased by, and a prize won by any such Play or share shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe Drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subparagraphs (A), (B), and (C) of this paragraph and residing in the same household.

(2) Those persons designated by a Selling Lottery's law as ineligible to play its games shall also be ineligible to Play the Powerball game in that Selling Lottery's jurisdiction.

(j) Applicable Law.

(1) In purchasing a Play, as evidenced by a ticket, or attempting to claim a prize, the purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Selling Lottery where the ticket was purchased, and by directives and determinations of the director of that Party Lottery.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Powerball game or a Powerball game promotion (as described in this section) can only be pursued against the Selling Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Selling Lottery that issued the Play. No claim shall be made against any other Participating Lottery or against the MUSL.

(3) Nothing in these Rules shall be construed as a waiver of any defense or claim the Selling Lottery which issued the Play, any other Participating Lottery or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against the Selling Lottery, any other Participating Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by a Selling Lottery, including the declaration of prizes and the payment thereof and the interpretation of Powerball Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the Lottery which issued the Play provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of the MUSL Powerball Rules or the laws, rules, regulations, procedures, and decisions of that Selling Lottery; any such prize claimed but unpaid shall constitute an unclaimed prize under these Rules and the laws, rules, regulations, procedures, and decisions of that Selling Lottery.

(k) Powerball Special Game Rules: Powerball Power Play®.

(1) Power Play® Description. The Powerball Power Play® is a promotional limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended herein. Power Play will begin at a time announced by the commission and will continue until discontinued by the commission. Power Play will offer to the owners of a qualifying Play a chance to increase the amount of any of the eight Low-Tier Set Prizes (the Low-Tier prizes normally paying $4 to $1,000,000) won in a Power Play Drawing. The Grand Prize is not a Set Prize and will not be increased. MUSL will conduct a separate random "Power Play" Drawing and announce results during each of the regular Powerball Drawings held during the promotion. During each Power Play Drawing a single number (2, 3, 4, 5 and sometimes 10) shall be drawn. The ten (10X) multiplier shall be available for all Drawings in which the initially Advertised Grand Prize amount is one hundred fifty million dollars ($150,000,000.00) or less. The probability of the possible Power Play numbers being drawn is indicated in Figure 16 TAC §401.317(k)(4)(D). The Powerball Group may modify the multiplier features for special promotions from time to time.

(2) Qualifying Play. A qualifying Play is any single PB Play for which the player pays an extra dollar ($1.00) for the Power Play option and which is recorded at the commission's lottery gaming system as a qualifying Power Play Play. [~~A Power Play Play purchase will not multiply a WTA Play.~~]

(3) Prizes to be Increased. Except as provided in the MUSL Powerball game rules and this section, a qualifying Play which wins

one of the seven lowest Set Prizes (excluding the Match 5 + 0) will be multiplied by the number drawn, either two (2), three (3), four (4), five (5), or sometimes ten (10), in a separate random Power Play Drawing announced during the official Powerball Drawing show. The ten (10X) multiplier will be available for Drawings in which the initially advertised annuitized Grand Prize amount is one hundred fifty million dollars ($150,000,000.00) or less. The announced Match 5+0 prize, for players selecting the Power Play option, shall be paid two million dollars ($2,000,000.00) unless a higher limited promotional dollar amount is announced by the Powerball Group.
Figure: 16 TAC §401.317(k)(3) (No change.)

(4) Prize Pool.

(A) Power Play Prize Pool. The Power Play Prize Pool is created to be used to fund Power Play Prizes and shall hold the temporary balances that may result from having fewer than expected winners in the Power Play. The source of the Power Play Prize Pool is the Party Lottery's weekly prize contributions less actual Power Play Prize liability. In total, fifty percent (50%) of each draw's sales shall be collected for the payment of prizes.

(i) In Drawings where the ten (10X) multiplier is available, the expected payout for all prize categories shall consist of up to forty-nine and nine hundred sixty-nine thousandths percent (49.969%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play. In Drawings where the ten (10X) multiplier is not available, the expected payout for all prize categories shall consist of up to forty-five and nine hundred thirty-four thousandths percent (45.934%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play.

(ii) In Drawings where the ten (10X) multiplier is available, an additional thirty-one thousandths percent (0.031%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play Prize Pool, for the purpose of paying Power Play prizes. In drawings where the ten (10X) multiplier is not available, an additional four and sixty-six thousandths percent (4.066%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play Prize Pool, for the purpose of paying Power Play Prizes.

(iii) The prize payout percentage per draw may vary. The Power Play Prize Pool shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play Prizes awarded in the current draw and held in the Power Play Prize Pool.

(B) End of Promotion. Any amount remaining in the Power Play Prize Pool when the Powerball Group declares the end of this promotion shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or promotion, or otherwise expended in a manner at the election of the individual Participating Lotteries of the Product Group in accordance with jurisdiction statute.

(C) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment cash prizes. Instead of the Powerball Set Prize amounts, qualifying winning Plays of Power Play will pay the amounts shown in paragraph (3) of this subsection, above. In certain rare instances, the Powerball Set Prize amount may be less than the amount shown in Figure: 16 TAC §401.317(k)(3). In such case, the eight lowest Power Play Prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball Set Prize amount of $50,000 becomes $25,000 under the rules of the Powerball game, and a 5X Power Play Multiplier is drawn, then a Power Play winning Play prize amount would win $125,000.

(D) Probability of Power Play Numbers Being Drawn. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball Power Play Drawing. The Powerball Group may elect to run limited promotions that may modify the multiplier features. Power Play does not apply to the Powerball Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 + 0 prize is set at two million dollars ($2,000,000.00), regardless of the multiplier selected.
Figure: 16 TAC §401.317(k)(4)(D)
~~Figure: 16 TAC §401.317(k)(4)(D)~~

(5) Limitations on Payment of Power Play Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Power Play Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(B) Pari-Mutuel Prizes--All Prize Amounts. If the total of the original Powerball Set Prizes and the Power Play Prizes awarded in a Drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the Power Play prize amounts) awarded shall first come from the amount available in the Set Prize Pool and the Power Play Prize Pool, if any, second from the Powerball Group's Set Prizes Reserve Account, if available, not to exceed forty million dollars ($40,000,000.00) per Drawing, and third from other amounts as agreed to by the Powerball Group in their sole discretion.

(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Power Play prize amounts), then the highest Set Prize (including the Power Play prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including the Power Play prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning Plays in proportion to their respective prize percentages. Powerball and Power Play prizes will be reduced by the same percentage. By agreement, the Licensee Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Power Play prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(6) Prize Payment.

(A) Prize Payments. All Power Play prizes shall be paid in a single payment through the Selling Lottery that sold the winning Power Play Play(s). A Selling Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.

(B) Prizes Rounded. Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

[(l) Powerball Special Game Rules: Powerball Winner Take All®.]

[(1) Winner Take All® (WTA) is a promotional add-on game element for the Powerball game and is conducted in accordance with the Powerball game rules and commission rules applicable to the Powerball game, except as may be amended herein.]

[(A) The promotion will begin at a time announced by the commission and will continue until discontinued by the MUSL Product Group and/or the commission.]

[(B) This promotion will offer to the owners of a qualifying WTA Play a chance to win the WTA Prize as a result of the selection of Winner Take All Winning Numbers.]

[(C) All rules applicable to the Powerball game in this section are applicable to the WTA promotion unless otherwise indicated.]

[(D) WTA is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) add-on promotion, to be drawn weekly on Mondays and/or Thursdays, as determined by the executive director, and which pays a single WTA Prize paid as a pari-mutuel single lump sum payment. Notification of WTA Drawing dates and times will be posted on the agency website and printed on the player's ticket evidencing purchase of the WTA Play(s).]

[(E) A WTA Drawing shall determine the Winning Numbers for the WTA promotion. During the WTA Drawing, five (5) numbers shall be drawn from the first set of sixty-nine (69) numbers, and one (1) number shall be drawn from the second set of twenty-six (26) numbers, which shall constitute the Winning Numbers.]

[(F) All WTA Play purchases shall qualify for the Drawing as indicated to the Player on the ticket as recorded on the commission's lottery gaming system. WTA Play(s) shall qualify for the next scheduled WTA Drawing, regardless of the date of the Drawing(s) for the qualifying purchased Powerball Plays. A WTA Play purchased before the close of sales on the day of the scheduled WTA Drawing will be eligible for that day's Drawing, otherwise, the WTA Play is eligible only on the next scheduled WTA Drawing. Advanced purchase for consecutive WTA Drawings is not available for the WTA promotion. Examples: (a) If a Player purchases one (1) Powerball and Power Play Play applicable for the next five (5) consecutive Powerball and Power Play Drawings, and selects the WTA option, the Player will receive one (1) WTA Play for the next scheduled WTA Drawing in addition to the one (1) Powerball and Power Play Plays for the next five (5) Powerball and Power Play Drawings. The purchase price for this selection would be sixteen dollars ($16.00), reflecting fifteen dollars ($15.00) for the five (5) advanced purchase Powerball and Power Play Plays, and one dollar ($1.00) for the WTA Play; (b) If a Player purchases two (2) Powerball and Power Play Plays applicable for the next five (5) consecutive Powerball and Power Play Drawings, and selects the WTA option, the Player will receive two (2) WTA Plays for the next scheduled WTA drawing in addition to the two (2) Powerball and Power Play Plays for the next five (5) Powerball Drawings. The purchase price for this selection would be thirty-two dollars ($32.00), reflecting thirty dollars ($30.00) for each of the five (5) advanced purchased Powerball and Power Play Plays, and two dollars ($2.00) for the WTA Plays.]

[(G) The winning WTA Play(s) are determined as the Play(s) matching the highest WTA Winning Numbers drawn in the scheduled WTA Drawing (see subparagraph (A) of paragraph (4) of this subsection). There is only one WTA Prize for each WTA Drawing and the WTA Prize will be divided on a pari-mutuel basis among all winning WTA Plays. For instance, if a WTA Play matching five (5) of the first set of Winning Numbers and none (0) of the second set is the highest level of matching numbers, then all Plays of that level will divide the entire WTA Prize and all remaining WTA Plays matching any combination of numbers will not qualify for a prize.]

[(H) The PB Play numbers selected by the player (or randomly generated as a Quick Pick selection) in the qualifying purchase, shall be used as the WTA Play numbers if the WTA promotion has been purchased. The ticket evidencing the WTA Play shall conspicuously indicate the WTA Play numbers and shall indicate the date of Drawing for which the WTA Play is applicable. This information shall be on a separate ticket from the PB Play(s).]

[(I) The Power Play multiplier is not applicable to the WTA promotion.]

[(2) Winner Take All Qualifying Play. To participate in the WTA add-on promotion, a player must first purchase a PB Play and Power Play Play, and then must pay an additional one dollar ($1.00) per WTA Play per each PB Play and Power Play Play purchased, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket. The Power Play purchase is required for each WTA Play purchase. The WTA Play shall be recorded on the commission's lottery gaming system as a WTA Play.]

[(3) Winner Take All Prize Pool. The prize pool for the WTA Prize shall consist of fifty percent (50%) of each WTA Drawing period's WTA Play sales, inclusive of any specific statutorily mandated tax of a Selling Lottery to be included in the price of a WTA Play, and including contributions to the prize pool accounts. For the WTA promotion, the Winner Take All Prize Pool (WTAPP), which is used to fund the WTA Prize, is hereby established. The contribution rate to the WTAPP shall be 100% of the prize pool (50.0% of WTA Play sales from each WTA Drawing period). Any amount remaining in the WTAPP when the Product Group declares the end of the promotion shall be returned to the Selling Lotteries participating in the accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or promotion, or otherwise expended in a manner at the election of the individual Participating Lotteries in accordance with jurisdiction statute. No amount of the WTAPP shall be used to fund Powerball or Power Play prizes. No Powerball or Power Play prize pool accounts or prize reserve accounts shall be used to fund WTA Prizes.]

[(4) Winner Take All® Expected Prize Payout Percentage and Winning Numbers Match Determination.]

[(A) Pari-Mutuel Determination. The WTA Prize payout shall be determined on a pari-mutuel basis. Except as otherwise mandated by jurisdiction statute or judicial requirements, or provided for in the MUSL Powerball game rules, the WTA Prize awarded will consist of 100% of the allocated prize pool and shall be paid as a single lump sum payment to the WTA Play(s) matching the most Winning Numbers in a WTA Drawing as indicated below:]

[(i) The WTA Prize will be paid to the holder(s) of the winning WTA Play(s) that matches all five (5) of the first set, plus one (1) of the second set selected in the WTA Drawing.]

[(ii) If the WTA Prize has not been awarded under clause (i) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches all five (5) of the first set and none (0) of the second set.]

[(iii) If the WTA Prize has not been awarded under clause (i) or (ii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any four (4) of the first set plus one (1) of the second set.]

[(iv) If the WTA Prize has not been awarded under clauses (i) through (iii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any four (4) of the first set and none (0) of the second set.]

[(v) If the WTA Prize has not been awarded under clauses (i) through (iv) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any three (3) of the first set plus one (1) of the second set.]

[(vi) If the WTA Prize has not been awarded under clauses (i) through (v) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any three (3) of the first set and none (0) of the second set.]

[(vii) If the WTA Prize has not been awarded under clauses (i) through (vi) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any two (2) of the first set plus one (1) of the second set.]

[(viii) If the WTA Prize has not been awarded under clauses (i) through (vii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any one (1) of the first set plus one (1) of the second set.]

[(ix) If the WTA Prize has not been awarded under clauses (i) through (viii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches none (0) of the first set plus one (1) of the second set.]

[(x) If the WTA Prize has not been awarded under clauses (i) through (ix) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any two (2) of the first set and none (0) of the second set.]

[(xi) If the WTA Prize has not been awarded under clauses (i) through (x) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any one (1) of the first set and none (0) of the second set.]

[(xii) If the WTA Prize has not been awarded under clauses (i) through (xi) of this subparagraph, then the WTAPP shall be carried forward to the subsequent Drawing.]

[(B) WTA Prize Pool Allocation. The WTAPP money allocated to the WTA Prize shall be divided on a pari-mutuel basis by the number of winning WTA Plays. The WTA Prize shall not be multiplied by the Power Play multiplier.]

[(C) WTA Prize Pool Carried Forward. The WTAPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the WTA Prize(s) awarded in the current draw (See clause (xi) of subparagraph (4)(A) of subsection (l) and subparagraph (D) of paragraph (6) of subsection (l) of this section).]

[(5) Winner Take All Probabilities. The odds of winning a prize in the WTA promotion depend on the highest prize level at which the WTA Prize is won. As more fully described in subparagraph (4) above, the winning WTA Play(s) are determined as the WTA Play(s) matching the highest WTA Winning Numbers drawn in the scheduled drawing. The following table sets forth the probability of a WTA Play matching the Winning Numbers from the WTA Drawing:]
[Figure: 16 TAC §401.317(l)(5)]

[(6) Winner Take All Prize Payment. There is only one WTA Prize for each WTA Drawing and the WTA Prize will be divided on a pari-mutuel basis among all winning WTA Plays and shall be paid as a single lump sum payment to each holder of a winning WTA Play.]

[(A) WTA Prize payments (whether described as "cash" payment prizes or otherwise) shall be paid through the Selling Lottery(ies) that sold the winning WTA Play(s) and at the discretion of the Selling Lottery(ies) that sold the winning WTA Play(s) may be paid by cash, check, warrant or electronic transfer.]

[(B) A Selling Lottery may begin making WTA Prize payment(s) after receiving confirmation from MUSL of the WTA prize winning Play(s) and WTA Prize amount(s) to be paid.]

[(C) A lottery may elect to make WTA Prize payment(s) from its own funds after validation, without having received a transfer from MUSL, with prior notice to MUSL.]

[(D) WTA Prize Rounded; Breakage Carried Forward. The WTA Prize is a single prize that will be divided on a pari-mutuel basis among all holders of winning WTA Plays, and therefore, being a pari-mutuel prize may be rounded down so that amounts may be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.]

[(E) WTA Prize Claim Period. WTA Prize claims shall be submitted within one hundred eighty (180) days after the Drawing date.]

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805430
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.28

(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 §74.28 is not included in the print version of the Texas Register. The figure is available in the online version of the December 28, 2018, issue of the Texas Register.)

The State Board of Education (SBOE) proposes an amendment to §74.28, concerning students with dyslexia and related disorders. The proposed amendment would adopt in rule as a figure the updated *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook)*.

Section 74.28 provides guidance to school districts and open-enrollment charter schools for identifying students with dyslexia or related disorders and providing appropriate services to those students.

The Texas Education Agency (TEA) convened two committees to develop recommendations to update the *Dyslexia Handbook,* one committee to review updates related to screening students and a second committee to review updates related to student identification. The two committees were convened in March, May, June, July, and August 2018 to make recommendations for updates to the *Dyslexia Handbook.* The SBOE approved updates to the *Dyslexia Handbook* at its November 16, 2018 meeting.

The proposed amendment would adopt the updated *Dyslexia Handbook* as Figure: 19 TAC §74.28(c).

The SBOE approved the amendment for first reading and filing authorization at its November 16, 2018 meeting.

The proposed amendment would have no new procedural and reporting requirements. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs to state government as a result of enforcing or administering the proposed amendment beyond what the authorizing statute requires. School districts and charter schools may incur costs for dyslexia screening required by statute. Because there are multiple assessments that can be used to screen for dyslexia, it is difficult to estimate the exact cost of the required screening for any given district.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be giving districts and schools accurate and appropriate resources and information for providing services to students with dyslexia and related disorders and for complying with state and federal laws regarding these students. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(28), which requires the State Board of Education (SBOE) to approve a program for testing students for dyslexia and related disorders; and TEC, §38.003, which requires that students enrolling in public schools be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(28) and §38.003.

§74.28. Students with Dyslexia and Related Disorders.

(a) In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, school districts and open-enrollment charter schools shall provide each student with dyslexia or a related disorder access to each program under which the student qualifies for services.

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate, evidence-based instructional services to the student are implemented in the district.

(c) A school district's or open-enrollment charter school's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, individualized evaluation, and techniques for treating dyslexia and related disorders. The strategies and techniques are described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders [~~,~~] " provided in this subsection. The handbook is a set of guidelines for school districts and open-enrollment charter schools that may be modified by the SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state.
Figure: 19 TAC §74.28(c)

(d) Screening as described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" and further evaluation should only be conducted by individuals who are trained in valid, evidence-based assessments and who are trained to appropriately evaluate students for dyslexia and related disorders.

(e) A school district or open-enrollment charter school shall purchase a reading program or develop its own evidence-based reading program for students with dyslexia and related disorders that is aligned with the descriptors found in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies that use individualized, intensive, multisensory, phonetic methods and

a variety of writing and spelling components described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." The professional development activities specified by each open-enrollment charter school and district and/or campus planning and decision making committee shall include these instructional strategies.

(f) At least five school days before any evaluation or identification procedure is used selectively with an individual student, the school district or open-enrollment charter school must provide written notification to the student's parent or guardian or another person standing in parental relation to the student of the proposed identification or evaluation. The notice must be in English, or to the extent practicable, the individual's native language and must include the following:

(1) a reasonable description of the evaluation procedure to be used with the individual student;

(2) information related to any instructional intervention or strategy used to assist the student prior to evaluation;

(3) an estimated time frame within which the evaluation will be completed; and

(4) specific contact information for the campus point of contact, relevant Parent Training and Information Projects, and any other appropriate parent resources.

(g) Before a full individual and initial evaluation is conducted to determine whether a student has a disability under the Individuals with Disabilities Education Act (IDEA), the school district or open-enrollment charter school must notify the student's parent or guardian or another person standing in parental relation to the student of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503, provide all information required under subsection (f) of this section, and provide:

(1) a copy of the procedural safeguards notice required by 34 CFR, §300.504;

(2) an opportunity to give written consent for the evaluation; and

(3) a copy of information required under Texas Education Code (TEC), §26.0081.

(h) Parents/guardians of a student with dyslexia or a related disorder must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support models as required by TEC, §26.0081(d), and options under federal law, including IDEA and the Rehabilitation Act, §504.

(i) Each school or open-enrollment charter school must provide each identified student access at his or her campus to instructional programs required in subsection (e) of this section and to the services of a teacher trained in dyslexia and related disorders. The school district or open-enrollment charter school may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(j) Because early intervention is critical, a process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be available in each district and open-enrollment charter school as outlined in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." School districts and open-enrollment charter schools may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.

(k) Each school district and open-enrollment charter school shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program must include:

(1) awareness and characteristics of dyslexia and related disorders;

(2) information on testing and diagnosis of dyslexia and related disorders;

(3) information on effective strategies for teaching students with dyslexia and related disorders;

(4) information on qualifications of those delivering services to students with dyslexia and related disorders;

(5) awareness of information on accommodations and modifications, especially those allowed for standardized testing;

(6) information on eligibility, evaluation requests, and services available under IDEA and the Rehabilitation Act, §504, and information on the response to intervention process; and

(7) contact information for the relevant regional and/or school district or open-enrollment charter school specialists.

(l) School districts and open-enrollment charter schools shall provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."

(m) School districts and open-enrollment charter schools will be subject to monitoring for compliance with federal law and regulations in connection with this section.

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

Filed with the Office of the Secretary of State on December 28, 2018.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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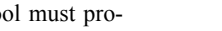
For further information, please call: (512) 475-1497



CHAPTER 117. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR FINE ARTS SUBCHAPTER C. HIGH SCHOOL, ADOPTED 2013

19 TAC §117.327, §117.328

The State Board of Education (SBOE) proposes new §117.327 and §117.328, concerning Texas Essential Knowledge and Skills (TEKS) for fine arts. The proposed new sections would add two International Baccalaureate (IB) courses to the fine arts TEKS to align with current course offerings by the International Baccalaureate Organization.

In order for students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and

included in administrative rule. At the September 2017 SBOE meeting, the committee discussed IB courses that are not currently included in SBOE rule and considerations regarding the appropriate amount of state credit that should be awarded for IB courses. At that time, the board requested that agency staff prepare rule text to address these issues and requested that staff balance the chapters that would be updated over two different meetings. At the January-February 2018 meeting, the SBOE approved revisions to English language arts and reading, mathematics, science, and languages other than English IB courses for second reading and final adoption. The SBOE's approval included the addition of eight IB courses to SBOE rules and updates that increased the amount of credit available for 17 IB courses currently in rule. The revisions became effective August 27, 2018.

At the April 2018 meeting, the SBOE approved for second reading and final adoption revisions to align the TEKS in science, social studies, economics, and technology applications with additional IB course offerings and update the amount of credit available for both IB and Advanced Placement (AP) courses in these subject areas. The SBOE's approval included the addition of nine IB courses to SBOE rules and updates to the amount of credit available for seven AP and IB courses currently in rule. The revisions became effective August 27, 2018.

In spring 2015, IB Film Standard Level and IB Film Higher Level were approved as innovative courses by the commissioner of education for use beginning with the 2016-2017 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

The SBOE discussed the addition of IB film courses to the fine arts TEKS at the September 2018 meeting. At that time, the SBOE asked staff to prepare proposed rules to add these two courses to the fine arts TEKS.

The proposed new sections would add §117.327, International Baccalaureate (IB) Film Standard Level (SL) (Two Credits), and §117.328, International Baccalaureate (IB) Film Higher Level (HL) (Two Credits), to the fine arts TEKS. The new courses would be effective beginning with the 2019-2020 school year.

The SBOE approved the new sections for first reading and filing authorization at its November 16, 2018 meeting.

The proposed new sections would have no procedural and reporting requirements. The proposed new sections would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed new sections are in effect there will be no additional costs to state or local government as a result of enforcing or administering the proposed new sections.

There is no effect on local economy for the first five years that the proposed new sections are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new sections do not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, are not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be adding TEKS-based IB courses to allow students more flexibility in meeting state requirements for graduation. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§117.327. International Baccalaureate (IB) Film Standard Level (SL) (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. This course is recommended for students in Grade 11 or 12.

(b) Content requirements. Content requirements for IB Film SL are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

§117.328. International Baccalaureate (IB) Film Higher Level (HL) (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. This course is recommended for students in Grade 11 or 12.

(b) Content requirements. Content requirements for IB Film HL are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

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

Filed with the Office of the Secretary of State on December 14, 2018.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 27, 2019
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.410

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes an amendment to §37.410, concerning the State Child Fatality Review Team Committee.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to align the rule with Texas Family Code, Chapter 264, Subchapter F, Child Fatality Review and Investigation. The amendment is necessary to comply with House Bill 1549, 85th Legislature, Regular Session, 2017, regarding the State Child Fatality Review Team Committee (committee) composition and requirements.

There are additional changes proposed by program to clean up language, clarify term limits, and streamline the rule for clarity and readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §37.410(c)(2) adds the word "the" for clarity and readability.

The proposed amendment to §37.410(d)(1) clarifies the timeframe for publishing the committee biennial report as defined in the Texas Family Code, §264.503(f).

The proposed amendment to §37.410(d)(3) deletes the language that the committee will submit data reports to vital statistics as required by Texas Family Code, §264.506. This data report is a responsibility of the local child fatality review teams, not the state committee.

The proposed amendment to §37.410(e)(1) and (2) adds three committee members and adds the requirement for non-agency appointed members to be a part of a local child fatality review team in accordance with Texas Family Code, §264.502(a), (b) and (h). The proposed amendment also clarifies who appoints non-permanent members to align with the Texas Family Code. The paragraphs are relabeled to account for addition of paragraphs and subparagraphs.

The proposed amendment to §37.410(f) clarifies member term limits in accordance with agency policy. The paragraphs are renumbered to account for deletion of a paragraph.

The proposed amendments to §37.410(g), (h) and (i) update language related to referencing officers.

The proposed amendment to §37.410(h) clarifies applicability of the Texas Family Code, §264.504, relating to Meetings of Committee.

The proposed amendment to §37.410(k) deletes paragraphs (1) - (4) and streamlines the rule and requires the committee to adopt bylaws to outline meeting procedures in accordance with agency advisory committee policies.

FISCAL NOTE

Dr. Manda Hall, Associate Commissioner of the Community Health Improvement Division, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of employee positions;

(3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule will not affect fees paid to the agency;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

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

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

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

Donna Sheppard, Chief Financial Officer, has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons; is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule; and is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be a better understanding of the causes and incidences of child death in Texas and provide strategies for reducing the number of preventable child deaths.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Amy Bailey at (512) 776-2311 in DSHS Community Health Improvement Division.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code 1150, Austin, Texas 78714-9030 or street address 4900 North Lamar Boulevard, MC 1150, Austin, Texas 78751; or faxed to (512) 776-7358; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us*. When faxing or emailing comments, please indicate "Comments on Proposed Rule 18R028" in the subject line.

Comments are accepted for 30 days following publication of the proposal in the *Texas Register.* If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, faxed or emailed before midnight on the following business day to be accepted.

ADDITIONAL INFORMATION

For further information, please call: (512) 776-7321.

STATUTORY AUTHORITY

The amendment is authorized by Texas Family Code, §264.503 which describes the purpose and duties of the committee; and Texas Government Code, §531.0055(e), and the Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment affects Texas Family Code, Chapter 264; Texas Government Code, Chapter 531; and Texas Health and Safety Code, Chapter 1001.

§37.410. State Child Fatality Review Team Committee.

(a) The committee. The State Child Fatality Review Team Committee (committee) is appointed under and governed by this section. The committee is established under Texas Family Code, §§264.501 - 264.515.

(b) Purpose. The purpose of the committee is to reduce the number of preventable deaths to children in the State of Texas.

(c) Tasks.

(1) The committee develops an understanding of the causes and incidences of child death in Texas.

(2) The committee identifies procedures within the agencies represented on the committee to reduce the number of preventable child deaths.

(3) The committee promotes public awareness and makes recommendations to the Governor and Texas Legislature for changes in law, policy, and practice to reduce the number of preventable child deaths.

(d) Reports.

(1) Not later than April 1 of each even-numbered year, the [~~The~~] committee files a biennial written report with the Governor, Lieutenant Governor, Speaker of the House of Representatives, Texas Department of State Health Services (DSHS), and Texas Department of Family and Protective Services (DFPS) and makes the report available to the public.

(2) The report contains aggregate child fatality data collected by local child fatality review teams, recommendations to prevent child fatalities and injuries, and recommendations to DFPS based on input from the child safety review subcommittee.

[~~(3) The committee shall submit data reports to the Vital Statistics Unit not later than the 30th day after the day on which the review of child fatalities took place.~~]

(e) Composition.

(1) The committee is composed of 25 [~~22~~] members. Permanent members of the [~~appointed by the Texas Health and Human Services Commission (HHSC) Executive Commissioner. The~~] committee include [~~includes~~]:

(A) [~~(1)~~] a person appointed by and representing the State Registrar of Vital Statistics;

(B) [~~(2)~~] a person appointed by and representing the DFPS [~~DSHS~~] Commissioner;

(C) [~~(3)~~] a person appointed by and representing the DSHS Title V Director; [~~and~~]

(D) a person appointed by and representing the speaker of the house of representatives;

(E) a person appointed by and representing the lieutenant governor; and

(F) a person appointed by and representing the governor.

(2) The permanent members of the committee who serve under paragraph (1) of this subsection, shall appoint the following committee members, who must be members of their local Child Fatality Review Team, unless the committee member is an appointed representative of a state agency:

[~~(4)~~] [~~the following individuals:~~]

(A) a criminal prosecutor involved in prosecuting crimes against children;

(B) a sheriff;

(C) a justice of the peace;

(D) a medical examiner;

(E) a police chief;

(F) a pediatrician experienced in diagnosing and treating child abuse and neglect;

(G) a child educator;

(H) a child mental health provider;

(I) a public health professional;

(J) a child protective services specialist;

(K) a sudden infant death syndrome family service provider;

(L) a neonatologist;

(M) a child advocate;

(N) a chief juvenile probation officer;

(O) a child abuse prevention specialist;

(P) a representative of the Texas Department of Public Safety;

(Q) a representative of the Texas Department of Transportation;

(R) an emergency medical services provider; and

(S) a provider of services to, or an advocate for, victims of family violence.

(f) Terms of office. Except as necessary to stagger terms, the term of office for members that are appointed under subsection (e)(2) of this section [~~each member~~] is three years.

(1) Members [~~At the expiration of their terms, members~~] may apply to serve up to two terms. Terms do not have to be consecutive [~~renew their terms~~].

[~~(2) The person appointed by and representing the State Registrar of Vital Statistics, the person appointed by and representing the DSHS Commissioner, and the person appointed by and representing the DSHS Title V Director are permanent members of the committee.~~]

(2) [~~(3)~~] An appointment to a vacancy on the committee is made in the same manner as the original appointment.

(g) Officers. The committee selects from its members a chair [~~presiding officer~~] and vice-chair [~~an assistant presiding officer~~].

(1) The chair [~~presiding officer~~] presides at all committee meetings at which he or she is in attendance and calls meetings of the committee.

(2) The vice-chair [~~assistant presiding officer~~] presides at meetings if the chair [~~presiding officer~~] is unable to attend.

(h) Meetings.

(1) The committee meets quarterly.

(2) Meeting arrangements are made by DSHS staff.

(3) Except as provided by Texas Family Code, §264.504 (b), (c), and (d), the [~~The~~] committee is a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) A simple majority of the appointed committee members constitutes a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(6) The agenda for each committee meeting includes an item entitled public comment under which any person is allowed to address the committee on matters relating to business. The chair [~~presiding officer~~] may establish procedures for public comment, including a time limit on each comment.

(i) Attendance. Members must attend committee meetings as scheduled.

(1) A member must notify the chair [~~presiding officer~~] or appropriate DSHS staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for which the member is appointed because of illness or disability or is absent from more than one committee meeting per year.

(3) A member may give another member voting proxy upon his or her absence.

(j) Staff. Staff support for the committee is provided by DSHS.

(k) Procedures. The committee shall adopt bylaws to outline meeting and operating procedures.

[~~(1) Any action taken by the committee must be approved by a majority vote of the members present, once quorum is established.~~]

[~~(2) Each member has one vote unless given proxy by another member.~~]

[~~(3) The committee makes decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.~~]

[~~(4) Minutes of each committee meeting are taken by DSHS staff and approved by the committee at the next scheduled meeting.~~]

(l) Statement by members.

(1) HHSC, DSHS, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from HHSC, DSHS, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the committee. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member may not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member may not disclose confidential information acquired through his or her committee membership.

(5) A committee member may not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(m) Reimbursement for expenses. A member of the committee is not entitled to compensation for serving on the committee but is entitled to reimbursement for the member's travel expenses as provided for in the General Appropriations Act.

(1) Reimbursement for a person serving on the committee is paid from funds appropriated by DSHS.

(2) Reimbursement for other persons serving on the committee shall be paid from funds appropriated to DSHS.

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805330
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 776-7321

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CHAPTER 73. LABORATORIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes an amendment to §73.41, concerning Sale of Laboratory Services; and the repeal of §73.54, concerning Fee Schedule for Clinical Testing and Newborn Screening; and the repeal of §73.55, concerning Fee Schedule for Chemical Analyses.

BACKGROUND AND PURPOSE

The purpose of the amendment to §73.41 is to inform stakeholders that future changes to the Laboratory Services Section (LSS) Public Fee Schedule will be posted on the LSS website at www.dshs.texas.gov/lab. The repeal of §73.54 and §73.55 removes the Fee Schedule for Clinical Testing and Newborn Screening, as well as Chemical Analyses, from rules in Texas Administrative Code (TAC) Title 25.

Future changes to the LSS Public Fee Schedule will be posted on the LSS website and may include: (1) the addition of new tests or deletion of low volume tests as needed, (2) fee increases for existing tests, an individual test would not be increased more than once per year, (3) decreases in fees for existing tests will be made as necessary, and (4) test changes in the event of a declared public health emergency or outbreak. These changes will be made based on the business needs of the LSS, or public health needs. Proposed changes will allow for stakeholder input prior to the implementation date as well as LSS customer communication regarding all changes to the LSS Public Fee Schedule. The only exception is in the case of a declared public health emergency or outbreak.

Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, required that DSHS: (1) develop, document, and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for the provision of laboratory tests and (2) analyze DSHS' costs and update the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). Although SB 80 expired in 2013, the DSHS LSS continues to use a methodology approved by DSHS Executive Management (Chief Financial Officer and Deputy Chief Financial Officer) for the determination of fees. A key component of the current fee change process is to notify all LSS stakeholders of the proposed changes and request feedback on the suggested fee increases. The LSS longstanding practice to engage stakeholders has included direct communication, LSS website and list-serve postings. Under the new proposed process, the LSS will continue to include time for stakeholder feedback and ample communication. Specifically, any change in fees will be posted on the LSS website for at least 90 days to allow for stakeholder feedback and LSS customer communication regarding all changes to the LSS Public Fee Schedule. The LSS will continue to use the same methods of outreach and communication with stakeholders in order to ensure timely and inclusive stakeholder involvement in the fee change process.

All of these proposed amendments comply with the Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 that allow DSHS to charge fees to a person who receives public health services from DSHS (which explicitly includes laboratory services), in an amount that recovers the cost to DSHS for providing that service.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §73.41, concerning Sale of Laboratory Services, adds language clarifying that future changes to the LSS Public Fee Schedule will be found on the LSS website at www.dshs.texas.gov/lab. The rule references to §73.54 and §73.55 are being removed from the rule text and replaced with the link to the revised website. New §73.41(f) describes that changes to available laboratory testing and related pricing may include implementation of new testing methodologies (such as Zika or other emerging diseases) in the DSHS LSS, updating fees to reflect the cost of testing, and elimination of certain low volume tests to make more efficient use of staff time and to reduce costs. Any change in fees will include processes for stakeholder input as well as LSS customer communication regarding all changes to the LSS Public Fee Schedule. Updating the LSS Public Fee Schedule directly through the LSS website will help facilitate effective cost recovery and allow offering of emerging laboratory testing to respond to public health threats on a broader scale, and will ensure the most accurate LSS Public Fee Schedule and information will be available to the public.

Section 73.54 and §73.55 are proposed for repeal as the content of the rules will be provided on the LSS website.

FISCAL NOTE

Dr. Grace Kubin, Director, LSS, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. Information posted on the LSS website will clearly layout the fiscal impact of any changes on specific fees.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency. This specific change only impacts the process for updating fees and tests in the LSS Public Fee Schedule, but does not impact the fees themselves;

(5) the proposed rules will not create a new rule;

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

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

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

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

Dr. Kubin has also determined that there will be very little or no adverse economic effect on small businesses, micro-businesses, or rural communities. The only impact would be if a business does not have easy access to internet services in order to review the online Public LSS Fee Schedule, they would have to request and receive the fee schedule via US mail. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas. The rule change in and of itself does not have a fiscal impact. Information posted on the LSS website will clearly layout the fiscal impact of any changes on specific fees. Any proposed changes to costs of regulated persons would be communicated to the public and allow for stakeholder feedback prior to the implementation of the new fee.

PUBLIC BENEFIT

Dr. Kubin has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be as mentioned in the Section-by-Section Summary, will facilitate effective cost recovery and allow the offering of emerging laboratory testing to respond to public health threats on a broader scale, and will ensure the most accurate LSS Public Fee Schedule and information will be available to the public.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Martha Thompson at (512) 776-6191 in the DSHS Laboratory Services Section.

Written comments on the proposal may be submitted to the Laboratory Services Section, P.O. Box 149347, Mail Code 1947, Austin, Texas 78714-9347 or physical address 1100 West 49th Street, Austin, Texas 78756; by fax (512) 776-7406; or by email to hhsrulescoordinationoffice@hhsc.state.tx.us. When faxing or emailing comments, please indicate "Comments on Proposed Rules 18R067" in the subject line.

Comments are accepted for 30 days following publication of the proposal in the *Texas Register*. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, faxed or emailed before midnight on the following business day to be accepted.

ADDITIONAL INFORMATION

For further information, please call: (512) 776-6191.

25 TAC §73.41

STATUTORY AUTHORITY

The amendment is authorized under Texas Health and Safety Code, §12.031 and §12.032 which allow DSHS to charge fees to a person who receives public health services from DSHS; §12.034 which requires DSHS to establish collection procedures; §12.035 which requires the DSHS to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of DSHS' public health service fee fund; §12.0122 which allows DSHS to enter into a contract for laboratory services; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment affects the Texas Health and Safety Code, Chapters 12 and 1001; and Texas Government Code, Chapter 531.

§73.41. Sale of Laboratory Services.

(a) Purpose. This section details the procedures concerning the sale of laboratory services by the Department of State Health Services (department). Particular services, [~~Certain of these services are set out by rule~~] with specific charges for each listed service, are found on the Laboratory Services Section (LSS) website (www.dshs.texas.gov/lab) [~~as found in §73.54 and §73.55 of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening and Fee Schedule for Chemical Analyses)~~]. Provision of those listed services by the department may or may not involve a contract, at the department's discretion. Other services[~~,~~] not found in the LSS Public Fee Schedule [~~those fee schedules,~~] that the department elects to sell will be memorialized in a contract between the department and the purchaser of such services [~~service(s)~~]. Entities which the department may contract with for the sale of laboratory services are limited to those found at Health and Safety Code, §12.0122. At the department's discretion, tests designated to be performed at a particular department laboratory may be performed at any of the department laboratories.

(b) Definition of laboratory services. Laboratory services include the sale of the following services: the evaluation and [~~and/or~~] testing of samples, and the subsequent reporting of test or evaluation results for samples submitted to the laboratory; certification, accredi-

tation or approval of milk and shellfish laboratories and milk analysts; and special projects. Laboratory Services, as limited by Health and Safety Code, §12.0122, do not include services related to tissue and cytology specimens [~~except for pap smears for recipients under federally funded programs~~].

(c) Charges. Fees for the sale of laboratory services to the public found on the LSS website [~~in the fee schedules at §73.54 and §73.55 of this title~~] were calculated to recover the department's costs associated with such activities. When laboratory services outside of the LSS Public Fee Schedule [~~those fee schedules~~] are sold under this section, the contract executed for that sale shall include charges for the services in question which recover the department's costs associated with such activities.

(d) Other contracts. This section does not affect department contracts that are not governed by Health and Safety Code, §12.0122.

(e) Fees. The LSS Public Fee Schedule [~~A schedule of all fees~~] is available upon request from the Department of State Health Services, 1100 West 49th Street, Austin, TX 78756-3199, (512) 776-7318. It is also available online at http://www.dshs.texas.gov/lab [~~in the Laboratory Testing Services Manual (currently found at http://www.dshs.state.tx.us/lab)~~].

(f) Future updates for laboratory services and fees. Changes to the LSS Public Fee Schedule will be posted on the LSS website and made based on the business needs of the LSS and the public health needs of the department. Changes to available laboratory testing and related pricing may include implementing new testing methodologies in the LSS, updating fees to reflect the cost of testing, and eliminating certain low volume tests to make more efficient use of staff time and to reduce costs. Any change in fees will be posted on the LSS website for at least 90 days to allow for stakeholder input as well as LSS customer communication regarding all changes to the LSS Public Fee Schedule. After the period for stakeholder notification and input, changes and amendments affecting the LSS Public Fee Schedule will be added to the LSS Public Fee Schedule as soon as practicable. Changes may include the following:

(1) the addition of new tests or deletion of low volume tests as needed;

(2) an increase in fees for existing tests may be applied to a test individually or collectively, but an individual test fee would not be increased more than once per year;

(3) a decrease in fees for existing tests as needed; or

(4) a change to the LSS Public Fee Schedule in response to a declared public health emergency or outbreak situation. This change may not include a formal process to receive stakeholder input before implementing a new test in order to ensure a rapid public health action. In the event of a declared public health emergency or outbreak, the LSS may implement tests as required without contract provisions or posting in the LSS Public Fee Schedule.

(g) [~~(f)~~] Payment of charges.

(1) The department will determine whether a charge must be paid with submission of the specimen or whether the department will bill later for the charge, unless otherwise stated in this section.

(2) A charge paid is non-refundable.

(3) Failure to pay a charge in a timely manner may result in the department's refusal to accept specimens or samples until all delinquent charges are paid.

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805328
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 776-6191

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25 TAC §73.54, §73.55

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, §12.031 and §12.032 which allow DSHS to charge fees to a person who receives public health services from DSHS; §12.034 which requires DSHS to establish collection procedures; §12.035 which requires the DSHS to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of DSHS' public health service fee fund; §12.0122 which allows DSHS to enter into a contract for laboratory services; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals affect the Texas Health and Safety Code, Chapters 12 and 1001; and Texas Government Code, Chapter 531.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

§73.55. Fee Schedule for Chemical Analyses.

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

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Barbara L. Klein
General Counsel
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Texas Department of Insurance proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Senate Bill 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. Amending §3.9901 is necessary to implement the provisions of SB 1654, because Insurance Code §425.073 requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). The valuation manual adopted by the NAIC may be viewed at the following website: www.naic.org/documents/cmte_a_latf_related_val_2019_edition.pdf.

Under Insurance Code §425.073 the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner must determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership, and by NAIC members representing jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 7, 2018, and September 10, 2018, the NAIC adopted changes to the valuation manual with a vote meeting the requirements set out in Insurance Code §425.073(c). On October 31, 2018, the Commissioner issued Commissioner's Order No. 2018-5690, making the determination that the NAIC vote met the §423.073(c) requirements.

The valuation manual amendments proposed to be adopted by the Commissioner provide updated reserving and reporting requirements for the valuation manual that are substantially similar to changes adopted by the NAIC.

Section 3.9901 as amended adopts an updated valuation manual, as required by Insurance Code §425.073.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards; and under Insurance Code §36.004 and §36.007, TDI must consider whether authority exists to enforce or adopt it. TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC and subsection (c) of the section expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that for each year of the first five years that the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section. This determination was made because the proposed amendment does not add or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment. Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal. This is because the proposed amendment does not have requirements that would directly affect local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities, because it does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose costs on regulated persons that are not mandated by law. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendment provides reserve and other requirements needed for solvency and required by statute. The proposed rule implements Insurance Code Section §425.073, as added by SB 1654, 84th Legislature, 2015.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; or

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on January 14, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to chiefclerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., Central time, on January 14, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073(c), enacted by SB 1654, 84th Legislature, Regular Session (2015).

§3.9901. Adoption of Valuation Manual and Operative Date.

(a) The Commissioner [~~commissioner~~] adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through September 10, 2018, [~~August 9, 2017,~~] as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805429
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 676-6584

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER J. PROHIBITED TRADE PRACTICES
28 TAC §21.1007

The Texas Department of Insurance proposes to amend 28 TAC §21.1007, relating to restrictions on using underwriting guidelines based on a water damage claim, previous mold damage, or a mold damage claim. The amendments to §21.1007 implement Senate Bill 202, 84th Legislature, Regular Session (2015), which amended Occupations Code Chapter 1958 and transferred regulation of mold assessment and remediation from the Texas Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR).

EXPLANATION. Amendments to §21.1007 are proposed to reflect the transferred regulation of mold assessment and remediation from DSHS to TDLR under SB 202. The section is also amended to make nonsubstantive changes for clarity and consistency with TDI's current writing style, and to update statutory and administrative citations, TDI's web address, and other TDI information.

Section 21.1007(b). Proposed amendments to §21.1007(b) add the statutory definition of "appliance" under Insurance Code §544.352(a), to clarify the meaning of the term "appliance-related," in §21.1007.

The proposed definition of "appliance-related claim" removes examples of specific appliances, because examples of appliances are included in the proposed definition of "appliance."

The proposed amendments to §21.1007(b) also alphabetize the definitions and renumber each defined term based on that revised order.

Section 21.1007(d). Proposed amendments to §21.1007(d) include moving the reference to an insurer's authorized inspectors from the first sentence of §21.1007(d)(5) to proposed (d)(3)(E), so that (d)(3) includes a complete list of all individuals authorized to inspect and certify appliance-related water damage remediation.

Proposed amendments to §21.1007(d) change references to "assessors" and "remediators" to "mold assessment consultants" and "mold remediation contractors," for consistency with the TDLR regulation addressing mold assessors and remediators in 16 TAC §78.150.

Proposed amendments to §21.1007(d) adopt by reference the water damage repair certificate form (PC327 WDR1). The form complies with Insurance Code Chapter 544. Because the form is adopted by reference, substantive requirements on the form will not change except through a subsequent rule amendment process. Nonsubstantive information on the form, such as TDI contact information, and formatting of the text are subject to change. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

Proposed amendments to §21.1007(d) make nonsubstantive editorial changes and reorganize the order of language in §21.1007(d)(4) and §21.1007(d)(5) to improve the rule's clarity and sequencing; update statutory citations; and update TDI's web address and outdated references to TDI's Automobile/Homeowners Section, which no longer exists.

Section 21.1007(e). Proposed amendments to §21.1007(e) include replacing references to "Texas Department of State Health Services" with references to "Texas Department of Licensing and Regulation," to conform with SB 202.

Proposed amendments to §21.1007(e) adopt by reference the mold damage remediation certificate form (PC326 MDR1). The

form complies with Occupations Code Chapter 1958 and Insurance Code Chapter 544. Because the form is adopted by reference, substantive requirements on the form will not change except through a subsequent rule amendment process. Nonsubstantive information on the form, such as TDI contact information, and formatting of the text are subject to change. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

Proposed amendments to §21.1007(e) also update TDI's web address and an outdated reference to TDI's Automobile/Homeowners Section.

Section 21.1007(f). Proposed amendments to §21.1007(f) include adding a reference to 28 TAC §5.9310(f), which already establishes requirements for submitting underwriting guidelines filings.

Section 21.1007(g). Proposed amendments to §21.1007 remove subsection (g). The subsection is unnecessary because it only addresses an effective date that has passed.

In addition to the changes already described, the proposed amendments to §21.1007 include nonsubstantive editorial and formatting changes throughout the rule to conform it to TDI's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, manager, Property and Casualty Lines Office, Regulatory Policy Division, has determined that during each year of the first five years the proposed amended section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Muckerheide expects that administering and enforcing the proposed amendments will have the public benefit of ensuring that the rule conforms to Insurance Code Chapter 544, Subchapters G and H, and Occupations Code Chapter 1958. The anticipated public benefit is implementing a rule necessary to comply with SB 202.

Mr. Muckerheide expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 544, Subchapters G and H, or Occupations Code Chapter 1958, because the proposed amendments do not impose requirements beyond those in the statutes and current §21.1007. The proposed amendments make one material change: they reflect the transfer of regulation of mold assessment and remediation from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation under SB 202. As a result, any cost associated with this change does not result from the enforcement or administration of the proposed amendments.

Beyond reflecting the transfer of regulation of mold assessment and remediation, the proposed amendments make nonsubstantive changes to improve the rule's clarity and provide consistency with the agency's current writing style. There will be no cost associated with the amendments to the rule because they will not substantively alter §21.1007 and, as a result, will not affect enforcement or administration of the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The proposed amendments should not impose a cost because the only material change is replacing references to DSHS with references to TDLR. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. However, if there were a cost, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendments to §21.1007 are necessary to implement SB 202. The proposed amendments to the rule implement Occupations Code, Chapter 1958, as amended by, SB 202, 84th Legislature, Regular Session (2015).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule will not:

- create or eliminate a government program;

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

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

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit, or repeal an existing regulation;

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

- positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on January 28, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., Central time, on January 28, 2019. If TDI holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §21.1007 under Occupations Code §1958.154 and Insurance Code §§544.304, 544.354, and 36.001.

Occupations Code §1958.154 provides that the Commissioner of Insurance adopt rules describing the information required in the mold remediation certificate, and that the Commissioner design the certificate as necessary to comply with any requirements imposed under Insurance Code Chapter 544, Subchapter G.

Insurance Code §544.304 provides that the Commissioner adopt rules as necessary to implement Chapter 544, Subchapter G.

Insurance Code §544.354 provides that the Commissioner adopt rules to accomplish the purposes of Chapter 544, Subchapter H, including rules with regard to the definition of a water damage claim.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.1007 implements Occupations Code Chapter 1958, enacted by SB 202, 84th Legislature, Regular Session (2015); and Insurance Code Chapter 544, Subchapters G and H, enacted by HB 2018, 79th Legislature, Regular Session (2005).

§21.1007. Restrictions on Using [~~the Use of~~] Underwriting Guidelines Based on [~~On~~] a Water Damage Claim [~~Claim(s)~~], Previous Mold Damage, or a Mold Damage Claim [~~Claim(s)~~].

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance due to [~~by~~] previous mold damage, or by [~~the~~] filing a [~~of~~] mold damage claim [~~claims~~], a water damage claim, or certain appliance-related claims[~~,~~] under a residential property insurance policy.

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

(1) Appliance--A household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(2) Appliance-related claim--A claim for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Insurance Code §823.003 if that affiliate is authorized to write and is writing residential property insurance in Texas. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Insurance Code Chapter 981.

(5) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(6) Underwriting guideline--A rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to decide to accept or reject an application for a residential property insurance policy or to determine how to classify risks that are accepted for the purpose of determining a rate.

(7) Water damage claim--A claim for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

[~~(1) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.~~]

[~~(2) Underwriting guideline--A rule, standard, guideline, or practice; whether written, oral, or electronic; that is used by an insurer or an agent of an insurer to decide whether to accept or reject an application for a residential property insurance policy or to determine how to classify the risks that are accepted for the purpose of determining a rate.~~]

[~~(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.~~]

[~~(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by §823.003 of the Insurance Code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Chapter 981.~~]

[~~(5) Appliance-related claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance. An appliance means a household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.~~]

[~~(6) Water damage claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.~~]

(c) Water damage claims - underwriting [~~Restrictions on the use of a water damage claim in underwriting~~]. An insurer may [~~shall~~] not use an underwriting guideline based solely on [~~upon~~] a single previous [~~prior~~] water damage claim either filed by the applicant or on the covered property. This subsection does not affect [~~Nothing contained herein shall preclude an insurer from~~] the surcharge and renewal provisions in Insurance Code [~~of~~] §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(d) This subsection contains provisions related to underwriting and rating based on a previous appliance-related claim [~~Restrictions on underwriting and rating and the inspection and certification process of appliance-related claims~~].

(1) Except as provided in Insurance Code §544.353(e) (concerning Restrictions on Use of Claims History for Water Damage) [~~of the Insurance Code~~] an insurer must [~~shall~~] not use a previous [~~prior~~] appliance-related claim as a basis for determining a rate to be

paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements [~~specified~~] in Insurance Code §544.353(c) and §544.353(d) [~~of the Insurance Code~~]. It is the consumer's option whether to have the appliance-related claim inspected and certified. The consumer is responsible for [~~, however, it is the consumer's responsibility to bear~~] the cost of the [~~such~~] inspection and certification. An appliance-related claim that is not inspected and certified is [~~shall be~~] subject to [~~the provisions contained in~~] subsection (c) of this section.

(2) Nothing [~~contained~~] in this subsection exempts [~~subsection (d) of this section shall exempt~~] an insurer from the notice provisions [~~contained~~] in Insurance Code §551.107(e). However, appliance-related losses are a special class of non-weather-related [~~non-weather related~~] losses. The [~~and the~~] notice must be specific to the insured's appliance-related loss history.

(3) The following individuals [~~who hold one or more of the following licenses~~] are inspectors that may have the knowledge and experience in water damage [~~the~~] remediation [~~of water damage~~] to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program under [~~pursuant to Article 5.33B of the~~] Insurance Code Chapter 2003, Subchapter C;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as mold assessment consultants [~~assessors~~] or mold remediation contractors [~~remediators~~] by the Department of Licensing and Regulation under Occupations Code [~~Department of State Health Services pursuant to~~] Chapter 1958 [~~of the Occupations Code~~];

(D) engineers licensed by the Texas Board of Professional Engineers; and[~~.~~]

(E) persons authorized by an insurer to perform appliance-related water damage remediation inspections.

(4) An insurer that maintains a list of authorized inspectors must give verbal and written notice that a claimant has the right to choose an inspector. The inspector does not have to be on the insurer's list. The insurer must give verbal notice when the claimant calls to report the claim. The insurer must send written notice within 15 days after the insurer receives notice of the claim.

(5) If a consumer uses an inspector from an insurer's list, the insurer may not reject or challenge the certification. If the consumer uses an inspector who is not on the insurer's list, the insurer may reject or challenge the certification by reinspecting the property. The insurer must give the consumer a list of all reasons it will not accept certification. The insurer must keep all documentation of the reinspection.

[~~(4) If the consumer has an inspection and certification performed by an inspector under paragraph (3) of this subsection who is not on a list provided by the insurer, the insurer may not reject or challenge the certification unless the insurer re-inspects the property and specifies in writing the areas of deficiency to the consumer. An insurer that re-inspects the property shall maintain all documentation, including documentation that supports the areas of deficiency identified by the inspection and specified in writing to the consumer.~~]

[~~(5) Inspectors shall also include persons who are authorized by insurers to perform appliance-related water damage remediation inspections. An insurer who provides a list of inspectors authorized by the insurer must give verbal notice to any claimant at the time of the claimant's phone call reporting the claim and written notice to the claimant within 15 days of receiving notice of the claim that the claimant has the right to select the inspector including the right to choose an inspector who is not on the insurer's list who will perform the inspection of the appliance-related water damage remediation. If the consumer has the inspection and certification performed by an inspector from the list of inspectors authorized by the insurer then the insurer does not have the right to reject or challenge the certification.~~]

(6) If an [~~the~~] inspector physically inspects the property and determines [~~by a physical inspection of the residential property~~] that the appliance-related water damage was [~~has been~~] properly remediated, the inspector must [~~shall~~] issue [~~within 10 days of the completion of the inspection~~] a water damage repair certificate (PC327 WDR-1) within 10 days of completing the inspection [~~Certificate of Appliance-Related Water Damage Remediation (WDR-1)~~].

(7) Water damage repair certificate form (PC327 WDR-1). An inspector must use the water damage repair certificate form (PC327 WDR-1) found on TDI's website at www.tdi.texas.gov, [~~The Certificate of Appliance-Related Water Damage Remediation (WDR-1) is a form that is prescribed by the Department for use by inspectors who will provide certifications. This form may be obtained from the Texas Department of Insurance website http://www.tdi.state.tx.us~~] or by requesting the [~~such~~] form from the Property and Casualty Lines Office, Mail Code 104-PC [~~Automobile/Homeowners Section, MC 104-PC~~], Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. TDI adopts by reference the water damage repair certificate form (PC327 WDR1) that an inspector must use, subject to the provisions of this subchapter and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(8) TDI has information about [~~Information regarding~~] inspectors who [~~that~~] may have the knowledge and experience in [~~the remediation of~~] water damage remediation to inspect and certify the proper remediation of an appliance-related claim. A list of inspectors can [~~may~~] be obtained from TDI's [~~the Texas Department of Insurance~~] website or by requesting it [~~such information~~] from the TDI Property and Casualty Lines Office [~~Automobile/Homeowners Section~~].

(e) This subsection contains provisions related to underwriting based on previous mold damage or a previous mold damage claim. [~~Restrictions on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance.~~]

(1) An insurer may [~~shall~~] not use an underwriting guideline [~~regarding a residential property insurance policy~~] based on [~~upon~~] previous mold damage or a previous [~~prior~~] mold damage claim filed [~~either~~] by the applicant or on the covered property if:

(A) the [~~applicant for insurance has~~] property [~~that~~] is eligible for residential property insurance coverage;

(B) the property [~~has~~] had mold damage;

(C) mold remediation was [~~has been~~] performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements [~~specified~~] in Occupations Code Chapter 1958, Subchapter D [~~of the Occupations Code,~~] and any applicable rules adopted [~~promulgated~~] by the Department of Licensing and Regulation, and inspected by a licensed mold assessment consultant; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying with reasonable certainty that the underlying cause or causes of the mold at the property were remedi-

ated; or [State Health Services pursuant to Chapter 1958 of the Occupations Code; and a Certificate of Mold Damage Remediation (MDR-1) is issued to the property owner under Section 1958.154 of the Occupations Code which certifies with reasonable certainty that the underlying cause or causes of the mold at the property have been remediated; or,]

(ii) inspected by a licensed, [an] independent mold assessment consultant [assessor] or a licensed adjuster; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying[, who is licensed to perform mold assessment in accordance with rules promulgated by the Department of State Health Services under Chapter 1958 of the Occupations Code and the independent mold assessor or adjuster provides to the property owner written certification on a Certificate of Mold Damage Remediation (MDR-1)] that, based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) [The Certificate of] Mold damage remediation certificate form (PC326 MDR-1). Mold remediation contractors, mold assessment consultants [Damage Remediation (MDR-1) is a form that is prescribed by the Department for use by mold remediators, assessors], and adjusters must use the mold damage remediation certificate form (PC326 MDR-1) found on TDI's [who will provide certifications. This form may be obtained from the Texas Department of Insurance] website at www.tdi.texas.gov, [http://www.tdi.state.tx.us] or by requesting the [such] form from the TDI Property and Casualty Lines Office [Automobile/Homeowners Section] or from the Department of Licensing and Regulation. TDI adopts by reference the mold damage remediation certificate form (PC326 MDR1) that must be used, subject to the provisions of this subchapter, Occupations Code Chapter 1958, and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner [State Health Services].

(3) This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice). [Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of §551.107.]

(f) This subsection contains provisions for filing Filing requirements for underwriting guidelines related [relating] to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must [shall] be filed with TDI. [the Department] They must [and shall] comply with the requirements [contained] in this section and with any rules [relating to underwriting guidelines that may be] adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must [shall] be submitted to TDI as described in §5.9310(f) of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements) [the Texas Department of Insurance, Property and Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas, 78714-9104 or to the Texas Department of Insurance, Property and Casualty Intake Unit, 333 Guadalupe Street, Austin, Texas 78701].

[(g) Subsection (c) of this section applies only to a residential property insurance policy that is delivered or issued for delivery based on an application that is submitted on or after the effective date of this section.]

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805300
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §342.1 and §342.25.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 2582, 85th Texas Legislature (2017), amended the Texas Water Code (TWC), §28A.001(1) to add a new exemption to the list of existing exemptions in the definition of "Aggregate production operation" (APO). The exemption applies to a site at which specialty or terrazzo-type stone is removed or extracted from the earth, the material is produced for commercial sale and used exclusively for decorative or artistic uses, and the stone horizon that is exposed for current production does not exceed five acres.

The proposed rulemaking amends Chapter 342 to add the new exemption in HB 2582 and to amend rule language for consistency with TWC, Chapter 28A.

Section by Section Discussion

§342.1, Definitions

The commission proposes to amend §342.1(1)(E) for consistency with §342.1(1)(A) and (D) and TWC, §28A.001(1)(A) and (D) relating to "removed or extracted." The commission proposes §342.1(1)(F) to include the new exemption added by HB 2582.

The commission proposes to remove §342.1(6), which is the definition of "Regulated Activity," as this term is not used in the proposed rulemaking. The commission proposes to add definitions for "Decorative or artistic uses," "Extraction activities," "Specialty stone," and "Terrazzo-type stone," to improve understanding and enforceability. Lastly, the commission proposes to re-number the definitions accordingly.

The commission interprets the phrase "the portion of the specialty or terrazzo-type stone horizon that is exposed for current production" from HB 2582 to mean the area exposed for current production, as viewed from an aerial perspective. While the commission is seeking comment on the entire rule, the commission is specifically requesting comment on this interpretation.

§342.25, Registration

The commission proposes to amend §342.25(a) to clarify that the requirement to register each operation refers to each APO.

The commission proposes to amend §342.25(b) and (d) to replace "regulated activities" with "extraction activities" for consistency with TWC, §28A.051(a) and to replace "operation(s)" with "aggregate production operation," which is a site, or "extraction activities," which are activities at a site, to improve clarity. The commission proposes to amend §342.25(e) to remove the 30-day deadline for notifying the commission that extraction activities have ceased, as this deadline is not required by TWC, §28A.051(b). Additionally, the commission proposes language in §342.25(e) that allows the responsible party to inactivate their existing registration by allowing it to expire rather than submitting a cancellation form. This alternative option reduces the regulatory burden while achieving the same goal.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed to implement HB 2582 which relates to an exemption for certain quarries from regulation as APOs. The legislation adds a new exemption from regulation for sites that do not exceed five acres where terrazzo-type stone is removed or extracted from the earth for decorative or artistic uses. Sites that meet the exemption criteria will no longer be required to register as an APO or pay the registration fee, but will still be subject to other air, water, and waste regulations and permitting.

The registration fees for sites less than 10 acres range from $225 to $300. Currently, the commission regulates 82 APOs that are five acres or less; however, based on the data in its system, the commission cannot determine how many of these fit the new exemption criteria. The commission's records do not capture the specific aggregate type, or the end uses. In the unlikely circumstance that each of these sites were to qualify for this exemption, the fiscal impact to the commission would be a decrease in revenue to the Water Resource Management Account Number 153 between $18,450 and $24,600 per year. The proposed rulemaking also contains non-substantive changes for consistency with other sections of the TWC.

Public Benefits and Costs

Ms. Bearse has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the proposed rulemaking will be compliance with state law and consistency with other sections of the TWC.

The proposed rulemaking is expected to save owners of newly exempted entities between $225 and $300 per year in annual registration fees. The proposed rulemaking creates an exemption to registration for APOs that extract a specialty or terrazzo-type stone for decorative or artistic uses on a site that does not exceed five acres.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The proposed rules would apply statewide and have the same effect in rural communities as in urban communities.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions nor eliminate current employee positions. The proposed rules will result in a decrease in fees paid to the commission. Because the proposed rulemaking contains an exemption to regulation, it does limit an existing regulation and decreases the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis

The commission reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The legislature enacted HB 2582, amending TWC, §28A.001(1), which relates to APOs. As the Author's/Sponsor's Statement of Intent makes clear, the legislature enacted HB 2582 with the aim of exempting certain quarries from current law that stipulates that certain APOs in Texas must adhere to regulations set by the commission, and while there are exemptions in place for some quarries from APO regulations, there is currently no consideration given to a small or micro-business status of their operator. HB 2582 addressed this issue by providing for an exemption for

certain quarries from regulation as an APO by adding them to the list of quarries exempted from TCEQ's APO regulations. HB 2582 amends the TWC to exclude from the definition of "Aggregate production operation" operations at a site where the materials being removed or extracted are specialty or terrazzo-type stone removed or extracted exclusively for decorative or artistic uses and where the specialty or terrazzo-type stone horizon that is exposed for current production for commercial sale at the site does not exceed five acres. HB 2582 amends current law relating to an exemption for certain quarries from regulation as APOs. Therefore, the specific intent of the proposed rulemaking is to add a new exemption to the list of existing exemptions in the definition of an APO.

The proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the Texas Government Code, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates an exemption within state law to ensure that small businesses are protected by state law. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not proposed under the TCEQ's general rulemaking authority. This rulemaking is proposed under specific state statutes enacted in HB 2582. Because this proposal does not constitute a "Major environmental rule," a Regulatory Impact Analysis is not required.

The commission invites public comment on the Draft Regulatory Impact Analysis. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis.

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I of the Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments in HB 2582, which modifies the definition of an "Aggregate production operation" by creating an additional exemption to the list of existing exemptions in the definition of "Aggregate production operation." The proposed rulemaking will substantially advance this stated purpose by proposing §342.1(1)(F) to include the new exemption from HB 2582 and amending rule language for consistency with TWC, Chapter 28A while reducing regulatory burden.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules are administrative and do not impose any new regulatory requirements. The primary purpose of the proposed rulemaking is to implement HB 2582 by modifying the definition of an "Aggregate production operation" to include the new exemption and amend language for consistency with TWC, Chapter 28A. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The proposed rules are consistent with the CMP goals and policies because the proposed rulemaking does not authorize the storage, emission, or discharge of any pollutant. The proposed rules exempt certain APOs from the registration and annual fees in Chapter 342. The registrations, required by Chapter 342, do not authorize the storage, emission, or discharge of any pollutant.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 22, 2019, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-026-342-OW. The comment period closes on January 30, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Laurie Fleet, TCEQ Wastewater Permitting Section, (512) 239-5445.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §342.1

Statutory Authority. The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §28A.001 defines "Aggregate production operation" and lists the operations excluded from this definition.

The amendment implements House Bill 2582, 85th Texas Legislature (2017) and TWC, §§5.013, 5.102, 5.103, and 5.120.

§342.1. Definitions.

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

(1) Aggregate production operation--A site from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates. For the purposes of this chapter, the term aggregate production operation does not include:

(A) a site at which aggregates that are being removed or extracted from the earth are used or processed at the same site or at a related site under the control of the same responsible party for the primary purpose of production of cement or lightweight aggregates, or in a lime kiln;

(B) a site that is being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation, any other state agency, or a local governmental entity;

(C) an extraction area from which all raw material is extracted for use as fill or for other construction uses at the same or a contiguous site;

(D) a site at which the aggregates that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location; [~~or~~]

(E) a site at which aggregates are being removed or[~~,~~] extracted[~~, or processed~~] where the primary purpose of removal or[~~,~~] extraction[~~, or processing~~] is not for commercial sale; or[~~,~~]

(F) a site at which:

(i) the materials being removed or extracted from the earth are specialty stone or terrazzo-type stone removed or extracted exclusively for decorative or artistic uses; and

(ii) the portion of the specialty or terrazzo-type stone horizon that is exposed for current production for commercial sale does not exceed five acres. This portion is defined as the area exposed for current production, as viewed from an aerial perspective.

(2) Aggregates--Any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this chapter, the term aggregates does not include clay or shale mined for use in manufacturing structural clay products.

(3) Commission--The Texas Commission on Environmental Quality.

(4) Decorative or artistic uses--Uses for ornamentation or creating artwork. This does not include uses such as construction activities, structural concrete, road construction, building facades, or mass-produced items.

(5) Extraction activities--The act of removing or extracting aggregates from the earth.

(6) [~~(4)~~] Operator--Any person engaged in and responsible for the physical operation and control of the extraction of aggregates.

(7) [~~(5)~~] Owner--Any person having title, wholly or partly, to the land on which an aggregate production operation exists or has existed.

[~~(6) Regulated Activity--Any activity that is regulated by the Texas Commission on Environmental Quality.~~]

(8) [~~(7)~~] Responsible party--The operator, lessor, or owner who is responsible for the overall function and operation of an aggregate production operation.

(9) [~~(8)~~] Site--One [~~one~~] or more contiguous or adjacent properties under common control by the same responsible party.

(10) Specialty stone--Stone that occurs in limited quantity, that is extracted for its unique and naturally occurring color, texture, opacity, or luster, and shall not include attributes commonly found in aggregates.

(11) Terrazzo-type stone--Stone that is incorporated into mortar or other similar wet binding agent used to create mosaic designs, images, pictures, or patterns.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805368
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 239-6812

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SUBCHAPTER B. REGISTRATION AND FEES

30 TAC §342.25

Statutory Authority. The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

The amendments implement House Bill 2582, 85th Texas Legislature (2017) and TWC, §§5.013, 5.102, 5.103, and 5.120.

§342.25. Registration.

(a) The responsible party for an aggregate production operation, in operation on or before September 1, 2012, shall register each aggregate production operation with the commission within the 60-day period beginning September 1, 2012.

(b) The responsible party for an aggregate production operation that begins extraction activities [~~operations~~] after September 1, 2012 shall register each aggregate production operation with the commission not later than the 10th business day before the beginning date of extraction [~~regulated~~] activities.

(c) An aggregate processing plant that has the same responsible party and is located at the same site from which aggregates are being or have been removed or extracted from the earth is not required to obtain a separate registration.

(d) The responsible party for an aggregate production operation shall renew the registration annually as extraction [~~regulated~~] activities continue.

(e) The requirements of this chapter are not applicable to aggregate production operations where:

(1) extraction activities have ceased; and

(2) the responsible party has submitted a registration cancellation request to the commission or allowed the existing registration to expire.

[~~(e) Within 30 days after all regulated activities at an aggregate production operation have ceased, the responsible party shall submit a registration cancellation request to the commission.~~]

(f) Applications for registration or cancellation of a registration shall be made on forms prescribed by the executive director.

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Texas Commission on Environmental Quality
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

The Texas Department of Public Safety (the department) proposes amendments to §4.15, concerning Safety Audit Program. The proposed amendments are necessary to harmonize §4.15 with federal regulations in 49 CFR §§385.11, 385.13, and 385.17. These changes harmonize timeline requirements regarding carrier safety fitness ratings and operating restrictions following "unsatisfactory" safety ratings. Additionally, nonsubstantive grammatical and capitalization changes have been made.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, January 8, 2019 at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.15, regarding Safety Audit Program, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference; and §644.155.

Texas Transportation Code, §644.051 and §644.155 are affected by this proposal.

§4.15. Safety Audit Program.

(a) The rules in this subsection, as authorized by Texas Transportation Code, §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the compliance review audit [~~Compliance Review Audit~~] to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the safety audit program [~~Safety Audit Program~~] shall have the following meanings, unless the context shall clearly indicate otherwise. [~~are as follows:~~]

(A) Compliance review--An [~~Review means an~~] on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability--An [~~means an~~] evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent hazard--Any [~~Hazard means any~~] condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory safety rating--A [~~Safety Rating means that a~~] motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, §385.5 [~~Part 385.5~~] and the state equivalents contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional safety rating--A [~~Safety Rating means a~~] motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, §385.5(a) through (k) [~~Part 385.5(a) through (k)~~] and the state equivalents contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4.

(F) Unsatisfactory safety rating--A [~~Safety Rating means a~~] motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4.

(G) For the purposes of safety ratings, Final Departmental Decision is defined as:

(i) the letter notifying the carrier of a satisfactory safety rating, issued under paragraph (4)(D) of this subsection;

(ii) the letter notifying the motor carrier of a conditional safety rating on the expiration of the time period in paragraph (4)(D)(ii) of this subsection, unless this changed earlier as a result of the department granting a request to change the safety rating or a departmental review;

(iii) the letter notifying the motor carrier of a final unsatisfactory safety rating issued under paragraph (4)(D)(iii) of this subsection; or

(iv) the letter notifying the motor carrier of a decision on a safety rating as a result of a request for a change of the safety rating or a departmental review.

(2) Inspection of Premises.

(A) [~~Authority to Inspect.~~] An officer or a non-commissioned employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code, §644.155.

(B) [~~Entry of Premises.~~] The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier: [~~;~~]

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code, §644.104, is liable to the state for a civil penalty not to exceed $1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code, §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) [~~Compliance Review Audits.~~] A compliance review [~~Compliance Review~~] will be conducted based upon [~~the following criteria~~]:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by documentation. Complaints for the purpose of this criterion include involvement in a fatality accident or the receipt of a 24-hour out-of-service notification based on violation(s) of Title 49, Code of Federal Regulations, §392.4 or §392.5 [~~Parts 392.4 or 392.5~~] or Texas Transportation Code, §522.101;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an unsatisfactory safety rating [~~Unsatisfactory Safety Rating~~] from the immediately previous compliance review [~~Compliance Review~~];

(D) requests from the legislature and state or federal agencies;

(E) request for a safety rating determination or a change to a safety rating determination; or

(F) a hazardous material incident as described in §4.1(b)(4) of this title (relating to Transportation of Hazardous Materials).

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, §385.7 [~~Part 385.7~~]. The [~~following~~] safety ratings detailed in subparagraph (B)(i) - (B)(iii) of this paragraph will be assigned:

(i) satisfactory safety rating [~~Satisfactory Safety Rating~~];

(ii) conditional safety rating [~~Conditional Safety Rating~~]; or

(iii) unsatisfactory safety rating [~~Unsatisfactory Safety Rating~~].

(C) The provisions of Title 49, Code of Federal Regulations, §385.13 [~~Part 385.13~~] relating to "unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts" is hereby adopted by the department and is applicable to intrastate motor carriers except that intrastate motor carriers transporting more than 15 passengers or hazardous materials are prohibited from operation on the 46th [~~61st~~] calendar day after notice of the proposed unsatisfactory safety rating; all other intrastate motor carriers are prohibited from operation on the 61st [~~76th~~] calendar day after notice of the proposed unsatisfactory safety rating.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 30 business days of the close out date of the compliance review.

(i) Notice of a satisfactory safety rating will be sent by regular U.S. Mail, or by personal delivery, and is final upon receipt or mailing.

(ii) Notice of a proposed conditional safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible, and will include a list of those items for which immediate corrective action must be taken. Unless changed by the department following a request for a change of safety rating or a department review, the conditional safety rating will become final without further notice on the 46th [~~61st~~] calendar day after notice of the proposed conditional safety rating for motor carriers transporting more than 15 passengers or hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations, and on the 61st [~~76th~~] calendar day after notice of the proposed conditional rating for all other motor carriers. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed conditional safety rating, the conditional safety rating may become final before the department can complete its review.

(iii) Notice of a proposed unsatisfactory safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number and will include a list of those items for which immediate corrective action must be taken. Within 5 business days of the expiration of the time periods set out in paragraph (4)(C) of this subsection, the department will provide written notification of the final unsatisfactory safety rating and an order to cease all intrastate transportation, as provided in Title 49, Code of Federal Regulations, §385.13 [~~Part 385.13~~], by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number. Electronic mail may be used for safety rating correspondence. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed unsatisfactory safety rating, the unsatisfactory safety rating may become final before the department can complete its review.

(iv) A final unsatisfactory safety rating and order to cease all intrastate transportation, described in clause (iii) of this subparagraph, will become effective on the date specified in the notice of proposed safety rating unless extended by the department, in writing, under subparagraph (G)(v) or (vi) of this paragraph. The department will make and document reasonable efforts to provide a copy of the written final unsatisfactory safety rating and order to cease intrastate transportation to the carrier. However, if the notice of proposed safety rating was received by the motor carrier and adequately describes the effective date and consequences of failure to improve the motor carrier's safety rating, failure of the department to serve the final unsatisfactory safety rating and order to cease intrastate transportation will not delay its effective date.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, §385.13 [~~Part 385.13~~] will be subject to a civil suit filed by the attorney general from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) A request for a change in or a departmental review of a safety rating must be submitted in writing to: Texas Department of Public Safety, Manager-Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. Such request(s) must meet the requirements provided for in this subsection.

(G) [~~Change to Safety Rating based on Corrective Actions.~~] A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(i) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in Title 49 Code of Federal Regulations, §385.5 and §385.7 [~~Parts 385.5 and 385.7~~], and equivalent state regulations contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the department to consider.

(ii) The department will make a final determination on the request for change based upon the documentation the motor carrier submits, a follow-up compliance review and any additional relevant information. The review will be conducted by the director's designee(s); the follow-up compliance review will be conducted by a field compliance review investigator.

(iii) The department will perform reviews of requests made by motor carriers with a proposed "unsatisfactory" or "conditional" safety rating in the following time periods after receipt of the motor carrier's request: within 30 calendar days for motor carriers transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials; or within 45 calendar days for all other motor carriers.

(iv) When a request for a change to a safety rating, based on corrective actions, is filed before a "conditional" or "unsatisfactory" safety rating has been final for 6 months or less, the timeline in paragraph (a)(4)(G)(iii) of this subsection is applicable for conducting a follow-up compliance review. All other requests for a change to a safety rating will be scheduled on a priority basis, however, the abbreviated timeline for completion as specified in paragraph (a)(4)(G)(iii) [~~of this subsection~~] is no longer applicable.

(v) The filing of a request for a change to a proposed or final safety rating under this section does not stay the 45 [~~60~~] calendar day period specified in this subsection for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to the Federal Motor Carrier Safety Regulations and state regulations and the department cannot make a final determination within the 45 [~~60~~] calendar day period, the period before the proposed safety rating becomes final may be extended for up to 30 calendar days at the discretion of the department.

(vi) The department may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials) to continue to operate in intrastate commerce for up to 60 calendar days beyond the 60 [~~75~~] calendar days specified in the proposed rating, if the department determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st [~~76th~~] day after the date of the notice of the proposed "unsatisfactory" rating.

(vii) If the department determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in Title 49, Code of Federal Regulations, §385.5 and §385.7 [~~Parts 385.5 and 385.7~~], and equivalent state regulations contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4, the department will notify the motor carrier in writing of its upgraded safety rating. An upgraded safety rating is final upon notification.

(viii) If the department determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in Title 49, Code of Federal Regulations, §385.5 and §385.7 [~~Parts 385.5 and 385.7~~], and equivalent state regulations contained in Texas Transportation Code, Chapter [~~Chapters~~] 522 and Chapter 644, and 37 TAC[~~,~~] Chapter 4, the department will notify the motor carrier in writing. Any extension of the time period before an unsatisfactory safety rating becomes effective under paragraph (4)(G)(iv) or (v) of this subsection will expire upon receipt of this notice.

(ix) Any motor carrier whose request for change to a safety rating is denied in accordance with this subsection may request a departmental review under the procedures of paragraph (4)(H) of this subsection. The motor carrier must make the request within 90 calendar days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any departmental review.

(H) [~~Departmental Review of Safety Rating.~~] A motor carrier may request the department to conduct a departmental review if it believes the department has committed an error in assigning its proposed safety rating in accordance with Title 49, Code of Federal Regulations, §385.15(c) [~~Part 385.15(c)~~], Texas Transportation Code, Chapter 644, or 37 TAC[~~,~~] Chapter 4 or its final safety rating in accordance with Title 49, Code of Federal Regulations, §385.11(b) [~~Part 385.11(b)~~], Texas Transportation Code, Chapter 644, or 37 TAC[~~,~~] Chapter 4.

(i) The motor carrier's request must explain the error it believes the department committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(ii) If a motor carrier has received a notice of a proposed conditional or unsatisfactory safety rating, it should submit its request within 15 business days from the date of the notice. This time frame will allow the department to issue a written decision before the

safety rating becomes final and any prohibitions outlined in paragraph (4)(C) of this subsection take effect. Failure to request within this 15 business day period may prevent the department from issuing a final decision before such prohibitions take effect.

(iii) The motor carrier must make a request for a departmental review within 90 calendar days of either the proposed or final safety rating issued in accordance with this subsection, or within 90 calendar days after denial of a request for a change in a safety rating in accordance with paragraph (4)(G) of this subsection.

(iv) The department may ask the motor carrier to submit additional data and attend a conference in Austin, Texas to discuss the safety rating. If the motor carrier does not provide the information requested or does not attend the conference, the department may dismiss its request for review. The review will be conducted by the director's designee(s).

(v) The department will notify the motor carrier in writing of its decision following the departmental review. The department will complete the review within 30 calendar days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating; or within 45 calendar days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating.

(I) A final safety rating constitutes a final agency decision. Any review of such decision is subject to Texas Government Code, Chapter 2001. Judicial review is subject to the substantial evidence rule under Texas Government Code, §2001.174.

(b) Imminent Hazard.

(1) Regardless of whether an unsatisfactory safety rating [~~Unsatisfactory~~ ~~Safety~~ ~~Rating~~] has become final under subsection (a)(4)(C) of this section, if the manager [~~Manager~~] of the Motor Carrier Bureau, or their [~~his~~] designee, determines that a motor carrier's operations constitute an imminent hazard [~~Imminent~~ ~~Hazard~~], the manager [~~Manager~~] or their [~~his~~] designee shall issue an order to cease [~~Order~~ ~~to~~ ~~Cease~~] all or part of the motor carrier's commercial motor vehicle operations.

(2) In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard.

(3) Opportunity for review of any such order shall be in the manner described in §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review).

(4) For purposes of all enforcement the department is authorized to take, any operations in violation of an imminent hazard [~~Imminent~~ ~~Hazard~~] determination will be treated as operating with a final unsatisfactory rating issued under subsection (a)(4)(D)(iii) of this section.

(c) Release of Safety Rating Information.

(1) The safety rating assigned to a motor carrier will be made available to the public upon request.

(2) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805338
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.50

The Texas Department of Public Safety (the department) proposes new §15.50, concerning State-to-State Verification Service. The new rule is intended to inform applicants for driver licenses (DL) and identification certificates (ID) that Texas will utilize the State-to-State Verification Service (S2S) to determine if an applicant holds a DL or ID in another state or U.S. jurisdiction. Texas Transportation Code, Chapter 521 requires the surrender of DLs and IDs issued by Texas, other states, or other U.S. jurisdictions before issuance of a Texas DL or ID. The new rule consolidates the various provisions related to DL or ID surrender in Chapter 521 to clarify the requirements related to the surrender of a previously issued DL or ID. Additionally, if the department determines through S2S that the applicant holds a DL or ID in another state or U.S. jurisdiction, the applicant will be required to surrender that document prior to issuance of a Texas DL or ID.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of rule will be better understanding of the process to determine if an applicant has been issued a DL or ID in another state or U.S. jurisdiction.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §521.182, which requires surrender of a license issued by another jurisdiction; Texas Transportation Code, §521.183, which requires surrender of a DL or ID issued by this state; and Texas Transportation Code, §521.142(e), which authorizes the department to determine eligibility for a DL or ID.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§521.005, 521.182, 521.183, and 521.142(e) are affected by this proposal.

§15.50. State-to-State Verification Service.

(a) An applicant for a Texas driver license (DL) or identification certificate (ID) must surrender any DL or ID issued by this state or another state or a U.S. jurisdiction before being issued a Texas DL or ID.

(b) Upon application, Texas will use the State-to-State Verification Service (S2S) to determine whether the person holds a DL or ID in another state or a U.S. jurisdiction.

(c) Texas will notify the previous state or U.S. jurisdiction and request transfer of the record. Upon issuance, Texas will become the state of record for that DL or ID holder.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805358

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 424-5848

CHAPTER 37. SEX OFFENDER REGISTRATION

37 TAC §37.3

The Texas Department of Public Safety (the department) proposes new §37.3, concerning Minimum Required Registration Period. Texas Code of Criminal Procedure, Article 62.402(a), directs the department to determine by rule the minimum required registration period under federal law for each reportable conviction or adjudication that requires registration as a sex offender. Registrants with a reportable conviction or adjudication that must register under Texas law for a period that exceeds the minimum required registration period under federal law may petition their trial court for early termination of their obligation to register as a sex offender.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of rule will be a better understanding of the Texas and federal minimum required registration periods for sex offenders registered in Texas.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an ex-

isting regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Jeanine Hudson, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; by fax to (512) 424-5666; or by email to jeanine.hudson@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Code of Criminal Procedure, Article 62.402(a), which authorizes the department to determine the minimum required registration period under federal law for each reportable conviction or adjudication under Chapter 62.

Texas Government Code, §411.004(3) and Texas Code of Criminal Procedure, Article 62.402(a) are affected by this proposal.

§37.3. Minimum Required Registration Period.

(a) The minimum required registration period under federal law for each reportable conviction or adjudication under Texas Code of Criminal Procedure, Chapter 62, is determined by the department. (The figure in this section reflects the minimum required registration period under federal law for each reportable conviction or adjudication.)

Figure: 37 TAC §37.3(a)

(b) For a list of reportable convictions or adjudications for which a person must register for a period that exceeds the minimum required registration period under federal law please visit https://records.txdps.state.tx.us/SexOffenderRegistry/.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805359
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 27, 2019
For further information, please call: (512) 424-5848

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.71

The Texas Board of Criminal Justice proposes amendments to §152.71, concerning Acceptance of Gifts Related to Buildings for Religious and Programmatic Proposes. The amendments are proposed in conjunction with a proposed rule review of §152.71 as published in another section of the *Texas Register.* The proposed amendments clarify the responsibilities associated with donating buildings to the TDCJ.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to enhance the understanding of building donors responsibilities. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §§492.001, 492.013, 501.009.

Cross Reference to Statutes: None.

§152.71. Acceptance of Gifts Related to Buildings for Religious and Secular Programs [~~Programmatic~~ ~~Purposes~~].

(a) Policy. Only the Texas Board of Criminal Justice (TBCJ) is authorized to accept gifts on behalf of the Texas Department of Criminal Justice (TDCJ) from any public or private source, for use in maintaining and improving correctional programs and services. The TBCJ also specifically and earnestly encourages the involvement of volunteers and volunteer organizations for the purpose of assisting the [~~providing~~] reintegration of offenders into society through religious and secular [~~and spiritual~~] programs. Correctional facilities of the TDCJ benefit from donated [~~typically need~~] additional space or enhancements to [~~amenities in~~] existing space for [~~to provide~~] religious and secular [~~services and~~] programs. The TBCJ and the TDCJ [~~shall~~] actively encourage the donation of buildings and enhancements for buildings that are related to the provision of religious and secular programs.

(b) Procedures.

(1) The TDCJ shall meet with donor groups for the purpose of accepting a building or enhancement for a building related to the provision of religious and secular programs. The TBCJ respects the right of contributors to designate a specific project at a specific TDCJ unit at which the donated building or enhancement will be used.

(2) A donor or designee shall be qualified to design and construct the donated building or enhancement in accordance with the TDCJ Administrative Plan for Capital Improvements by Donor Groups. Subject to final project approval by the executive director or designee, all plans for the building or enhancement must be approved by the Facilities Division. All design and construction activities by the donor or designee will be coordinated through the Facilities Division. The Capital Improvement Review Committee shall review and

coordinate all steps pertaining to the project, ensuring all requirements of the TDCJ Administrative Plan for Capital Improvements by Donor Groups are followed. The donor or designee will design and construct the donated building or enhancement at no cost to the TDCJ. [~~The donor or designee will design and construct the donated buildings, at the donor's cost, after a determination that the donor or designee is qualified to design and construct the donated buildings in accordance with the TDCJ Administrative Plan for Capital Improvements by Donor Groups. All design and construction activities by the donor or designee will be coordinated through the Facilities Division. The Capital Improvement Review Committee shall review and coordinate all steps pertaining to the project, ensuring all aspects of the TDCJ Administrative Plan for Capital Improvements by Donor Groups are followed.~~]

(3) The TDCJ shall be the owner of the donated building or enhancement [~~enhanced building~~] and shall be responsible for the operation, control, and maintenance of the building, which shall be used for religious and secular [~~other correctional~~] programs [~~and services~~]. The naming of buildings obtained under this rule shall be in accordance with [~~is subject to~~] 37 Texas Administrative Code §155.21.

(4) Buildings that serve as chapels provided by or enhanced by donations under this rule shall provide a place for all offenders to practice their religion as guaranteed by the First Amendment to the United States Constitution, in accordance with TDCJ policy and procedures for facilitating the religious [~~beliefs and~~] practices of offenders. Furthermore, the buildings shall be used by offenders to participate in [~~programs with~~] religious and secular programs with [~~other~~] volunteers, [~~the~~] TDCJ chaplaincy staff, and other program personnel.

(5) These donations, including donations at privately-operated, state-owned facilities, shall be presented at a regularly scheduled meeting of the TBCJ for discussion, consideration, and possible action.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805374
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 27, 2019
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.36

The Texas Board of Criminal Justice proposes amendments to §163.36, concerning Mentally Impaired Offender Supervision. The amendments are proposed in conjunction with a proposed rule review of §163.36 as published in another section of the *Texas Register.* The proposed amendments are necessary to clarify the definition of an offender with a mental impairment and make grammatical and formatting updates.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be clarification of the definition of an offender with a mental impairment. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §§492.013, 509.003; Texas Health and Safety Code §614.013.

Cross Reference to Statutes: None.

§163.36. Supervision of Offenders with Mental Impairment [~~Mentally Impaired Offender Supervision~~].

(a) Offender with mental impairment means an offender with an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that either substantially impairs a person's thoughts, perception of reality, emotional process, or judgement, or grossly impairs a person's behaviors as demonstrated by recent disturbed behavior. [~~A mentally impaired offender is defined as one with an Axis I or Axis II disorder as identified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), that inhibits their ability to comply with conditions of supervision, other than solely substance abuse dependence.~~]

(b) Community supervision and corrections department directors [~~Supervision and Corrections Department (CSCD) Directors~~] shall develop and implement policies and procedures for the effective supervision of [~~mentally impaired~~] offenders with mental impairment. Policies and procedures shall address at least the following and any other requirements imposed by special grant conditions:

(1) contact [~~Contact~~] standards;

(2) treatment [~~Treatment~~] referral process within and outside of jurisdiction;

(3) coordination [~~Coordination~~] of services with treatment providers;

(4) treatment [~~Treatment~~] participation requirements;

(5) recommendations [~~Recommendations~~] for modified conditions of supervision based on an offender's [~~offenders~~] progress, risk factors, or ability to comply;

(6) caseload [~~Caseload~~] size; and

(7) violation [~~Violation~~] procedures.

(c) Community supervision officers shall [~~collaborate with collateral sources and~~] coordinate services with agencies within and outside the criminal justice system to address the needs of the [~~mentally impaired~~] offender with mental impairment.

(d) Departments closing or transferring out of county supervision of an [~~a mentally impaired~~] offender with mental impairment shall complete a supervision summary within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805376
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 27, 2019
For further information, please call: (936) 437-6700

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CHAPTER 195. PAROLE

37 TAC §195.51

The Texas Board of Criminal Justice files this notice of intent to repeal 37 Texas Administrative Code, Part 6, §195.51 concerning Sex Offender Supervision. The repeal is proposed in conjunction with a proposed rule review of §195.51 as published in another section of the *Texas Register.* The repeal eliminates an unnecessary rule. No statute requires the board to promulgate a rule regarding the Parole Division supervision of sex offenders.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the repeal will be in effect, the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period the repeal will be in effect, there will not be an economic impact on persons as a result of the repeal. There will not be an adverse economic impact on small or micro businesses or on rural communities as a result of the repeal. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of the repeal, will be to eliminate an unnecessary rule. No cost will be imposed on regulated persons.

The repeal will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P. O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of the repeal of this rule in the *Texas Register.*

The repeal is proposed under Texas Government Code §492.013, §508.112.

Cross Reference to Statutes: None.

§195.51. Sex Offender Supervision.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805379
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 27, 2019
For further information, please call: (936) 437-6700

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

The Texas Department of Licensing and Regulation withdraws the proposed amended §65.2 which appeared in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6516).

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805418
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 14, 2018
For further information, please call: (512) 463-3671

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SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §65.64

The Texas Department of Licensing and Regulation withdraws the proposed amended §65.64 which appeared in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6516).

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805419
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 14, 2018
For further information, please call: (512) 463-3671

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.11

The State Board of Dental Examiners withdraws the proposed amended §101.11, which appeared in the June 22, 2018, issue of the *Texas Register* (43 TexReg 4002).

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805436
Alex Phipps
General Counsel
State Board of Dental Examiners
Effective date: December 14, 2018
For further information, please call: (512) 305-9380

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Makinzy Almand
10th Grade

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER N. PEER SPECIALIST SERVICES

The Texas Health and Human Services Commission (HHSC) adopts new Subchapter N, Peer Specialist Services, including Division 1, General Provisions; Division 2, Service Provision; Division 3, Peer Specialists; Division 4, Organizations in Which Peer Specialists Deliver Services; Division 5, Training; Division 6, Peer Specialist and Peer Specialist Supervisor Certification; Division 7, Certification Entities; and Division 8, Complaints, Appeals, and Hearings. New §§354.3001, 354.3011, 354.3013, 354.3015, 354.3051, 354.3053, 354.3055, 354.3101, 354.3103, 354.3155, 345.3157, 354.3161, 354.3163, 354.3165, 354.3201, 354.3205, 354.3207, 354.3211, 354.3251, 354.3255, 354.3301, 354.3303, 354.3305, and 354.3307 are adopted without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5887) and will not be republished. New §§354.3003, 354.3105, 354.3151, 354.3153, 354.3159, 354.3203, 354.3209, and 354.3253 are adopted with changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5887) and will be republished.

BACKGROUND AND JUSTIFICATION

This new subchapter implements House Bill (HB) 1486, 85th Legislature, Regular Session, 2017, which requires HHSC to establish a Medicaid reimbursable peer service benefit and adopt rules establishing training and certification requirements for peer specialists to provide Medicaid-reimbursable peer specialist "services to persons with mental illness or services to persons with substance use conditions." The rules were developed with input from a stakeholder workgroup, in compliance with HB 1486.

COMMENTS

The 30-day comment period ended October 14, 2018. During the comment period, HHSC received comments regarding the proposed rules from 13 commenters, including five private individuals, the Coalition for Nurses in Advanced Practice, Disability Rights Texas, the Hogg Foundation, the Meadows Mental Health Policy Institute, PRO International, the Texas Council for Community Centers, the Texas Medical Association, and Via Hope. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Seven commenters expressed concern about the proposed Medicaid reimbursement rate or the cost to provide services.

Response: The rate-setting process and outcome is a separate rulemaking action from the adoption of these rules. There are no changes to the rules based on these comments.

Comment: Five commenters submitted concerns or suggestions regarding the definitions in §354.3003 for "LPHA," "person-centered recovery plan," "QCC," and "trauma-informed." For "LPHA," one commenter suggested "physician or other licensed practitioner of the healing arts." For "person-centered recovery plan," one commenter had questions about how plan amendments based on a person's needs are determined. For "QCC," one commenter suggested "physician or other qualified credentialed counselor," and another suggested changes to how advanced practice nurses were described. For "trauma-informed," one commenter suggested additional language be added to the definition. Three commenters also requested that "peer specialist" be differentiated from "certified peer specialist" throughout the subchapter.

Response: HHSC declines to list physicians separately from other professionals in the definitions of "LPHA" and "QCC." These definitions, and the list of professionals that is included in each, exist in other Texas Administrative Code rules that do not list physicians separately. HHSC did revise the description of advanced practice nurses in the "QCC" definition in §354.3003(15), as the language was outdated. The questions submitted regarding "person-centered recovery plan" fall outside the scope of these rules. Finally, HHSC declines to revise the definition of "trauma-informed," as this definition was discussed and agreed upon by the external stakeholder workgroup.

Comment: Eight commenters expressed concern that §354.3011 limits eligibility to adults, defined as 21 years of age or older in these rules.

Response: HHSC declines to revise the rule at this time. While HHSC recognizes the concern of external stakeholders regarding the exclusion of younger Medicaid recipients, the benefit is being implemented for a person who is 21 of age or older at this time based on HHSC's understanding of the legislative intent of HB 1486. HHSC is, however, researching how coverage of recipients between the ages of 18 and 21 might be accomplished in the future. At this time, if a person under 21 years of age is seeking peer services, the state ensures that all Medicaid services available under federal law are provided to a person under 21 of age. This includes when the service is determined to be medically necessary to address conditions or diagnoses discovered by screening services, whether or not such services are covered in the State Plan.

Comment: One commenter stated regarding §354.3011(4) that peer specialist services "should be included in each service package and made available upon request of the individual."

Response: HHSC declines to revise the rule in response to this comment. Section 354.3011(4) states that one of the eligibility criteria is to "have peer specialist services included in the recipient's person-centered recovery plan." HHSC declines to prescribe in the rule the process by which providers include the service in a recipient's person-centered recovery plan. In addition, providers may define "service package" differently and, therefore, this terminology may not translate across all provider types that may employ peer specialists.

Comment: One commenter suggested that §354.3013 include telemedicine.

Response: HHSC declines to revise the rule in response to this comment. Telemedicine refers specifically to physician-delivered services, whereas telehealth refers to non-physician delivered services. While a change to the rule is not required in order to allow for remote delivery of this service, Medicaid policy does not currently allow for these services to be delivered via telehealth. HHSC is currently reviewing a request to change the telehealth policy to add peer specialist services.

Comment: A commenter asked about the requirement in §354.3013(d) that "Participation in peer specialist services is voluntary." The commenter asked, "How can participation be voluntary if Peer Services is listed in their recovery plan? Wouldn't having peer services on a plan give clinicians room to say that someone is being non-compliant when choosing not to utilize peer services?"

Response: HHSC declines to revise the rule in response to this comment. Based on the definition of "person-centered recovery plan" in §354.3003, peer services would not be included in a recipient's plan if that person chose not to participate in peer services.

Comment: Regarding §354.3055, two commenters expressed concern about the phrase "dispense expert opinions," with one commenter suggesting "medical opinions" instead and one commenter suggesting changing "make assessments" to "make clinical or diagnostic assessments." One commenter also expressed general concern that the rules are not specific enough regarding the limitations that exist for a peer specialist related to working within one's "certification, knowledge, and abilities" and not engaging "in any service that requires a license."

Response: HHSC declines to revise the rules based on these comments. "Expert opinion" was specifically chosen over "medical opinion" because it is broader, encompassing clinical opinions that extend beyond that of a physician. The rule already referred to "make clinical or diagnostic assessments," so no revision is needed in response to that comment. Finally, while HHSC understands the last commenter's desire for more specific information, HHSC cannot articulate in administrative rule an exhaustive list of the duties or responsibilities that may be permitted or limited based on an individual's knowledge and abilities. The peer specialist's supervisor and the organization in which the peer specialist works are more appropriate arbiters of an individual's scope of work.

Comment: Regarding §354.3101, two commenters stated that peer-run organizations, recovery community organizations, and clubhouses should be included in the list of authorized provider types for Medicaid.

Response: HHSC declines to revise the rule based on these comments. Section 354.3101 does not list specific provider types that may or may not enroll in Texas Medicaid. These comments relate to the Medicaid medical policy rather than the rule. The entities referenced by the commenter are not currently eligible to enroll in Texas Medicaid.

Comment: Regarding §354.3103, one commenter suggested adding "or supervisor" to the end of "Peer specialist supervision must occur: (3) more frequently at the request of the peer specialist."

Response: HHSC declines to revise the rule as suggested. Paragraphs (1) and (2) of subsection (b) already require "at least once weekly" or "at least once monthly" supervision, which both indicate the supervisor's discretion to require supervision more frequently.

Comment: Regarding §354.3105, one commenter suggested that HHSC "indicate in the qualifications a preference to use individuals with lived experience as supervisors."

Response: HHSC declines to revise the rule as suggested. Administrative code rules are not intended to communicate preference, and any preference stated in an administrative code rule is not enforceable. However, HHSC will consider this suggestion in the provision of any requested technical assistance to Medicaid providers who employ certified peer specialists under these rules.

Comment: One commenter stated that the Centers for Medicare & Medicaid (CMS) "requires that Peer Specialists be supervised by an LPHA." This commenter also requested clarification on the requirement in §354.3105(a)(5).

Response: CMS State Medicaid Director Letter #07-011, regarding peer support services, states that, "Supervision must be provided by a competent mental health professional (as defined by the State)." Therefore, CMS does not limit supervision of peer specialists to licensed practitioners of the healing arts (LPHAs). HHSC did revise §354.3105(a)(5) from "be certified under this subchapter" to "be a certified peer specialist supervisor under this subchapter."

Comment: Regarding §354.3151, one commenter asked if training curricula translated into other languages would need to be approved by HHSC or if such curricula would become the property of HHSC to be shared with other training entities.

Response: Translated curricula does not require HHSC approval, nor does it become the property of HHSC if a training entity has paid for the translation for its own use. If HHSC has any of the curricula translated into other languages, then HHSC would "own" those translations and make them available to all training entities certified under this subchapter. No change was made to the rule based on this comment.

Comment: Regarding §354.3153, one commenter asked for clarification regarding the instructor requirement in (a)(2) of the rule: "(a) An instructor must... (2) be trained by a training entity certified under this subchapter, and be approved to provide each type of training described in this subchapter before facilitating that training."

Response: HHSC revised §354.3153 in response to this comment as follows: "(a) An instructor must... (2) if part of an organization certified to provide training under this subchapter, rather than certified as an individual, be approved by the organization

to provide each type of training described in this subchapter before facilitating that training."

Comment: Regarding §354.3157 and §354.3203, one commenter expressed concern that the time frame for approving an application for training or an application for certification, 60 calendar days, was too long.

Response: HHSC declines to revise the rule based on this comment. Sixty days is not intended to be the norm, but an absolute maximum. If the stated time frame maximums later prove to be a barrier to persons seeking certification, HHSC will consider an amendment at that time.

Comment: Regarding §354.3159(a), one commenter requested clarification on whether "web-based" training qualifies as training through "telecommunication."

Response: HHSC declines to revise the rule based on this comment. As "web-based" training can take a variety of forms, HHSC stated in the proposed rule that for any training provided using telecommunication, "participants must be able to ask questions in real time and interact with the instructor and other classmates." If a web-based training meets those requirements, then it is in compliance with the rule.

Comment: Regarding §354.3159, one commenter stated that the rule should outline the content for the core curriculum, and one commenter expressed concern that the rule does not specify the process for revising curricula over time.

Response: HHSC declines to revise the rule based on these comments. For all trainings required in this subchapter, a list of the contents was purposefully omitted from the rules so that the trainings can be more easily adapted over time. Likewise, the process for revising or updating a training will not be included in these rules, particularly since the process may vary based on the scope of the change and who requests or initiates a particular change.

Comment: Regarding §354.3159, two commenters suggested specific content for the training as well as additional "endorsements" in areas such as co-occurring disorders and veterans' services.

Response: HHSC declines to revise the rule based on these comments. As this is a new certification program, HHSC is leaving the supplemental trainings at the two options currently in the rules (mental health or substance use), with the option to take both and be certified in both if a person has both types of lived experience. However, continuing education for certified peer specialists could certainly include content focused on the needs of a specific population, region, culture, etc.

Comment: Regarding §354.3159, four commenters stated that the certification entity should give exams, rather than the training entities giving knowledge assessments. Two of the four commenters requested a standardized test.

Response: HHSC declines to revise the rule based on these comments. The knowledge assessment given at the end of each core, supplemental, and supervisor training will be an HHSC-approved knowledge assessment used throughout the state for each respective training. The rules purposefully refer to "knowledge assessments" rather than exams, because these are not intended to mirror professional licensure exams. For peer specialists, the knowledge assessments are not intended to imply that a person is ready to work independently, but that the person understands basic concepts about the work and is ready to receive an initial certification to begin the 250 hours of supervised work experience. Due to the nature of peer work, the certification system described in these rules is purposefully designed to rely more on the trainer and the peer specialist's supervisor to assess the person's readiness to do the work.

Comment: Regarding §354.3201, two commenters expressed concern about the background check requirements on the whole, stating that they would eliminate potentially good peer specialists from participating as peer specialists. Three commenters also suggested additional wording or clarification for subsection (f), regarding a finding of incapacity based on mental defect or disease by a court in a criminal matter.

Response: HHSC declines to revise the rule based on these comments. The criminal offenses included in the background check requirements serve to protect the health and safety of the Medicaid recipients who would receive peer specialist services under these rules. If a potential peer specialist has a criminal history that would preclude certification under these rules, but has a compelling story about the changes in his or her life since that crime was committed, then the certification entity's exception process would be available to that person. Regarding subsection (f), no additional clarification is needed. Based on the nature of the comments, the three commenters perhaps missed the phrase "in a criminal matter." That subsection is solely focused on criminal matters, not civil findings solely for the reason of committing a person to a psychiatric facility. Additionally, subsection (g) clarifies, "When a person's application is denied under subsection (e) or (f) of this section, the person may reapply when... (3) the person who had been found to be incapacitated is found to be no longer incapacitated, in which case the provisions of this section applicable to the status of the charge and prosecution at that time will apply."

Comment: Regarding §354.3203, one commenter suggested "a statement identifying that individuals should not be working as both a mental health peer specialist and a recovery support peer specialist at the same time in the same organization."

Response: HHSC declines to revise the rule based on this comment. If a person has both certifications and is employed by an organization that provides both mental health and substance use services, then working as both a mental health peer specialist and a recovery support peer specialist at the same time in the same organization would be within the spirit and intent of these rules.

Comment: A commenter suggested deleting the requirement in §354.3203 that a peer specialist certification include the peer specialist's signature and photo, as these are not customarily included on most other professional or paraprofessional licenses/certifications.

Response: HHSC agrees with the commenter and deleted that requirement in both §354.3203 and §354.3209.

Comment: Regarding §354.3251, one commenter stated that there was no explanation of how the certification entity fees would be set, and one commenter stated that there should be "a maximum or state-approved fee policy."

Response: HHSC declines to revise the rule in response to these comments. Section 354.3253 states that HHSC approves an application which is in compliance with this subchapter and which properly documents applicant eligibility. Section 354.3251(7) requires a certification entity have a documented fee policy. There-

fore, HHSC will be able to monitor certification entity fees and cap them, if necessary, in the future.

Comment: Regarding §354.3255, one commenter requested clarification on when a record is considered "closed."

Response: HHSC declines to revise the rule based on this comment. Section 354.3003 defines "Closed" as "A certification entity record for a revoked or relinquished certification, including the record for a person who is deceased or no longer certified for another reason."

HHSC made changes to the following rules for reasons of clarity and not as a result of public comments. HHSC revised §354.3003, Definitions, and §354.3105, Peer Specialist Supervisor Minimum Qualifications, to correctly refer to the designation of Qualified Mental Health Professional-Community Services, previously referred to incorrectly as Qualified Mental Health Professional. HHSC revised §354.3151, Training Entity Minimum Requirements, to clarify that specific requirements are required only of an organization, not an individual, and to correct an oversight related to the knowledge assessment required after peer specialist supervisor training. HHSC corrected the same oversight related to the knowledge assessment required after peer specialist supervisor training in §354.3153, Instructor Requirements. HHSC also corrected an oversight by revising §354.3159, Core and Supplemental Training, to clarify that supplemental training (as well as core training) must be delivered in a classroom setting, or through telecommunication if participants are able to ask questions in real time and interact with the instructor and other classmates. HHSC revised §354.3253, Certification Entity Application Process, to correct the time frame reference to reflect that HHSC may require a new application if additional materials or revisions are not submitted to HHSC within 90 calendar days.

ADDITIONAL INFORMATION:

For further information, please call (512) 487-3419.

DIVISION 1. GENERAL PROVISIONS

1 TAC §354.3001, §354.3003

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.3003. Definitions.

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

(1) Adult--A person who is 21 years or older.

(2) Certification entity--An organization approved by HHSC to certify:

(A) peer specialists;

(B) peer specialist supervisors; and

(C) peer specialist training entities.

(3) Closed--A certification entity record for a revoked or relinquished certification, including the record for a person who is deceased or no longer certified for another reason.

(4) Dual relationship--A peer specialist's familial, financial, business, professional, close personal, sexual, or any other non-therapeutic relationship with a recipient, or any activity with another person that interferes or conflicts with the peer specialist's professional obligation to a recipient.

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

(6) Lived experience--When a person has experienced a significant life disruption due to the person's own mental health condition and/or substance use disorder and is now in recovery.

(7) LPHA--Licensed Practitioner of the Healing Arts. A person licensed as one of following and acting within the authorized scope of the person's license:

(A) physician;

(B) licensed professional counselor;

(C) licensed clinical social worker;

(D) psychologist;

(E) advanced practice registered nurse;

(F) physician assistant; or

(G) licensed marriage and family therapist.

(8) Mental health--A state of well-being in which an individual realizes one's own abilities, can cope with the normal stresses of life, and is able to be productive.

(9) Mental health condition--A condition (excluding a single diagnosis of an intellectual or developmental disability or a substance use disorder) that substantially impairs:

(A) an individual's thought, perception of reality, emotional process, or judgement;

(B) an individual's behavior; or

(C) an individual's ability to participate in daily routines.

(10) Mental health rehabilitative services--Services that are individualized, age-appropriate, and provide training and instructional guidance that restore an individual's functional deficits due to serious mental illness. The services are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community.

(11) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote a recipient's recovery and resiliency.

(12) Person-centered--The provision of services:

(A) directed by the recipient;

(B) aligned with the hopes, goals, and preferences of the recipient; and

(C) designed to build on the recipient's interests and strengths.

(13) Person-centered recovery plan--A written plan that serves as a plan of care and:

(A) is developed with the person, others whose inclusion is requested by the person and who agree to participate, and the persons planning or providing services;

(B) amended at any time based on the person's needs;

(C) guides the recovery process and fosters resiliency;

(D) identifies the person's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(E) identifies services and supports to meet the person's goals, preferences, needs and desired outcomes.

(14) Prevalent language--A non-English language determined to be spoken by at least 10 percent of persons in a community where a peer specialist will be providing services or in a community in which a training is offered. Persons are only counted toward the minimum 10 percent if they do not speak English as their primary language and if they have a limited ability to read, speak, write, or understand English.

(15) QCC--Qualified Credentialed Counselor. A person licensed as one of the following and acting within the authorized scope of the person's license:

(A) licensed professional counselor;

(B) licensed clinical social worker;

(C) licensed marriage and family therapist;

(D) psychologist;

(E) physician;

(F) physician's assistant;

(G) licensed chemical dependency counselor;

(H) certified addictions registered nurse; or

(I) advanced practice registered nurse licensed by the Texas Board of Nursing as a psychiatric-mental health clinical nurse specialist or nurse practitioner.

(16) QMHP-CS--Qualified Mental Health Professional-Community Services. A QMHP-CS must demonstrate competency in the work to be performed and:

(A) be a Registered Nurse; or

(B) have a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician's assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention.

(17) QPS--Qualified Peer Supervisor. A QPS must:

(A) be a certified peer specialist under this subchapter; and

(B) have one of the following combinations:

(i) a high school diploma or General Equivalency Diploma (GED) and at least four years of work experience as a peer specialist, up to two years of which may be substituted by work experience supervising others; or

(ii) an associate's degree or higher from an accredited college or university and at least two years of work experience as a peer specialist.

(18) Recipient--Refers to a person receiving Medicaid services under this subchapter.

(19) Recovery--A process of change through which a person:

(A) improves one's health and wellness;

(B) lives a self-directed life;

(C) strives to reach one's self-defined full potential; and

(D) participates in one's personal community.

(20) Relationship-focused--Requires a peer specialist to deliver services through a relationship with the recipient that is respectful, trusting, empathetic, collaborative, and mutual.

(21) Self-directed recovery--The point at which an individual takes proactive steps to plan and implement the individual's own recovery.

(22) Substance use disorder--A recurrent use of alcohol or drugs that causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

(23) Trauma-informed--A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.

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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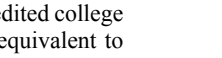

DIVISION 2. SERVICE PROVISION

1 TAC §§354.3011, 354.3013, 354.3015

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 3. PEER SPECIALISTS

1 TAC §§354.3051, 354.3053, 354.3055

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 4. ORGANIZATIONS IN WHICH PEER SPECIALISTS DELIVER SERVICES

1 TAC §§354.3101, 354.3103, 354.3105

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.3105. Peer Specialist Supervisor Minimum Qualifications.

(a) A peer specialist supervisor must:

(1) be at least 18 years of age;

(2) be a:

(A) QCC;

(B) LPHA;

(C) QMHP-CS, with a QCC or LPHA supervising the QMHP-CS; or

(D) QPS, with a QCC or LPHA supervising the QPS;

(3) pass criminal history and registry checks as described in §354.3201 of this subchapter (relating to Criminal History and Registry Checks);

(4) meet the training requirements in §354.3163 of this subchapter (relating to Supervisor Training) and §354.3165 of this subchapter (relating to Peer Specialist Supervisor Certification Renewal Training); and

(5) be a certified peer specialist supervisor under this subchapter.

(b) An LPHA or QCC supervising a QMHP-CS or QPS per subsections (a)(2)(C) or (a)(2)(D) of this section must conduct:

(1) at least monthly documented meetings with each QMHP-CS or QPS being supervised; and

(2) documented observation of a QMHP-CS or QPS providing supervision at a frequency determined by the LPHA or QCC based on the QMHP-CS's or QPS's skill level.

(c) A person who has at least two years of experience supervising peer specialists, within the five years prior to the date this rule is initially effective, may apply to a certification entity to be grandfathered into peer specialist supervisor certification under this subchapter. A person requesting to be grandfathered in under this subsection must successfully complete the knowledge assessment required by §354.3163(b) of this subchapter (relating to Supervisor Training). If the person is unable to successfully complete the knowledge assessment, the certification entity may:

(1) deny the request for grandfathering; or

(2) accept the request for grandfathering, with an initial one-year certification during which the person must successfully complete specific training and pass the knowledge assessment for that training.

(d) A peer specialist supervisor must be certified as such under this subchapter before providing supervision to a peer specialist under this subchapter.

(e) If a peer specialist supervisor is also a peer specialist, that person cannot supervise themselves.

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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DIVISION 5. TRAINING

1 TAC §§354.3151, 354.3153, 354.3155, 354.3157, 354.3159, 354.3161, 354.3163, 354.3165

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.3151. Training Entity Minimum Requirements.

(a) A training entity must have:

(1) a physical location in Texas;

(2) experience in training or sponsoring training for paraprofessionals;

(3) experience in training or sponsoring training that uses adult learning principles;

(4) experience in training or sponsoring training related to elements of peer specialist services;

(5) a plan to provide training for at least one of the following:

(A) peer specialists, including:

(i) core training; and

(ii) at least one type of supplemental training; or

(B) peer specialist supervisors under §354.3163 of this division (relating to Supervisor Training);

(6) if the training entity is an organization, rather than a single individual, a plan to approve each instructor who will provide training under the organization, per §354.3153(a)(2) of this division (relating to Instructor Requirements);

(7) a plan to provide training on a regularly scheduled basis, including primary training location(s), training schedule, and procedures related to registration/enrollment, training methodology, course completion/graduation requirements, and evaluation of training;

(8) a documented application process for peer specialists and/or peer specialist supervisors, including:

(A) use of HHSC-approved scoring rubric(s); and

(B) availability of application materials in prevalent languages, professionally translated;

(9) if the training entity is an organization, rather than a single individual, a documented internal review process designed to ensure consistency and equity in application scoring; and

(10) a documented fee policy.

(b) A training entity must be certified by a certification entity to provide training under this subchapter.

(c) A training entity must use training curricula pre-approved by HHSC, including the knowledge assessment(s) required by §354.3159(e) (relating to Core and Supplemental Training) and §354.3163(b) (relating to Supervisor Training) of this division.

(d) All training must:

(1) provide reasonable accommodation for a person with a disability;

(2) provide reasonable accommodation for a person who speaks a prevalent language; and

(3) be culturally sensitive.

(e) A training entity must maintain the following documentation for each person trained:

(1) application;

(2) date of each training attended and length of each training; and

(3) results of each knowledge assessment.

(f) An application not approved must be retained for at least 2 years.

(g) Documentation of each person trained must be retained for at least 5 years.

§354.3153. Instructor Requirements.

(a) An instructor must:

(1) be a certified peer specialist in good standing, and must have the certification endorsement related to any supplemental training before providing that training;

(2) if part of an organization certified to provide training under this subchapter, rather than certified as an individual, be approved by the organization to provide each type of training described in this subchapter before facilitating that training; and

(3) use training curricula pre-approved by HHSC, including the knowledge assessment(s) required by §354.3159(e) (relating to Core and Supplemental Training) and §354.3163(b) (relating to Supervisor Training) of this division.

(b) An instructor who has been consistently providing peer specialist training in the two years before the initial effective date of this section may apply to a certification entity to be approved as an instructor under this subchapter without meeting the requirements in:

(1) subsection (a)(1) of this section; and

(2) subsection (a)(2) of this section, except that the instructor may only provide supplemental training in the area of specialty for which they have historically provided training.

§354.3159. Core and Supplemental Training.

(a) Core training and supplemental training must be delivered in a classroom setting. If provided through telecommunication, participants must be able to ask questions in real time and interact with the instructor and other classmates.

(b) Core training must be consistent with subsection §354.3013(a) of this subchapter (relating to Services Provided).

(c) Upon successful completion of core training, a person is eligible for the supplemental training consistent with the person's lived experience:

(1) Mental Health Peer Specialist, for a person with lived experience in recovery from a mental health condition; or

(2) Recovery Support Peer Specialist, for a person with lived experience in recovery from a substance use disorder.

(d) Upon successful completion of a supplemental training, a person may apply for certification under Division 6 of this subchapter (relating to Peer Specialist and Peer Specialist Supervisor Certification).

(e) Successful completion of both core training and supplemental training must be documented through a knowledge assessment completed by each participant at the end of each training.

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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For further information, please call: (512) 487-3419

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DIVISION 6. PEER SPECIALIST AND PEER SPECIALIST SUPERVISOR CERTIFICATION

1 TAC §§354.3201, 354.3203, 354.3205, 354.3207, 354.3209, 354.3211

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.3203. Procedures for Peer Specialist Certification.

(a) An applicant must submit all required information and documentation to a certification entity electronically or in hard copy, as specified by the certification entity, including:

(1) application form;

(2) proof of core training and supplemental training;

(3) state-issued identification; and

(4) signed ethics statement.

(b) For each applicant, the certification entity must conduct the background checks required in §354.3201 of this division (relating to Criminal History and Registry Checks).

(c) Application approval must be based on the requirements in §354.3051 of this subchapter (relating to Minimum Qualifications) and §354.3201 of this division.

(d) Application approval or disapproval must be communicated to the applicant within 60 calendar days. Notice of disapproval must include the reason(s) for disapproval and information on how to file an appeal.

(e) An applicant who is not approved may file an appeal per Division 8 of this subchapter (relating to Complaints, Appeals, and Hearings).

(f) For an approved applicant, the certification entity issues a peer specialist certification, including an endorsement based on the supplemental training completed by the person per §354.3159 of this subchapter (relating to Core and Supplemental Training). Each peer specialist certification includes:

(1) a certificate number;

(2) the peer specialist's endorsement, based on lived experience and supplemental training, as a:

(A) Mental Health Peer Specialist; or

(B) Recovery Support Peer Specialist;

(3) the date the certification will expire; and

(4) the name of the certification entity.

(g) A peer specialist may only provide services consistent with the endorsement on the person's certification, as listed in subsection (f)(2) of this section. However, a person with lived experience in recovery from both a mental health condition and a substance use disorder may apply to receive both supplemental trainings.

(1) Documentation of each supplemental training under this subsection must be provided to the certification entity to have a second endorsement added to the person's certification.

(2) Two endorsements do not require additional supervised work experience under §354.3205 of this division (relating to Initial Peer Specialist Certification).

(3) Two endorsements do not require additional certification renewal training hours.

§354.3209. Procedures for Peer Specialist Supervisor Certification.

(a) An applicant must submit all required information and documentation to a certification entity electronically or in hard copy, as specified by the certification entity, including:

(1) application form;

(2) proof of peer specialist supervisor training;

(3) state-issued identification; and

(4) signed ethics statement.

(b) For each applicant, the certification entity must conduct the background checks required in §354.3201 of this division (relating to Criminal History and Registry Checks).

(c) Application approval must be based on the requirements in §354.3105 of this subchapter (relating to Peer Specialist Supervisor Minimum Qualifications) and §354.3201 of this division.

(d) Application approval or disapproval must be communicated to the applicant within 60 calendar days. Notice of disapproval must include the reason(s) for disapproval and information on how to file an appeal.

(e) An applicant who is not approved may file an appeal per Division 8 of this subchapter (relating to Complaints, Appeals, and Hearings).

(f) The certification entity issues an approved applicant a peer specialist supervisor certification. Each peer specialist supervisor certification includes:

(1) a certificate number;

(2) the date the certification will expire; and

(3) the name of the certification entity.

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

Filed with the Office of the Secretary of State on December 12, 2018.

TRD-201805345
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2019
Proposal publication date: September 14, 2018
For further information, please call: (512) 487-3419

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DIVISION 7. CERTIFICATION ENTITIES

1 TAC §§354.3251, 354.3253, 354.3255

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.3253. Certification Entity Application Process.

(a) An applicant to be a certification entity submits an application and all required documentation to HHSC, in a format specified by HHSC.

(b) Within 90 calendar days, HHSC sends the applicant a notice of disapproval, a notice of approval, or a notice of required additional materials or revisions to the application.

(c) If HHSC sends a notice of required additional materials or revisions to the application, the applicant must submit the requested materials within 90 calendar days. HHSC may require a new application if additional materials or revisions are not submitted to HHSC within 90 calendar days.

(d) HHSC approves an application which is in compliance with this subchapter and which properly documents applicant eligibility.

(e) HHSC disapproves an application if the applicant:

(1) does not meet the eligibility and application requirements set out in this subchapter;

(2) fails or refuses to properly complete or submit required information; or

(3) knowingly presents false or misleading information in the application process.

(f) HHSC gives an applicant written notice of the reason for a disapproval and of the opportunity to reapply or appeal.

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

Filed with the Office of the Secretary of State on December 12, 2018.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 487-3419

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DIVISION 8. COMPLAINTS, APPEALS, AND HEARINGS

1 TAC §§354.3301, 354.3303, 354.3305, 354.3307

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

Filed with the Office of the Secretary of State on December 12, 2018.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 487-3419

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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs, §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures, §355.112, concerning Attendant Compensation Rate Enhancement, and §355.306, concerning Cost Finding Methodology. The amendments are adopted without changes to the proposed text as published in the October 19, 2018, issue of the *Texas Register* (43 TexReg 6911), and therefore will not be republished.

Due to a publication error in the October 19, 2018, issue of the *Texas Register,* the text of what should have been §355.112(h)(2)(B), was inadvertently deleted. The text of old subparagraph §355.112(h)(2)(C) should have remained unchanged and become the text for §355.112(h)(2)(B). A Correction of Error was published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8173).

BACKGROUND AND JUSTIFICATION

These rule amendments are necessary for consistency and efficiency of cost report training requirements, include a technical correction to the cost determination process for Integrated Care Management (ICM) because the ICM program no longer exists, and update cost report submission requirements from every year to every other year for certain providers.

Senate Bill 547, 85th Legislature, Regular Session, 2017, required the HHSC Executive Commissioner to establish rules in order to implement the delivery of nonresidential services by state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID). These

rule changes allow HHSC to use cost allocation methods beyond those identified in the current rules for cost reporting purposes by State Supported Living Centers (SSLCs) and Bond Homes. These amendments allow flexibility in the reporting of expenses by SSLCs and Bond Homes in order to ensure the most accurate representation of the SSLCs' and Bond Homes' costs to deliver the nonresidential services.

COMMENTS

The 30-day comment period ended November 19, 2018.

During this period, HHSC did not receive any comments regarding the proposed rules.

ADDITIONAL INFORMATION

For further information, please call: (512) 424-6637.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §§355.102, 355.105, 355.112

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805311
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2019
Proposal publication date: October 19, 2018
For further information, please call: (512) 424-6637

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306

The amendment is adopted under Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805312
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2019
Proposal publication date: October 19, 2018
For further information, please call: (512) 424-6637

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CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §371.214

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §371.214, concerning Resource Utilization Group Classification System.

The amendment is adopted without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5902), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment replaces the requirement that HHSC's Office of Inspector General (HHSC-OIG) conduct on-site utilization reviews of every nursing facility at least every fifteen months with a process whereby HHSC-OIG conducts a comprehensive annual review of all nursing facilities by considering criteria such as length of time since the last review, previous review results, complaints, and referrals. HHSC-OIG uses the results of that review to prioritize nursing facilities for on-site utilization reviews. The rule is built on an established risk assessment process.

By applying an inclusive set of key criteria to each nursing facility on a case-by-case basis, the adopted change allows HHSC-OIG the flexibility to schedule and prioritize its work in the most cost-effective and resource-efficient manner while upholding its commitment to review all nursing facilities in Texas.

COMMENTS

The 30-day comment period ended October 14, 2018.

During this period, HHSC did not receive any comments regarding the proposed rule.

ADDITIONAL INFORMATION

For further information, please call: (512) 491-2070.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides the HHSC executive commissioner the authority to adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102(a), which grants HHSC-OIG the responsibility to conduct reviews of fraud, waste, and abuse

in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides HHSC with the authority to obtain any information or technology necessary to enable HHSC-OIG to meet its legal responsibilities; Texas Government Code §531.102(a-2), which requires the executive commissioner to work in consultation with the HHSC-OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033 which provides the executive commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

Filed with the Office of the Secretary of State on December 12, 2018.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2019
Proposal publication date: September 14, 2018
For further information, please call: (512) 491-2070

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies), adopts the amendment to 7 TAC, §5.101, concerning Employee Training and Education Assistance Programs without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7284). The amended rule will not be republished.

Government Code, §656.048 requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and the obligations assumed by the administrators and employees on receiving the training and education. The commission adopted §5.101 to implement Government Code, §656.048.

Subsection (e) of §5.101 requires the finance agencies to develop and maintain policies for administering the employee training and education program of each finance agency. Subsection (e) also describes what the to-be-developed polices were to include. The finance agencies have developed such policies and the amendment to §5.101 eliminates the transitionary provisions for future development to reflect that the policies have been developed.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §656.048, which provides for training and education assistance to employees of state agencies.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805393
Catherine Reyer
General Counsel
Finance Commission of Texas
Effective date: January 3, 2019
Proposal publication date: November 2, 2018
For further information, please call: (512) 475-1301

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.11

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to 7 TAC §26.11, concerning providing information to perpetual care cemetery customers about filing complaints, without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7285). The amended rule will not be republished.

The amendment clarifies when a perpetual care cemetery website must contain access to the notice to consumers of how to file complaints.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Health and Safety Code, §712.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805395

Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 3, 2019
Proposal publication date: November 2, 2018
For further information, please call: (512) 475-1301

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.23, §33.35

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.23, concerning permissible investments that are required to be maintained by money transmitters under Finance Code, §151.309; and §33.35, concerning record retention relating to money transmission transactions, without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7286). The amended rules will not be republished.

Finance Code, §151.309(a) requires a money transmission license holder to maintain permissible investments. Section 151.309(b) enumerates the categories of assets and investments that constitute a permissible investment for purposes of Finance Code, §151.309. Finance Code, §151.309(b)(7) grants the commission the authority to permit by rule other assets and investments to constitute permissible investments, based on a determination that the assets or investments have a safety substantially equivalent to other permissible investments.

Based on requests from money transmission license holders, the department evaluated the safety of Automated Clearing House Receivables, Credit Card Receivables, and Debit Card Receivables and determined that developments in payment systems law and technology have caused these assets to have a safety substantially equivalent to the other permissible investments listed in Finance Code, §151.309(b). The commission adopted the department's determination. New §33.23(d)(3) recognizes any receivable owed by a bank to a license holder resulting from an automated clearinghouse (ACH), debit, or credit-funded transmission, subject to certain limitations, as a permissible investment. New §33.23(g) defines the terms relevant to the receivables. New §33.23(h) sets forth the conditions precedent for ACH Receivables to constitute a permissible investment. New §33.23(i) and (j) describe similar conditions precedent to Credit Card Receivables and Debit Card Receivables, respectively. New §33.23(k) excludes from total permissible investments the aggregate value of ACH Receivables, Credit Card Receivables, and Debit Card Receivables owed to a license holder from a single person that exceeds ten (10) percent of the aggregate value of a license holder's permissible investments. New §33.23(l) instructs license holders as to how ACH Receivables, Credit Card Receivables, and Debit Card Receivables may be reported when reporting on permissible investments.

As amended, ACH Receivables, Credit Card Receivables, and Debit Card Receivables are subject to the "past due or doubtful of collection" standard, originally applied only to receivables due a license holder from authorized delegates in Finance Code, §151.309(b)(1). Section 33.23(c) defines the term "past due or doubtful of collection" in the context of Finance Code, §151.309(b)(1). As amended, §33.23(c) allows the subsection to address the broader applicability of the term.

Section 33.35(e)(2) cites 31 CFR §1010.100(j) to incorporate the federal definition of "funds transfer." Section 33.35(e)(2) as amended corrects the statutory reference for the federal definition to 31 CFR §1010.100(w).

The department received one comment regarding the proposed amendment to §33.23. That comment, from The Money Services Round Table, was in support of the amendment. No comments were received by the department regarding the proposed amendment to §33.35.

The amendments are adopted under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151. Additionally, the amendment to §33.23 is also adopted under Finance Code, §151.309(b)(7) which authorizes the commission to permit by rule other assets and investments to constitute permissible investments, based on a determination that the assets or investments have a safety substantially equivalent to other permissible investments.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805399
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 3, 2019
Proposal publication date: November 3, 2019
For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 85, Subchapter A, §§85.202, 85.203, 85.205, 85.206, 85.211, 85.212, 85.301, 85.304, 85.307, 85.402, 85.405, 85.421, 85.502, 85.601, 85.603, 85.604, 85.606, 85.701, and 85.702, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7288). The rules will not be republished.

The commission received one written comment on the proposal from Vianovo, LP. The comment mentions proposed §85.604, concerning Enforcement Action Against Pawnshop License or Pawnshop Employee License. However, the comment does not specify whether it is for or against the adoption of the proposed amendments to this section. The agency's response to the

comment is included following the discussion of the changes to §85.604.

The adopted amendments affect rules contained in Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the adopted amendments to 7 TAC, Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter A was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5402). The commission received no comments in response to that notice.

The agency distributed an early draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft, although several stakeholders provided verbal feedback during the stakeholder meeting. Certain concerns raised during the meeting have been addressed in the rules as proposed and maintained for this adoption. The agency appreciates the thoughtful input provided by stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments are intended to fulfill the following three purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) modernize or remove obsolete language; and 3) make technical corrections. Any pawnshop rule not included in this adoption will be maintained in its current form.

The individual purposes of the adopted amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to rule changes to ensure consistency and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

The agency's acronym "OCCC," currently defined in §85.102(8) replaces the use of "commissioner" in three instances in the introductory language of §85.202. The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §85.202, the following rules include amendments replacing "commissioner" with "OCCC": §85.206, concerning Processing of Application; §85.301, concerning Filing of New Application (for pawnshop employees); §85.304, concerning Processing of Application (for pawnshop employees); §85.402, concerning Recordkeeping; §85.502, concerning Annual Report; §85.603, concerning Reinstatement of an Expired Pawnshop License; and §85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee License.

Section 85.202, concerning Filing of New Application, includes numerous adopted amendments to ensure consistency with current agency procedures. In §85.202(a)(1)(A) and (a)(1)(B), changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" has been added to §85.202(a)(1)(A)(ii), to further the use of online terminology.

Adopted changes are included in §85.202(a)(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the applicant, without reference to particular titles of the person signing.

Adopted amendments updating licensing terminology continue in §85.202(a)(1)(C) through (a)(1)(I) and (a)(2)(A) to better align the rule with the OCCC's online portal.

Section 85.202(a)(1)(D) contains several adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" replaces "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person requires simply a different address from the licensed location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §85.202(a)(1)(I)(i), an adopted amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 85.202(a)(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. Adopted amendments in clause (iv) update the fingerprinting requirements and clarify when applicants will not need to resubmit if acceptable fingerprints are on file. Upon request, previously licensed individuals and principal parties may need to submit a new set of fingerprints due to unsubscription requirements from the Texas Department of Public Safety. The last sentence in clause (iv) provides clearer guidance to applicants and will enhance the agency's ability to fulfill its criminal background check requirements.

Moreover, the adopted amendments to §85.202(a)(2)(A)(iv) updating fingerprinting correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §85.202(a)(2)(B), several adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (a)(2)(C)(ii)(II) and (III), and (a)(2)(C)(iv)(II) and (III) required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. In addition, the requirements in §85.202(a)(2)(C)(ii)(IV)(-a-) and (a)(2)(C)(iv)(IV)(-a-) have been deleted. These provisions required applicants to provide

minutes electing the statutory agent. The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these adopted changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. While uncommon, the "if requested" documents may be necessary to obtain missing information or resolve conflicts that may arise when determining the appropriate number and identity of an applicant's current officers and directors required for the owners and principal parties section of the application, or to address other discrepancies with business filings.

Parallel changes to streamline the required entity documents are adopted for corporations in §85.202(a)(2)(C)(ii), and for limited liability companies in §85.202(a)(2)(C)(iv).

In §85.203, concerning Relocation, adopted amendments continue use of the agency's acronym and update licensing terminology. Additionally, the adopted amendments to §85.205(e)(4), concerning Transfer of License; New License Application on Transfer of Ownership, provide corresponding revisions to licensing terminology.

Section 85.206, concerning Processing of Application, contains several adopted amendments to ensure consistency with current agency procedure and make technical corrections. First, the former terminology related to "acceptance" was intended to address paper applications that did not contain enough information to trigger initial processing. With the online portal, the majority of pawnshop license applications are submitted electronically, and there is no longer a need to distinguish application "acceptance" as opposed to "completion." The adopted amendments delete "acceptance" terminology and focus on completion, as built into the online portal to improve the efficiency of application processing.

Second, the adopted amendments to §85.206(e) enhance the OCCC's ability to more quickly deliver the required notice of application and protest procedures when a competing application has been filed in an existing pawnshop's county. Section 371.057 of the Texas Finance Code requires that these notices be "given" to existing pawnshops when a competing application is filed. Adopted new §85.206(e)(1)-(2) will allow the OCCC to e-mail the notice of application and protest procedures to the master file e-mail address on file. If the OCCC receives notice that the e-mail is not deliverable or if an existing licensee does not have a master file e-mail address, the notice will be sent by first class mail.

And third, the remaining amendments adopted in §85.206 continue use of the agency's acronym and update an internal reference to the criminal history rule in §85.601, which was consolidated from two rules into one last year.

The following two sections include adopted amendments to make technical corrections. In §85.211, concerning Fees, an internal reference has been updated to refer to the appropriate subsection.

In §85.212, concerning Application and Notices as Public Records, the agency name for the Texas State Library and Archives Commission (TSLAC) has been corrected. A parallel change regarding the reference to TSLAC has also been made in §85.307, which is the public records rule for pawnshop employees.

In §85.301, concerning Filing of Application (for pawnshop employees), adopted amendments continue use of the agency's acronym, update licensing terminology, and make technical corrections.

The adopted amendments to §85.304, concerning Processing of Application (for pawnshop employees), provide parallel changes to those outlined in the discussion regarding the corresponding rule for pawnshops, §85.206. The amendments to §85.304 remove "acceptance" terminology, use the agency's acronym, and update a reference to the criminal history rule.

In §85.402(c), concerning Recordkeeping, an adopted amendment streamlines the compliance file requirements to align with examinations issued through the online portal. An additional amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCCC's website.

In §85.405(a)(6)(A), concerning Pawn Transaction, an adopted amendment updates a citation to the Texas Business and Commerce Code. The cited section was redesignated to a different section number by the 2017 legislature.

The adopted amendments to §85.421, concerning Consumer Information, provide modernization. While pawnshops may request additional copies of consumer brochures from the agency, the amendment clarifies that licensees may print additional copies of these brochures, as available on the OCCC's website.

In §85.502, concerning Annual Report, the adopted amendments align this reporting rule with those in the agency's other regulated areas. The amendments streamline the language to more simply state compliance with posted agency instructions. Additionally, the July 31st due date for pawnshop annual reports has been added to the introductory paragraph.

In §85.601(d)(2), concerning Denial, Suspension, or Revocation Based on Criminal History, an adopted amendment corrects a citation to the Texas Finance Code.

The adopted amendments to §85.603, concerning Reinstatement of an Expired Pawnshop License, include changes to update terminology, including use of the agency's acronym.

Section 85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee Licensee, contains several adopted amendments to ensure consistency with current agency procedures and make technical corrections. The primary changes update agency enforcement procedures and terminology.

As a result of the adopted amendments, §85.604 will better reflect the enforcement actions available to the agency under the Texas Finance Code: injunction, administrative penalty, suspension, and revocation. Accordingly, the title of §85.604 has been amended, replacing the phrase "Revocation or Suspension of" with the phrase "Enforcement Action Against" to more accurately describe the agency's authority. Thus, the full amended title of §85.604 as maintained in this adoption will be: "Enforcement Action Against Pawnshop License or Pawnshop Employee License."

In general, the agency is moving away from an approach where every violation results in an immediate administrative penalty. Once a violation is referred to the legal department, the agency's first response will often be an injunction with no penalties. An injunction is an order issued by the commissioner that directs the person to either take some action required by law or to refrain

from action prohibited by law. Thus, the adopted amendments to §85.604 include several added references to injunctions.

For many first-time violations, the agency believes that this enforcement posture will better allow licensees to bring their practices into compliance without the added burden of paying an administrative penalty.

Should an administrative penalty be commensurate with the violation in question, the Texas Finance Code provides the OCCC with discretion in determining the amount of the penalty. The OCCC considers the following factors when determining the amount of an administrative penalty, as provided by Texas Finance Code, §14.252: "(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act; (2) the extent of actual or potential harm to a third party; (3) the history of violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require."

Additionally, before a violation is referred for a potential enforcement action, an applicant or licensee will generally have opportunities to resolve the issue through the agency's other regulatory processes. For example, many licensing deficiencies are resolved when the licensing department requests and receives additional information from an applicant. The OCCC's consumer assistance staff resolves numerous complaints through communications with licensee compliance officers. Many violations are also resolved as part of the confidential investigation or examination process.

The commission received one comment that refers to the proposed amendments in §85.604. The commenter does not provide any suggestions or recommended changes to the rule text as proposed. Regarding the amendments in §85.604, the commenter states: "No statutory citation is provided for the changes updating enforcement procedures."

Section 14.208(a) of the Texas Finance Code authorizes injunctions against pawnshops and pawnshop employees. Section 14.208(a) states: "If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmation action, or both, to enforce compliance." The term "injunction" refers to the order to cease and desist, take affirmative action, or do both, as authorized under §14.208(a). Sections 14.208(c), 14.251, and 371.303 of the Texas Finance Code authorize administrative penalties against pawnshops and pawnshop employees. Section 371.251 of the Texas Finance Code authorizes suspension or revocation of a pawnshop license, and §371.255 of the Texas Finance Code authorizes suspension or revocation of a pawnshop employee license.

The commenter also expresses concerns about the public nature of enforcement orders (as opposed to confidential examination instructions), and requests additional information on the OCCC's policies and procedures for handling enforcement actions. For example, the commenter asks whether referrals from the examination department to the legal department will automatically result in an injunction. These requests are outside the scope of the rule amendments in §85.604(a), which simply restate the types of enforcement actions authorized under Chapters 14 and 371 of the Texas Finance Code. The OCCC intends to address the commenter's requests related to agency policies and procedures outside the rulemaking process. The proposed text of §85.604 will be maintained for this adoption.

The remaining amendments adopted in §85.604 continue use of the agency's acronym and update an ATF form number referenced in subsection (b)(4).

In §85.606, concerning Surrender of License, adopted amendments to subsection (b) update terminology by replacing the term "administrative action" with the term "enforcement action." The term "enforcement action" is intended to avoid confusion with the more specific term "administrative penalty."

Adopted amendments related to agency enforcement procedures are also contained in §85.701, concerning Failure to Timely File a Pawnshop Employee Application, and in §85.702, concerning Accepting Prohibited Merchandise. The amendments to both of these rules are consistent with those outlined in the discussion of §85.604.

In particular, the adopted amendments to §85.701(a) maintain the approach that a pawnshop employee application will usually not be denied solely because it has been filed late. If no other ground is present upon which to deny the application, the agency will typically grant the pawnshop employee license, along with an appropriate enforcement action listed in subsection (b).

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be February 1, 2019.

DIVISION 2. PAWNSHOP LICENSE

7 TAC §§85.202, 85.203, 85.205, 85.206, 85.211, 85.212

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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-201805431
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Office of Consumer Credit Commissioner
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Proposal publication date: November 2, 2018
For further information, please call: (512) 936-7621

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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §§85.301, 85.304, 85.307

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 4. OPERATION OF PAWNSHOPS

7 TAC §§85.402, 85.405, 85.421

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 5. INSPECTIONS AND EXAMINATION

7 TAC §85.502

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §§85.601, 85.603, 85.604, 85.606

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 7. ENFORCEMENT; PENALTIES

7 TAC §85.701, §85.702

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §101.8, concerning the criminal history of applicants and licensees, with changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7300). The rule amendment will be republished. As a result of staff review and Board member discussion during an open meeting, the Board is making clarifying changes to the proposed text. The changes to the published text are to insert "if more than one recommended sanction applies to the conviction of a licensee or applicant, the Board shall apply the highest recommended sanction applicable" into subsection (d), and to insert "may" as a replacement for "shall" regarding Class B misdemeanors in subsections (d)(1)(C) and (d)(2)(F).

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a)-(b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings and the examination of applicants for a license to practice dentistry. Additionally, the rule is proposed under Texas Occupations Code §262.102(a), which gives the Board authority to adopt rules relating to professional conduct for dental hygienists.

§101.8. Persons with Criminal Backgrounds.

(a) The purpose of this section is to establish mandatory sanctions, recommended sanctions, guidelines and criteria for the disciplinary actions to be taken by the Board against applicants and licensees with criminal backgrounds.

(b) Definitions. In this section, the following terms shall apply:

(1) "Applicant" means a person applying for a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(2) "Conviction" shall mean a conviction under federal law or the law of any state, district, or territory of the United States. A conviction shall be considered "final" upon the imposition of a sentence of imprisonment, parole, probation, community supervision, or other punishment after such conviction. Pursuant to Texas Occupations Code §53.021(e)(1), the Board shall consider placement of a defendant under deferred adjudication community supervision, or a similar deferral of adjudication of guilt under federal or state law, as a final conviction for all licensing and disciplinary purposes under the Texas Occupations Code and Board rules.

(3) "Final Disposition" shall mean the date on which the applicant or licensee completed the imposed sentence after conviction, including any period of parole or probation, or completed the conditions of deferred adjudication community supervision or similar deferral of adjudication of guilt, as shown by the certified records of the court or supervising government authority.

(4) "License" means a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(5) "Licensee" means the holder of a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(6) "Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants" means any criminal violation of the Texas Dental Practice Act; any criminal violation of a law related to the billing and payment for dental care services; any criminal violation of a law related to the treatment and care of patients; and any criminal violation of a law related to the preservation and protection of patient records or patient protected health information.

(c) Imposition of Mandatory Sanctions for Criminal Convictions. Based upon Texas Occupations Code §263.006 and the interests of public health and safety, the Board shall impose the following mandatory sanctions on licensees for the following offenses. The Board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the licensee whose license was suspended or revoked. The Board must base that determination on substantial evidence contained in an investigative report.

(1) Felony Convictions. The Board shall revoke the license of a current licensee who receives a final felony conviction under federal law or the law of any state, district, or territory of the United States.

(2) Assaultive Offenses. The Board shall revoke the license of a current licensee who receives a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only.

(3) Mandatory Registration as Sex Offender. The Board shall revoke the license of a current licensee who receives a final conviction requiring the licensee register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(4) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board shall revoke the license of a current licensee who receives a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code.

(d) Imposition of Recommended Sanctions for Criminal Convictions. Based upon statutory authorization and the interests of public health and safety, the Board shall impose the following recommended sanctions for the following offenses, based on the Board's determination that these offenses relate to the practice of dentistry, and the Board's determination that allowing a licensee to practice dentistry or provide dental services under a license issued by the Board pro-

vides an opportunity for further criminal conduct. In the event that a sanction from subsection (c) of this section is also applicable to a licensee, the Board shall impose the mandatory sanction instead of the recommended sanction under this subsection. If more than one recommended sanction applies to the conviction of a licensee or applicant, the Board shall apply the highest recommended sanction applicable. The Board may only increase these recommended sanctions upon an affirmative finding that persuasive aggravating factors require elevation of the sanction for the protection of public health and safety. The Board shall reduce the following sanctions only upon an affirmative finding of persuasive mitigating factors presented by the applicant or licensee, as applicable. The Board shall articulate these aggravating or mitigating factors in any order adopting the sanctions to be imposed on the licensee.

(1) Current Licensees. The Board shall impose the following disciplinary sanctions based upon convictions which occurred after the Board issued a license.

(A) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. Pursuant to Texas Occupations Code §263.002(a)(10), the Board shall take disciplinary action for convictions related to the practice of dentistry. The Board has determined that violations of law relating to the practice of dentistry and dental hygiene are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. As a result, the Board shall impose a five-year probated suspension for a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants.

(B) Conviction of Misdemeanor Involving Fraud. Pursuant to Texas Occupations Code §263.002(a)(2), the Board shall take disciplinary action for misdemeanor convictions involving fraud. The Board has determined that holding a license allows access to sensitive patient records and information, which requires the licensee to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension for a final conviction of a misdemeanor under Chapter 32 of the Texas Penal Code, or an equivalent section of federal law or the law of any state, district, or territory of the United States.

(C) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to controlled substances, dangerous drugs and other substances that represent the potential for abuse and drug diversion, which requires the licensee to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on a current licensee who receives a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code. The Board may impose a Reprimand for a Class B misdemeanor final conviction pursuant to subsection (d)(1)(D) of this section.

(D) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsection (h) of this section.

(2) License Applicants. The Board shall impose the following disciplinary sanctions based upon convictions that occurred prior to the submission of an application for a license.

(A) Felony Convictions. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances and dangerous drugs, and patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. Pursuant to Texas Occupations Code §263.001(a)(5), the Board shall deny an applicant who received a final felony conviction under federal law or the law of any state, district, or territory of the United States that is still pending final disposition. The Board shall impose a five-year probated suspension on an applicant with a final conviction for a felony that is less than five years from the date of final disposition. From five to ten years after the date of final disposition, the Board shall impose a one-year probated suspension. After ten years from the date of final disposition, the Board shall take no action.

(B) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. The Board has determined that violations of Texas law relating to the practice of dentistry are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. Pursuant to Texas Occupations Code §263.001(a)(4) and (a)(6), the Board shall deny an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is still pending final disposition, but which occurred prior to the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a one-year probated suspension on an applicant with a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(C) Mandatory Registration as Sex Offender. The Board has determined that holding a license allows access to controlled substances and dangerous drugs, and patients in sensitive and compromised physical conditions, including minor patients and patients with mental and physical disabilities, which requires the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall deny an applicant who received a final conviction requiring the applicant register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(D) Assaultive Offenses. The Board has determined that holding a license allows access to patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall deny an applicant who received a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an assaultive offense, other than a misdemeanor punishable by fine only, that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(E) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board has determined that holding

a license allows access to confidential patient records and information, and patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall deny an applicant who received a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(F) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances, and dangerous drugs, which requires the applicant to demonstrate the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on an applicant who received a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code that is less than five years from the date of final disposition. The Board may impose a Reprimand for a Class B misdemeanor final conviction that is less than five years from the date of final disposition, pursuant to subsection (d)(2)(G) of this section. After five years from the date of final disposition, the Board shall take no action.

(G) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsections (f) - (g) of this section.

(e) Pursuant to Texas Occupations Code §53.021(b), the Board shall revoke a license upon the imprisonment of the licensee following a felony conviction or deferred adjudication, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(f) The Board may impose any authorized disciplinary action on an applicant or licensee because of a person's conviction of a crime, other than a Class C misdemeanor, that:

(1) serves as a ground for discipline under the Dental Practice Act;

(2) directly relates to the duties and responsibilities of a licensee including consideration of:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant or licensee previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the license; or

(3) does not directly relate to the duties and responsibilities of a licensee and that was committed within the previous five years.

(g) In determining the appropriate disciplinary action to take where the Board is not mandated to take a certain disciplinary action, the Board may consider the following factors listed in paragraphs (1) - (6) of this subsection:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person.

(h) The applicant or licensee has the responsibility, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as referenced by subsection (g)(6) of this section.

(i) In addition to fulfilling the requirements of subsection (g) of this section, if requested by the Board, the person shall furnish proof in the form required by the Board that the person has:

(1) maintained a record of steady employment;

(2) supported the person's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the person has been convicted.

(j) An applicant or licensee shall disclose in writing to the Board any arrest, conviction or deferred adjudication against him or her at the time of initial application and renewal. Additionally, an applicant or licensee shall provide information regarding any arrest, conviction or deferred adjudication to the Board within 30 days of a Board request. An application shall be deemed withdrawn if the applicant has failed to respond to a request for information or to a proposal for denial of eligibility or conditional eligibility within 30 days. Pursuant to Texas Government Code §2005.052, making a false statement or material misrepresentation when applying or renewing a license, refusing to provide requested information to the Board, or failing to provide all of the criminal history requested by the Board represents grounds for denial of the application or suspension or revocation of the license.

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 107. DENTAL BOARD PROCEDURES
SUBCHAPTER C. DISPOSITION OF COMPLAINTS
22 TAC §107.201

The State Board of Dental Examiners (Board) adopts amendments to 22 TAC §107.201, concerning the use of administrative penalties in informal complaint resolution, with change to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7304). The amended rule will be republished.

The only change made by the Board to the proposed language was a cross-reference correction in subsection (e).

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a) - (b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings. Additionally, the rule is proposed under Texas Occupations Code §262.102(a), which gives the Board authority to adopt rules relating to professional conduct for dental hygienists.

§107.201. Procedures for Assessment of Administrative Penalties in Informal Complaint Resolution.

(a) Statutory Authorization and Purpose.

(1) Section 263.002(a) of the Texas Occupations Code authorizes the Board to assess administrative penalties as disciplinary actions against persons licensed or regulated under the Dental Practice Act. Subchapter A of Chapter 264 of the Texas Occupations Code provides the Board's procedure when assessing an administrative penalty. Section 264.011 of the Texas Occupations Code authorizes the Board to utilize an administrative penalty using the informal settlement conference process under Texas Occupations Code §263.007. Section 263.0065 of the Texas Occupations Code authorizes the Board to delegate certain complaint dispositions to a committee of Board employees.

(2) The purpose of this rule section is to establish the procedure to be followed by the Board and Board employees when utilizing administrative penalties in the informal settlement process. The processes outlined in this rule may be utilized in addition to the assessment of administrative penalties outlined in Subchapter A of Texas Occupations Code Chapter 264.

(b) Definitions. In this rule section, the following terms shall apply:

(1) "Administrative Fine" is a monetary fine assessed pursuant to Texas Occupations Code §263.002(a) in connection with the issuance of a disciplinary sanction by the Board. Administrative fines shall not be assessed when issuing a Remedial Plan. The Board shall not assess an administrative fine without the issuance of a Warning, Reprimand, Probated Suspension, or Enforced Suspension.

(2) "Administrative Penalty" is a monetary penalty assessed as a disciplinary action pursuant to Texas Occupations Code §263.002(a). An administrative penalty is a public disciplinary action of the Board. An administrative penalty shall not be issued in conjunction with the issuance of a Warning, Reprimand, Probated Suspension, Enforced Suspension, or Remedial Plan. An administrative penalty that is issued subject to an agreement between the parties during informal settlement shall be referred to as an "agreed administrative penalty."

(3) "Informal Settlement Conference" is a settlement conference held by the Board pursuant to Texas Occupations Code §263.007 and Board rule 22 TAC §107.63 (relating to Informal Disposition and Mediation).

(4) "Licensee" means a person who holds a license, certificate, registration, permit, or other authorization that is issued by the Board.

(c) Use of Administrative Penalties in Informal Settlement Conferences. The Board shall utilize administrative penalties as outlined in this subsection during informal settlement conferences.

(1) The panel appointed for the Informal Settlement Conference shall follow the assessment of administrative penalties schedule in Board rule 22 TAC §107.202 (relating to Administrative Penalty Schedule) when determining the appropriate amount of the penalty. The administrative penalty may be proposed as an agreed settlement for the resolution of one or more of the pending complaints considered by the panel at the informal settlement conference.

(2) The agreed administrative penalty shall not contain restrictions on the scope of a dentist's practice or the removal or restriction of sedation/anesthesia permit privileges. The panel may require the completion of up to ten hours of continuing education in relevant practice areas through the agreed administrative penalty. The panel shall require the completion of the Board's jurisprudence assessment.

(3) The Board may utilize administrative penalties as disciplinary sanctions for the resolution of all Board complaints, with the exception of the following complaint categories that are not eligible for administrative penalties:

(A) The death or hospitalization of a patient where the informal settlement conference panel determines that violations by the licensee directly contributed to the condition or cause of the patient's death or hospitalization;

(B) Criminal conviction of a licensee for crimes directed at patients or staff;

(C) Violations related to the provision of sedation/anesthesia where the informal settlement conference panel determines that violations by the licensee posed a danger to the health and safety of patients;

(D) Violations related to addiction to or habitual intemperance in the use of alcoholic beverages or drugs, or violations related to improperly obtaining, possessing, using, or distributing habit-forming drugs or narcotics; or

(E) Violation of a suspension, prohibition, or restriction of practice contained in a prior Board order.

(d) Use of Administrative Penalties in Delegated Complaint Resolution. The Board is authorized by Texas Occupations Code §263.0065 to delegate the authority to enter into agreed settlement of certain complaint dispositions. All delegated dispositions must be

approved at a public meeting of the Board. Should the licensee reject any attempt at settlement, the complaint shall be scheduled for an informal settlement conference. Subject to these requirements, the Board shall allow the following uses of administrative penalties in delegated resolutions:

(1) An informal settlement conference panel member may direct staff to attempt resolution of a complaint through agreed settlement utilizing an administrative penalty prior to presentation of the complaint for an informal settlement conference.

(2) The Board shall allow a committee of Board employees the authority to offer an agreed settlement utilizing an administrative penalty prior to scheduling a complaint for an informal settlement conference. The following requirements apply to this delegated authority:

(A) Board employees are not authorized to offer settlement of a complaint that is a violation of the standard of care involving the licensee's clinical treatment or lack of treatment for a patient; and

(B) The committee of Board employees must include at least two of the following Board employees: (i) Executive Director, (ii) General Counsel, (iii) Director of Dental Practice Division, and (iv) Director of Investigations Division.

(e) Use of the State Office of Administrative Hearings. If a licensee refuses to accept the recommendation of an informal settlement conference panel to resolve a case through an agreed administrative penalty, the Board shall follow the procedures outlined in Texas Occupations Code §263.0073(h). The Board may impose the previously-recommended administrative penalty, and may impose a lower amount of penalty or a higher level of disciplinary sanction with an administrative fine and other conditions, as justified by Board rules and the relevant mitigating and aggravating factors identified during the contested case process. Regardless of the recommended sanction provided by an administrative law judge or mediator at the State Office of Administrative Hearings, the Board shall not recommend or impose an administrative penalty in any circumstances identified in subsection (c)(3) of this section.

(f) Reports of Administrative Penalties.

(1) An administrative penalty shall be a public record and shall be kept with the associated disciplinary actions taken against each licensee.

(2) An administrative penalty shall not be considered a restriction or limitation on the license or registration of the licensee and shall not be reported to the National Practitioner Data Bank.

(3) The investigative file and other records related to the administrative penalty shall remain confidential, in accordance with Texas Occupations Code §254.006.

(4) A report of the administrative penalties issued shall be made to the Board at each regularly scheduled meeting.

(g) Nothing in this rule section shall be construed to prohibit or restrict the Board from offering or imposing a different disciplinary sanction, or a Remedial Plan, to resolve a complaint. An offer of administrative penalty during the settlement process shall not be binding on the Board in any subsequent contested case hearing or mediation to resolve a complaint.

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

Filed with the Office of the Secretary of State on December 14, 2018.

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W. Boyd Bush, Jr.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 305-9332

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22 TAC §107.202

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §107.202, concerning a standardized penalty schedule for purposes of imposing administrative penalties, with changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7307), and the rule amendment will be republished.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a) - (b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings. Additionally, the rule is adopted under Texas Occupations Code §264.002(b), which gives the Board authority to adopt rules relating to a standardized penalty schedule for administrative penalties.

§107.202. Administrative Penalty Schedule.

(a) Purpose and Construction. The Board has established the following administrative penalty schedule based upon consideration of the required factors outlined in Section 264.002(b) of the Texas Occupations Code. The Board and Board employees shall utilize this schedule when recommending an administrative penalty amount under Subchapter A of Texas Occupations Code Chapter 264 and §107.201 of this title (relating to Procedures for Assessment of Administrative Penalties in Informal Complaint Resolution). Nothing in this rule section shall be construed to prohibit the Board from imposing a different disciplinary sanction or a Remedial Plan to resolve a complaint. An offer of administrative penalty during the settlement process shall not be binding on the Board in any subsequent contested case hearing or mediation to resolve a complaint.

(b) Definitions. The definitions contained in §107.201(b) of this title shall apply to this rule section.

(c) Penalty Schedule. The amount of an administrative penalty shall not exceed five thousand dollars for each violation, in accordance with Texas Occupations Code §264.002(a). The Board shall identify each violation and element of the penalty amount showing the constituent elements of the total penalty assessed. Pursuant to Texas Occupations Code §264.002(a), each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The type and base amount of each penalty shall be as follows:

(1) Violation of a Board Administrative Rule. A violation involving purely administrative requirements that does not involve the care of patients. Violations under this classification include, but are not limited to:

(A) failure to timely complete continuing education requirements;

(B) practice with expired license, permit, or registration;

(C) failure to comply with Board advertising rules and restrictions;

(D) permitting a staff member to practice with an expired license, permit, or registration; and

(E) failure to maintain a current and accurate contact address with the Board. The base amount of this penalty shall be one hundred dollars.

(2) Basic Recordkeeping and Patient Communication. A violation involving maintenance of patient records, providing patient records upon request, and required communication with a patient. Violations under this classification include, but are not limited to:

(A) failure to provide records to a patient within 30 days of request;

(B) failure to provide adequate intent to discontinue undertaken treatment notice to the patient as required by §108.5 of this title (relating to Patient Abandonment) (each missing element represents a separate violation);

(C) failure to report a patient hospitalization as required by §108.6 of this title (relating to Report of Patient Death or Injury Requiring Hospitalization);

(D) failure to review and update patient medical history annually; and

(E) failure to record patient vital signs as required by Board rule. The base amount of this penalty shall be two hundred fifty dollars.

(3) Preparedness, Patient Safety, and Sanitation. A violation involving failure to adequately clean and prepare the dental office or location where patients will be treated. Violations under this classification include, but are not limited to:

(A) failure to prepare adequate emergency protocols and ensure staff training for emergencies;

(B) failure to comply with sanitation requirements and testing; and

(C) failure to maintain adequate supplies of emergency response medications and supplies as required by the licensee's practice type and sedation/anesthesia permit level. The base amount of this penalty shall be five hundred dollars.

(4) Standard of Care and Fair Dealing. A violation involving direct clinical treatment or lack of treatment for the patient. Violations under this classification include, but are not limited to:

(A) falling below the minimum standard of care when performing endodontic, orthodontic, restorative, or other dental treatment;

(B) provision of sedation/anesthesia below the minimum standard of care, where the violations did not pose a danger to the health and safety of patients;

(C) failing to obtain adequate written informed consent from the patient for all procedures performed;

(D) violation of the duty of fair dealing by overcharging, overbilling, or overtreating the patient; and

(E) misleading a patient as to the gravity of their dental needs. The base amount of this penalty shall be one thousand dollars.

(d) Additional Factors in Penalty Calculation. The Board shall apply the base amount of each penalty for each day of the violation as identified through the Board's investigation of a complaint. Additionally, the Board shall apply the considerations required by Texas Occupations Code §264.002(b)(1) - (5), and the following additional factors to calculate a final administrative penalty.

(1) Previous Disciplinary Action. If a licensee has received prior disciplinary action for the same conduct representing grounds for the administrative penalty, the Board shall apply five hundred dollars for each previous disciplinary action related to the same conduct, up to the maximum penalty amount.

(2) Exceptional Disregard for Patient Safety. If the Board determines that the conduct representing grounds for the administrative penalty shows exceptional disregard for patient safety by the licensee, the Board shall apply one thousand dollars to each violation which shows such disregard, up to the maximum penalty amount.

(3) Offsetting Restitution to Patient. The Board may reduce the administrative penalty amount assessed upon a showing that the licensee has paid, or by agreed settlement will pay, an amount of restitution to the patient. The Board shall not require payment of other damages or make an estimation of harm in calculation of restitution.

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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W. Boyd Bush, Jr.
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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.4

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §114.4, concerning the issuance of nitrous oxide monitoring certificates of registration, with changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7309), and the rule amendment will be republished.

The Board received one timely comment regarding the adoption of this rule from the Texas Dental Hygienists' Association (TDHA) on November 29, 2018. TDHA's comment was in opposition to the text contained in the proposed rule's subsection (d)(2)(C), removing the requirement that the 8 hours of didactic education for training be taken through a Commission on Dental Accreditation-accredited dental, dental hygiene or dental assisting program. The text of the rule as proposed substituted providers approved by the Board under 22 TAC §104.2, a broader category of providers.

Board Response: After reviewing the comment from TDHA, the Board agrees with the substance of the comment, and has adopted a version of the rule removing the changes proposed to subsection (d)(2)(C). As a result, the text as adopted retains the

Commission on Dental Accreditation requirement that existed prior to the publication of the proposed rule text on November 2, 2018. As the Board's change to the proposed text is to revert back to the existing text of the regulation as it existed prior to the proposal of this amendment, no expansion of the regulation or additional impacts to regulated individuals will occur, and the Board will not be republishing the rule for additional comment. The Board made no further changes to the rule text as published.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. Additionally, the rule is adopted under Texas Occupations Code §265.0015(a), directing the Board to establish the requirements for registrations issued by the Board.

§114.4. Monitoring the Administration of Nitrous Oxide.

(a) Previous Nitrous Oxide Monitoring Certificate Holders.

(1) Until September 1, 2019, the State Board of Dental Examiners shall issue a "nitrous oxide monitoring registration" to a dental assistant who holds a current nitrous oxide monitoring certificate issued by the board before that date and who meets the continuing education requirements established by the board under 22 TAC §114.12. These persons will not be required to meet the requirements of subsection (d) of this section to obtain or renew the nitrous oxide monitoring registration. A nitrous oxide monitoring registration must be renewed biennially in accordance with the requirements of Tex. Occ. Code §265.0017 and 22 TAC §114.2(d).

(2) Beginning on September 1, 2019, the board shall cease issuing nitrous oxide monitoring registrations to any person who does not comply with the provisions of subsection (d) of this section. Persons who have obtained a nitrous oxide monitoring registration under paragraph (a)(1) of this subsection may continue to practice and renew their nitrous oxide monitoring registrations. Nitrous oxide monitoring registrations which have been expired more than one year may not be renewed, and instead shall require qualification under subsection (d) of this section.

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

(1) "Dental industry professional organization" any organization, the primary mission of which is to represent and support dentists, dental hygienists, and/or dental assistants.

(2) "Didactic education" requires the presentation and instruction of theory and scientific principles.

(3) "Direct Supervision" requires that the dentist responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well-being.

(c) A Texas-licensed dentist may delegate the monitoring of the administration of nitrous oxide to a dental assistant, if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) holds a current nitrous oxide monitoring registration granted by the provisions of this rule.

(d) A dental assistant wishing to obtain nitrous oxide monitoring registration under this section must:

(1) pay an application fee set by board rule; and

(2) on a form prescribed by the board, provide proof that the applicant has:

(A) a dental assistant registration issued by the board pursuant to 22 TAC §114.2 that is not expired and is not under probated or enforced suspension;

(B) successfully completed a current course in basic life support; and

(C) completed a minimum of 8 hours of didactic education and testing in monitoring the administration of nitrous oxide taken through a CODA-accredited dental, dental hygiene or dental assisting program, approved by the board, whose course of instruction includes:

(i) Texas jurisprudence, including but not limited to: anesthesia standard of care, anesthesia/analgesia, enteral conscious sedation, and this rule, regarding monitoring the administration of nitrous oxide;

(ii) dental anatomy and physiology;

(iii) pharmacology;

(iv) sedation equipment;

(v) infection control;

(vi) patient monitoring; and

(vii) recognition and management of medical emergencies.

(e) The jurisprudence assessment may be completed to satisfy the requirements set out in subsection (d)(2)(C)(i) of this section.

(f) A program seeking to offer a course in monitoring the administration of nitrous oxide must submit a written request for approval to the board demonstrating that it meets the requirements set forth in subsection (d)(2)(C) of this section. Additionally, all courses must include a mandatory competency evaluation with a minimum of 50 test items. Course documentation must be maintained by the course provider for no less than three years.

(g) Approved courses may be offered at annual meetings of dental industry professional organizations.

(h) Courses taken to satisfy the requirements of this section are valid for five (5) years from the date of course completion for nitrous oxide monitoring registration purposes.

(i) Applicants for nitrous oxide monitoring registration under this rule are ineligible if they are in violation of a board order at the time of application.

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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W. Boyd Bush, Jr.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 305-9332

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.10

The Texas Optometry Board adopts amendments to §280.10 of Chapter 280, Title 22, without changes to the proposed text published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6174).

The amendments to Rule §280.10 implement the directives of House Bill 2561, including the promulgation of specific guidelines for optometric glaucoma specialists for the responsible prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol, the requirement to periodically access the information submitted to the Prescription Monitoring Program to determine whether an optometric glaucoma specialist is engaging in potentially harmful prescribing patterns or practices, the authority to open a complaint against a prescriber if the Board finds evidence that the prescriber is engaging in conduct that violates Subchapter C, Chapter 481, Texas Health and Safety Code, and the requirement that optometric glaucoma specialists must access information in the Prescription Monitoring Program with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol. The amendments also remove language referring to a Controlled Substances Registration no longer in effect.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and House Bill 2561, Regular Session, 85th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets House Bill 2561, Regular Session, 85th Legislature, to require the agency to promulgate specific guidelines for optometric glaucoma specialists for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol, to periodically access the information submitted to the Prescription Monitoring Program to determine whether an optometric glaucoma specialist is engaging in potentially harmful prescribing patterns or practices and allows the agency to open a complaint. House Bill 2561 requires an optometric glaucoma specialist to access information in the Prescription Monitoring Program with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol.

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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Chris Kloeris
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Commissioner of Insurance adopts amendments to 28 TAC §1.414, relating to the 2019 assessment of maintenance taxes and fees imposed by the Insurance Code. The department adopts the amendments to §1.414 without changes to the proposed text published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7433). The rules will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2019 on the basis of gross premium receipts for calendar year 2018.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department adopts an amendment to the section heading to reflect the year for which the assessment of maintenance taxes and fees is applicable. The department also adopts amendments in subsections (a) - (f), and (h) to reflect the appropriate year for accurate application of the section.

The department adopts amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) to update rates to reflect the methodology the department developed for 2019.

The following paragraphs provide an explanation of the methodology used to determine rates of assessment for maintenance taxes and fees for 2019:

In general, the department's 2019 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2018.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 605 (Senate Bill 1), Acts of the 85th Legislature, Regular Session, (2017) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by In-

surance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2019 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department added these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department included costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department included an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculated the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removed costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2018 (August 31, 2018) and estimated fee revenue collections for fiscal year 2019. The resulting balance is the estimated revenue need that must be supported during the 2019 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determined the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplied the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusted the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusted the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocated the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocated the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department used the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divided the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the rates for DWC and the Office of Injured Employee Counsel (OIEC):

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2019 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2019 fiscal year until the next assessment collection period in 2020. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2018, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2019. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the rates for the Workers' Compensation Research and Evaluation Group.

To determine the revenue need, the department considered the following factors that are applicable to the Workers' Compensation Research and Evaluation Group: (i) the appropriations in the General Appropriations Act for fiscal year 2019 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2019 fiscal year until the next assessment collection

period in 2020. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2018. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the Commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §1.414 under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §259.004 requires a third party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §260.002 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations.

Insurance Code §260.003 provides that a nonprofit legal services corporation must pay maintenance taxes under the chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C, which was recodified as Insurance Code §2053.202 by House Bill 2017, 79th Legislature, Regular Session (2005). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance de-

termines is necessary to pay the expenses of administering the Texas Workers' Compensation Act.

Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the Workers' Compensation Research and Evaluation Group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the comptroller in the manner provided by Insurance Code Chapter 255.

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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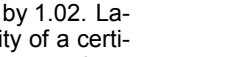

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Commissioner of Insurance adopts amendments to 28 TAC §7.1001, relating to assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The department adopts the amendments to §7.1001 without changes to the proposed text published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7441). The amendments will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2019 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2018 calendar year, and from each foreign insurer examined during the 2018 calendar year using the same methodology.

The department adopts an amendment to the section heading to reflect the year for which the assessment will be applicable. The department also adopts amendments to subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department adopts amendments to subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2019.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2019.

In general, the department's 2019 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2018.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 605 (Senate Bill 1), Acts of the 85th Legislature, Regular Session, (2017) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2019 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2019 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2018 to determine the rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2018 to determine the rate of assessment for admitted assets.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §7.1001 under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner administers money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable. Insurance Code §401.151 also provides that the department collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed

under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 provides that the Commissioner determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

SUBCHAPTER E. EMERGENCY ORDERS FOR UTILITIES

30 TAC §35.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §35.202, concerning Emergency Order for Rate Increase in Certain Situations,*without changes* to the proposal as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4634). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Repeal

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section Discussion

§35.202, Emergency Order for Rate Increase in Certain Situations

The commission adopts the repeal of §35.202. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health

from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to repeal an obsolete TCEQ rule in Chapter 35 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to repeal the rule relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adoption will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted repeal will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of repealing an obsolete rule in Chapter 35 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rulemaking based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted repeal neither relates to, nor has any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of the adoption. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to repeal an obsolete TCEQ rule relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 35.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

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 37. FINANCIAL ASSURANCE
SUBCHAPTER O. FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS

30 TAC §§37.5001, 37.5002, 37.5011

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§37.5001, 37.5002, and 37.5011, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4636) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, nonsubstantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are nonsubstantive and generally not specifically discussed in this preamble.

§37.5001, Applicability

The commission adopts amended §37.5001 to remove "retail public utilities" and the reference to Chapter 291. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§37.5002, Definitions

The commission adopts amended §37.5002 to remove the reference to §291.3. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§37.5011, Financial Assurance for a Public Water System

The commission adopts amended §37.5011 to remove "or Retail Public Utility" from the section title and language in subsections (b) and (c) which pertain to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 37.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§50.31, 50.45, 50.131, and 50.145, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4639). The amendments will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were

renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§50.31, Purpose and Applicability

The commission adopts amended §50.31 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.45, Corrections to Permits

The commission adopts amended §50.45 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.131, Purpose and Applicability

The commission adopts amended §50.131 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.145, Corrections to Permits

The commission adopts amended §50.145 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend Chapter 50 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 50 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 50.

SUBCHAPTER C. ACTION BY EXECUTIVE DIRECTOR

30 TAC §50.31, §50.45

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131, §50.145

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
Director, Environmental Law Division
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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§55.1, 55.27, 55.101, and 55.250, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4645) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections were removed, subsequent subsections were re-lettered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§55.1, Applicability

The commission adopts amended §55.1(a) to remove the reference to Texas Water Code (TWC), §12.013 and Chapter 13. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission adopts to remove the refer-

ence to TWC, §11.036 and §11.041, because Chapter 55, Subchapters D and G do not apply to TWC, §11.036 and §11.041.

§55.27, Commission Action on Hearing Request

The commission adopts amended §55.27 to remove subsection (d), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts to remove §55.27(e), because the language in the subsection is obsolete due to the repeal of Chapter 80, Subchapter E in September 1999.

§55.101, Applicability

The commission adopts amended §55.101(g)(5) to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission adopts to remove the requirements for the executive director to review hearing requests, determine the sufficiency of hearing requests, and refer the application to the chief clerk for hearing processing because those requirements are not applicable to TWC, §11.036 and §11.041, petitions.

§55.250, Applicability

The commission adopts amended §55.250 to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rule-

making is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 55.

SUBCHAPTER A. APPLICABILITY AND DEFINITIONS

30 TAC §55.1

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER B. HEARING REQUESTS, PUBLIC COMMENT

30 TAC §55.27

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
Director, Environmental Law Division
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For further information, please call: (512) 239-6812

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SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.250

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Director, Environmental Law Division
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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§80.3, 80.17, 80.105, and 80.109, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4651). The amended rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections and paragraphs were removed, subsequent subsections and paragraphs were re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§80.3, Judges

The commission adopts amended §80.3(c) to remove paragraph (15), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§80.17, Burden of Proof

The commission adopts amended §80.17 to remove subsection (b), because the subsection pertains to the burden of proof in reviewing rates charged pursuant to a contract. The setting of rates pursuant to Texas Water Code (TWC), Chapter 11 was transferred from the commission to the PUC on September 1, 2014.

§80.105, Preliminary Hearings

The commission adopts amended §80.105(b)(2)(B) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§80.109, Designation of Parties

The commission adopts amended §80.109(b)(1)(A) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore,

the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 80.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.3, §80.17

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER C. HEARING PROCEDURES

30 TAC §80.105, §80.109

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the

TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 281. APPLICATIONS PROCESSING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §281.2 and §281.17; and the repeal of §281.16 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4655). The amended rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§281.2, Applicability

The commission adopts amended §281.2 to remove paragraph (8), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§281.16, Applications for Certificates of Convenience and Necessity

The commission adopts the repeal of §281.16. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§281.17, Notice of Receipt of Application and Declaration of Administrative Completeness

The commission adopts amended §281.17(d) to remove the reference to §281.16. With the transfer of this function from the commission to the PUC in HB 1600 and SB 567, this reference is no longer required.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state

and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 281.

SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.2, §281.17

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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Robert Martinez
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30 TAC §281.16

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.38, §290.39

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §290.38 and §290.39 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4659). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules are intended to implement statutory changes made by House Bill (HB) 1600 and Senate Bill (SB) 567 of the 83rd Texas Legislature, 2013, and SB 1842 of the 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 290 resulting from the adopted repeal of rules in 30 TAC Chapter 291.

SB 1842 amended Texas Health and Safety Code (THSC), §341.035(d) to include a Class A utility, as defined by Texas Water Code (TWC), §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were added, subsequent paragraphs were renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§290.38, Definitions

The commission adopts amended §290.38(1) to update the cross-reference to exempt utility in adopted §291.103.

§290.39, General Provisions

The commission adopts §290.39(g)(4) to include a Class A utility, as defined by TWC, §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. SB 1842 amends THSC, §341.035(d) to exempt a Class A utility, as defined by TWC, §13.258 from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate. The specific intent of the adopted rulemaking is to amend Chapter 290 relating to the economic regulation of water and wastewater utilities and to include certain Class A utilities among the entities exempt from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC and to exempt certain Class A utilities from the requirement to file a business plan with the TCEQ.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities or THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts these rules for the following purposes: 1) to amend TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; and 2) to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment in Chapter 290 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendments of TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the adopted rulemaking.

Further, the commission determined that amending TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities and exempting certain Class A utilities from the requirement to file a business plan with the TCEQ for a public drinking water system will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities and to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 290.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567, passed by the 83rd Texas Legislature, 2013. Additionally, the adopted amendments implement Senate Bill 1842, passed by the 85th Texas Legislature, 2017.

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 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§291.1, 291.14, 291.76, 291.92, 291.103, 291.110, 291.114, 291.128, 291.131, 291.142, and 291.143; the repeal of §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12, 291.21 - 291.32, 291.34, 291.35, 291.41 - 291.45, 291.71 - 291.75, 291.80 - 291.91, 291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.125, 291.127, 291.129, 291.130, 291.132 - 291.138, 291.141, 291.146, 291.147, and 291.150 - 291.153; and new §291.129, *without changes* to the proposal as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4671) and, therefore, will not be republished. The amendment to §291.3 and new §291.130 are adopted *with changes* to the proposed text as published and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is adopted to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294, 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities.

HB 294 adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the commission to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341.

The adopted amendment to §291.76 facilitates the ability to convert the regulatory assessment fee (RAF) to an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This conversion from a self-report, self-pay to a billed fee allows for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections, paragraphs, or subparagraphs were removed, subsequent subsections, paragraphs, or subparagraphs were re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

Subchapter A: General Provisions

§291.1, Purpose and Scope of This Chapter

The commission adopts amended §291.1 to remove all reference to rates and consumer protection and clarify that Chapter 291 applies to commission proceedings under TWC, §§11.036 - 11.041 and Chapter 13.

§291.2, Severability Clause

The commission adopts the repeal of §291.2 to conform with current commission's rule writing practices.

§291.3, Definitions of Terms

The commission adopts amended §291.3 to remove all paragraphs, with the exception of §291.3(2), (5), (10), (13) - (15), (23), (28), (29), (32), (34) - (36), (40), (42), (43), (52), (53), and (55). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts amended §291.3(3) to add "Public Utility Commission of Texas" to the definition of "Certificate of Convenience and Necessity" to clarify that the PUC is the agency that grants certificates of convenience and necessity.

§291.4, Cooperative Corporation Rebates

The commission adopts the repeal of §291.4. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.5, Submission of Documents

The commission adopts the repeal of §291.5. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.6, Signatories of Applications

The commission adopts the repeal of §291.6. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.8, Administrative Completeness

The commission adopts the repeal of §291.8. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.9, Agreements To Be in Writing

The commission adopts the repeal of §291.9 to conform with current commission's rule writing practices.

§291.11, Informal Proceedings

The commission adopts the repeal of §291.11. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.12, Burden of Proof

The commission adopts the repeal of §291.12. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.14, Emergency Orders

The commission adopts amended §291.14 to remove all language, with the exception of §291.14(b), (b)(1), and (c) to implement HB 1600 and SB 567. The commission acknowledges that PUC and TCEQ share dual jurisdiction over some issues and intends to coordinate closely with PUC. The commission also adopts to combine existing §291.14(b) and (b)(1) to form one sentence in adopted §291.14(a).

Subchapter B: Rates, Rate-Making, And Rates/Tariff Changes

The commission adopts the repeal of Subchapter B, §§291.21 - 291.32, 291.34, and 291.35. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter C: Rate-Making Appeals

The commission adopts the repeal of Subchapter C, §§291.41 - 291.45. The language in repealed §291.44 is adopted as §291.130 with the removal of references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in repealed §291.44 to Subchapter I is to combine all rules related to petitions for the sale or use of water under one subchapter.

Subchapter D: Records and Reports

§291.71, General Reports

The commission adopts the repeal of §291.71. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.72, Financial Records and Reports--Uniform System of Accounts

The commission adopts the repeal of §291.72. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.73, Water and Sewer Utilities Annual Reports

The commission adopts the repeal of §291.73. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.74, Maintenance and Location of Records

The commission adopts the repeal of §291.74. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.75, Management Audits

The commission adopts the repeal of §291.75. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.76, Regulatory Assessment

The commission adopts amended §291.76(d) to provide clarification between the amount of RAF payable to the commission versus the amounts payable to the utility service provider by their customers for water and sewer invoices. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.), the clarification in this revision should ensure proper calculation, reporting, and remittance of fees.

The commission adopts amended §291.76(e) to clarify the payment period as the previous calendar year.

The commission adopts amended §291.76(h) to clarify that retail water and sewer applies to both charges and the assessment collection.

The commission adopts amended §291.76(i) to specify the utility service provider must ensure retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's on-line portal.

The commission adopts §291.76(i)(1) to allow the commission to issue an invoice based on previously reported revenues and adjustment based on available information if the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year.

The commission adopts §291.76(i)(2) to allow the commission to issue an invoice in an amount up to $100 if the utility service provider has not previously reported charges for water and sewer services to the commission.

The commission adopts §291.76(i)(3) to clarify that utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline are not relieved of the requirement to ensure retail water and sewer charges are reported through the on-line portal. Once the utility service provider reports charges for water and sewer services to the commission through the on-line portal, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

The commission adopts amended §291.76(k) to clarify that assessment shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal.

Subchapter E: Customer Service and Protection

The commission adopts the repeal of Subchapter E, §§291.80 - 291.90. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required. Additionally, the requirements for each utility to maintain a current copy of Chapter 290, Subchapter D and Chapter 291 at each office location is no longer necessary because up-to-date versions of Chapters 290 and 291 are readily available online.

Subchapter F: Quality of Service

§291.91, Applicability

The commission adopts the repeal of §291.91. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.92, Requirements by Others

The commission adopts amended §291.92 to remove subsection (b), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

Subchapter G: Certificates of Convenience and Necessity

§291.101, Certificate Required

The commission adopts the repeal of §291.101. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.102, Criteria for Considering and Granting Certificates or Amendments

The commission adopts the repeal of §291.102. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.103, Certificates Not Required

The commission adopts amended §291.103 to remove all language, with the exception of §291.103(d)(1) and (1)(A) - (D). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.104, Applicant

The commission adopts the repeal of §291.104. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission adopts the repeal of §291.105. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.106, Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications

The commission adopts the repeal of §291.106. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.107, Action on Applications

The commission adopts the repeal of §291.107. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction

The commission adopts the repeal of §291.109. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.110, Foreclosure and Bankruptcy

The commission adopts amended §291.110 to remove all language, with the exception of §291.110(a), (c), and (e). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. Additionally, the commission adopts amended §291.110(b) to remove "is not required to provide the 120-day notice prescribed by §13.301 of the code" which also pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.111, Purchase of Voting Stock in Another Utility

The commission adopts the repeal of §291.111. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.112, Transfer of Certificate of Convenience and Necessity

The commission adopts the repeal of §291.112. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.113, Revocation or Amendment of Certificate

The commission adopts the repeal of §291.113. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.114, Requirement To Provide Continuous and Adequate Service

The commission adopts amended §291.114 to remove all language, with the exception of §291.114(b) and (b)(1) - (3) to implement HB 1600 and SB 567. The commission acknowledges that PUC and TCEQ share dual jurisdiction over some issues and intends to coordinate closely with PUC. Additionally, the commission adopts amended §291.114(b)(1)(B) to replace "commission" with "Public Utility Commission of Texas" and remove the requirement that a retail public utility provide financial assurance in accordance with TCEQ's rules in Chapter 37, Subchapter O.

§291.115, Cessation of Operations by a Retail Public Utility

The commission adopts the repeal of §291.115. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.116, Exclusiveness of Certificates

The commission adopts the repeal of §291.116. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.117, Contracts Valid and Enforceable

The commission adopts the repeal of §291.117. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.118, Contents of Request for Commission Order under the Texas Water Code, §13.252

The commission adopts the repeal of §291.118. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.119, Filing of Maps

The commission adopts the repeal of §291.119. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.120, Single Certification in Incorporated or Annexed Areas

The commission adopts the repeal of §291.120. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter H: Utility Submetering and Allocation

The commission adopts the repeal of Subchapter H, §§291.121 - 291.125 and §291.127. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter I: Wholesale Water Petitions

The commission amends the title of Subchapter I to "Wholesale Water Petitions" to more closely reflect the subchapter's contents.

§291.128, Petition Concerning Wholesale Water

The commission adopts amended §291.128(1) to clarify the applicable sections in TWC, Chapter 11 and remove the reference to TWC, Chapter 12. The commission removes §291.128(2) which pertains to functions that were transferred from the com-

mission to the PUC in HB 1600 and SB 567; and renames the section to more closely reflect the section's purpose.

§291.129, Definitions

The commission adopts the repeal of §291.129. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.129, Petition

The commission adopts §291.129. The language in adopted §291.129 is from repealed §291.130, with the exception of existing §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.130, Petition or Appeal

The commission adopts the repeal of §291.130. The language in §291.130 is adopted as §291.129, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.130 to adopted §291.129 is so the general language in repealed §291.130 comes before the language in adopted §291.130 pertaining to specific petitions under TWC, §§11.036 - 11.041.

§291.130, Contents of Petition under Texas Water Code, §§11.036 - 11.041

The commission adopts §291.130. The language in adopted §291.130 is from repealed §291.44 with the following changes: removed the references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567; changed the reference from ratepayer to person, changed the reference from water supplier to entity, and removed the references to supply service in order to conform to TWC, §§11.036 - 11.041; included language to clarify that the petition includes the applicable requirements depending on which statutory provision is being invoked; and removed redundant language found in adopted §291.129. The purpose of moving the language from repealed §291.44 to adopted §291.130 is to combine all rules related to petitions for the sale or use of water under one subchapter.

§291.131, Executive Director's Review of Petition

The commission adopts amended §291.131 to remove all language, with the exception of §291.131(a). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission removes the reference to appeal and adds language to clarify TCEQ's authority under TWC, §§11.036 - 11.041. The commission also updates the references from §291.130 to adopted §291.129.

§291.132, Evidentiary Hearing on Public Interest

The commission adopts the repeal of §291.132. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 with the exception of TWC, §11.036 transferred from the commission to the PUC on September 1, 2014.

§291.133, Determination of Public Interest

The commission adopts the repeal of §291.133. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.134, Commission Action to Protect Public Interest, Set Rate

The commission adopts the repeal of §291.134. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.135, Determination of Cost of Service

The commission adopts the repeal of §291.135. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.136, Burden of Proof

The commission adopts the repeal of §291.136. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.137, Commission Order To Discourage Succession of Rate Disputes

The commission adopts the repeal of §291.137. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.138, Filing of Rate Data

The commission adopts the repeal of §291.138. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

Subchapter J: Enforcement, Supervision, and Receivership

§291.141, Supervision of Certain Utilities

The commission adopts the repeal of §291.141. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver

The commission adopts §291.142(a)(2)(D) to include additional criteria that allows the commission or the executive director to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

§291.143, Operation of a Utility by a Temporary Manager

The commission adopts amended §291.143(d) to change the term of the temporary manager from "one year" to "180 days" to be consistent with TWC, §5.505.

§291.146, Municipal Rates for Certain Recreational Vehicle Parks

The commission adopts the repeal of §291.146. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.147, Temporary Rates for Services Provided for a Non-functioning System

The commission adopts the repeal of §291.147. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter K: Provisions Regarding Municipalities

The commission adopts the repeal of Subchapter K, §§291.150 - 291.153. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 (2013), transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The intent of the adopted rulemaking associated with HB 1600 and SB 567 is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities. HB 294 (2017) adds additional criteria to TWC, §13.412(a) that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341. The intent of the adopted rulemaking associated with HB 294 is to incorporate the additional criteria listed in TWC, §13.142(a) into §291.142. The intent of the adopted changes to §291.76 is to convert the RAF from a self-report, self-pay fee to a billed fee. The conversion from a self-report, self-pay fee to a billed fee will allow for the collection of delinquent fees, late fees, and penalty fees as directed by Chapter 12. The intent of these rules is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities; incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirements of TWC, Chapter 5, 11, 12, or 13, which relate to the collection of fees, economic regulation of water and wastewater utilities, and the appointment of a receiver for water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts these rules for the following purposes: 1) to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; 2) to incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) the conversion of the RAF from a self-report, self-pay fee to a billed fee.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5)

provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the adopted rulemaking.

Further, the commission determined that amending and repealing obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities; incorporating additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The specific intent of the adopted rulemaking is to: 1) transfer functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567; 2) incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) to convert the RAF from a self-report, self-pay fee to a billed fee. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission received comments on Chapter 291 from Bickerstaff Heath Delgado Acosta LLP (Bickerstaff). Bickerstaff suggested changes to the rules.

Response to Comments

Comment

Bickerstaff commented that the last sentence of §291.130(d), which states, "{i}n the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction" be deleted or revised as it is unclear what the commission considers to be "within the commission's jurisdiction" or outside of the commission's jurisdiction as it relates to a petition filed under TWC, §11.041.

Response

The commission disagrees with the recommendation to delete the sentence, "{i}n the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction." The last sentence does not need to be clarified to explain the commission's jurisdiction within TWC, §11.041. No changes were made to the rules in response to this comment.

Comment

Bickerstaff commented that TWC, §11.041(b) requires the commission to hold a hearing, and on completion of that hearing, "render a written decision" regarding the complaint. Bickerstaff commented that all of the items listed in TWC, §11.041 are within the commission's jurisdiction to decide, and the commission is obligated to consider and render a decision on each of the elements, even if the executive director does not provide testimony or evidence on each element.

Response

The commission agrees with these comments. The commission will issue a final decision on each of the elements in TWC, §11.041(a) within its jurisdiction. No changes were made to the rules in response to this comment.

Comment

Bickerstaff commented that what is outside the commission's authority or jurisdiction is the ability to set a rate for the water should the commission determine the petitioner is entitled to the water, is willing and able to pay a just and reasonable rate, the water supplier has available water not contracted to others, and the water supplier either refused or failed to supply the water, or the price or rental demanded by the water supplier is not reasonable and just or is discriminatory. Bickerstaff commented that the PUC has the jurisdiction to fix a reasonable rate or price for the water as provided by TWC, §12.013, and although PUC may participate under TWC, §11.041, it does not limit TCEQ's jurisdiction over the four elements listed in TWC, §11.041.

Response

The commission agrees with Bickerstaff's comment stating that the ability to set a rate is outside the commission's jurisdiction. The commission is required to hold a hearing and render a written decision under TWC, §11.041. No changes were made to the rules in response to this comment.

Comment

Bickerstaff comments that alternatively, the sentence should be clarified to state that the executive director will not provide evidence or testimony to fix the rate for the water, which is reserved for the PUC.

Response

The commission disagrees that the last sentence should be clarified to explain the commission's jurisdiction. No changes were made to the rules in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§291.1, 291.3, 291.14

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.3. Definitions of Terms.

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

(1) Affected county--A county to which Texas Local Government Code, Chapter 232, Subchapter B, applies.

(2) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance, Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(3) Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(4) Code--The Texas Water Code.

(5) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(6) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(7) Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(8) Nonfunctioning system--A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(9) Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(10) Potable water--Water that is used for or intended to be used for human consumption or household use.

(11) Public utility--The definition of public utility is that definition given to "Water and sewer utility" in this section.

(12) Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(13) Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(14) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(15) Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(16) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(17) Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(18) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(19) Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

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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Robert Martinez
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30 TAC §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

30 TAC §§291.21 - 291.32, 291.34, 291.35

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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. RATE-MAKING APPEALS

30 TAC §§291.41 - 291.45

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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

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SUBCHAPTER D. RECORDS AND REPORTS

30 TAC §§291.71 - 291.75

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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30 TAC §291.76

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.701, concerning Fees, which the commission is authorized to collect.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.701.

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

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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §§291.80 - 291.90

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 F. QUALITY OF SERVICE

30 TAC §291.91

Statutory Authority

The repeal of the section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the section implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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30 TAC §291.92

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

30 TAC §§291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 219.120

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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30 TAC §§291.103, 291.110, 291.114

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 H. UTILITY SUBMETERING AND ALLOCATION

30 TAC §§291.121 - 291.125, 291.127

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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 I. WHOLESALE WATER PETITIONS

30 TAC §§291.128 - 291.131

Statutory Authority

The amendments and new rules are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; TWC, §11.036, concerning the sale of conserved or stored water; and TWC, §11.041, concerning complaints for the denial of water.

The adopted amendments and new rules implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.130. Contents of Petition under Texas Water Code, §§11.036-11.041.

(a) A person seeking relief under the Texas Water Code (TWC), §§11.036 - 11.041 should include in a written petition to the

commission, the following information, as applicable to the section of the TWC under which the petitioner seeks relief:

(1) the petitioner's name;

(2) the name of the entity from which water is received or sought;

(3) an explanation of why the petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under TWC, §§11.036 - 11.041 should include in a written petition for relief to the commission, the following information:

(1) the petitioner's name;

(2) the name of the ratepayers to whom water is rendered;

(3) an explanation of why the petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by the petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the TWC, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition. In the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction.

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

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SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

30 TAC §§291.129, 291.130, 291.132 - 291.138

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §§291.141, 291.146, 291.147

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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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30 TAC §291.142, §291.143

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 294 passed by the 85th Texas Legislature, 2017.

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 K. PROVISIONS REGARDING MUNICIPALITIES

30 TAC §§291.150 - 291.153

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §293.11 and §293.44, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4690). The amended rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register,* the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were renumbered, accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§293.11, Information Required to Accompany Applications for Creation of Districts

The commission adopts amended §293.11(h) to remove paragraph (11), because the language pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

§293.44, Special Considerations

The commission adopts amended §293.44(b)(7) to remove the reference to Chapter 291, Subchapter G, which pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health

from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend by removing obsolete references and language relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 293.

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.44

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805415
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: January 3, 2019
Proposal publication date: July 13, 2018
For further information, please call: (512) 239-6812

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.5

The Texas County and District Retirement System (TCDRS) adopts an amendment to §105.5 concerning correction of errors by employers. The amendment to the rule is adopted without changes to the proposed text as published in the October 26, 2018, (43 TexReg 7094), issue of the *Texas Register* and will not be republished.

TCDRS adopts the amendment to the rule to clarify the contributions required to be made by an employer participating in TCDRS when making a correction to the TCDRS account of one of its employees. Under the adopted amendment, the contribution required by the employer to make a correction does not include a payment for interest. If interest is owed due to the correction, the interest is collected at the time of income allocation under Texas Government Code §845.315. The amendment is needed due to accounting and income allocation improvements that were a result of the TCDRS fund consolidation bill passed by the legislature in 2015 (Senate Bill 463) and the recent deployment of modernized pension administration technology.

The TCDRS board of trustees received no public comments regarding the amendment to the rule.

The amendment to the rule is adopted under Government Code, §845.102, which authorizes the TCDRS board of trustees to adopt rules for the efficient administration of TCDRS.

Government Code, §842.112 is affected by this amendment. No other statutes, articles, or codes are affected by the amendment.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805424
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 3, 2019
Proposal publication date: October 26, 2018
For further information, please call: (512) 637-3247

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) adopts amendments to §15.25, concerning Address. This rule is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7446) and will not be republished.

The United States Postal Service (USPS) has adopted standards for address correction software to increase the accuracy of addresses. The use of address-matching software that meets certification standards under the Coding Accuracy Support Sys-

tem (CASS) adopted by the USPS will ensure that driver license address records are CASS compliant. These amendments are necessary to inform the public of the address validation system currently being used for conformation of driver license and identification card addresses to USPS standards. These amendments also update the peace officer alternative address program to add special investigators and inform the public of changes to the program made by the 85th Texas Legislature.

The department accepted comments on the proposed amendments through December 10, 2018. Mr. Casey Dean Alani, Esq. submitted comments regarding §15.25(1), (4), and (5). These existing rules have been in place since May 20, 2008. Since the comments received do not pertain to proposed changes to the rule text, the department will make no changes in response to these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §521.063, which authorizes the department to adopt rules to implement mailing address verification; and Texas Transportation Code, §521.1211, which authorizes the department to issue driver licenses to peace officers or special investigators using an alternative address.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805360
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §15.119

The Texas Department of Public Safety (the department) adopts the repeal of §15.119, concerning Clearance Report When No Fee Is Required. This repeal is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7448) and will not be republished.

The 85th Legislature passed Senate Bill 1913 and House Bill 351 which amended §706.006 of the Transportation Code to expand the conditions under which persons who fail to appear in a court would not be required to pay an administrative fee to the department. The repeal of this rule is necessary because the changes to §706.006 eliminated the need for this rule.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §706.012, which authorizes the department to adopt rules necessary to administer Chapter 706 of the Texas Transportation Code.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805361
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.142

The Texas Department of Public Safety (the department) adopts amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. This rule is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7449) and will not be republished.

Section 521.062 of the Transportation Code authorized the department to establish a driver record monitoring pilot program by rule. At the conclusion of the term of pilot program, the statute authorized the Public Safety Commission to implement a permanent driver record monitoring program. This amendment removes the pilot program designation from the rule text to provide for the permanent program.

The department accepted comments on the proposed amendments through December 10, 2018. A written comment was submitted by Explore Information Services, LLC in support of the amendments to §15.142 which establishes a permanent Driver Record Monitoring program.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and Texas Transportation Code, §521.062, which authorizes the driver record monitoring program.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805362

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
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SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.173

The Texas Department of Public Safety (the department) adopts new §15.173, concerning Issuance to Civilly Committed Individuals/Memorandum of Understanding. This rule is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7450) and will not be republished.

The 85th Legislature passed Senate Bill 1576 which requires the department, the Texas Civil Commitment Office (TCCO), and the Department of State Health Services (DSHS), by rule, to adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a civilly committed person, including responsibilities related to verification of the person's identity. This new rule is intended to provide the information for review of that interagency agreement.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and Health and Safety Code, §841.153(c), which authorizes the agreement relating to issuance of driver licenses and identification cards to civilly committed individuals.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805363
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
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CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §21.3

The Texas Department of Public Safety (the department) adopts amendments to §21.3, concerning Standards for Sunscreening and Privacy Window Devices. This rule is adopted with changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7451) and will be republished.

This amendment repeals language duplicative of federal regulations and simplifies the process by which a driver or vehicle owner may establish entitlement to a medical condition-based exemption from the window tint requirements of Transportation Code, §547.613. Current rule language requires a driver present a department issued letter of authorization to law enforcement in order to establish entitlement to the exemption. Current rule language also describes the process by which the department issues such letters of authorization, following the review of documentation submitted by the vehicle owner establishing a medical reason to be shielded from the direct rays of the sun. The proposed amendment eliminates this process, instead requiring the driver present the documentation from a physician directly to law enforcement upon request.

The department made one change to the proposed language to correct a cross-reference in §21.3(f)(3).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt rules to administer and enforce Chapter 547.

§21.3. Standards for Sunscreening and Privacy Window Devices.

(a) The words and terms detailed in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) Sunscreening device--A glazing, film material, or device for reducing the effects of visible sunlight and/or preventing observation. This does not include glazing or film material without visible tinting providing protection from the effects of ultraviolet light because this type of sunlight is not visible to the human eye.

(2) Light transmission--The ratio of the amount of total visible light to pass through a product or material to the amount of total visible light falling on the product or material and the glazing.

(3) Luminous reflectance--The ratio of the amount of total visible light that is reflected outward by a product or material to the amount of total visible light falling on the product or material.

(4) Driver rear visibility requirement--To meet this requirement a motor vehicle must be equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle.

(5) Multipurpose vehicles are those designated as such by the vehicle manufacturer. Sports utility vehicle (SUV) or similar terms denote the vehicle as multipurpose. Generally, it is a motor vehicle designed to carry 10 or fewer persons constructed on either a truck chassis or a passenger vehicle chassis, with special features for occasional off-road use.

(6) Manufacturer--A person or business engaged in the manufacturing or assembling of a sunscreening device; or fabricates, laminates, or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.

(7) Installer--Any person or business engaged for hire in the installation of sunscreening device products or materials designed to be used in conjunction with vehicle glazing material for the purpose of reducing the effects of the sun.

(b) All sunscreening devices used as standard equipment, optional equipment, or in replacement parts, adhering to the federal standards at the time of vehicle manufacture, are authorized.

(c) After-market sunscreening devices. Standards and specifications described in paragraphs (1) - (4) of this subsection apply to after-market sunscreening devices applied in conjunction with window glazing (vehicle safety glass) meeting federal standards.

(1) All installed after-market sunscreening devices will be measured in combination with the vehicle's original equipment (window glass).

(2) Windshields. No after-market sunscreening devices shall be installed, affixed, or applied to a vehicle windshield below the AS-1 line, or five inches from the top of the windshield if the AS-1 line annotation is not present.

(A) If an additional sunscreening device is used above the AS-1 area of the windshield, the light transmission value, in combination with the original windshield glazing, must be 25% or more.

(B) The luminous reflectance of any additional sunscreening devices used above the AS-1 area of the windshield must be 25% or less.

(C) An installed after-market sunscreening device used on the windshield may not be of a red, blue, or amber color.

(3) Side Windows. The vehicle type determines the specific windows affected.

(A) Passenger vehicles. All side windows of the vehicle must have at least a 25% light transmission value and luminous reflectance of 25% or less, over the entire surface area of the window.

(B) Buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles. Windows to the immediate left and right of the operator must have at least a 25% light transmission value and luminous reflectance of 25% or less, over the entire surface area of the window. Side windows to the rear of the driver, both left and right, have no minimum requirement for light transmission.

(4) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If the vehicle has left and right outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle, there is no minimum light transmission requirement.

(B) If the vehicle is not equipped with both a left and right side outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle, the rear window must have a 25% light transmission value for the area used for driver visibility value. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The shade band area is authorized to have less than 25% light transmission. The device must have a luminous reflectance of 25% or less.

(d) Window covers and other window privacy devices.

(1) The use of curtains, blinds, drapes, or stick-on novelty designs in the rear window or windows is not prohibited if the window(s) are not required for driver rear visibility.

(2) Louvered materials, when installed as designed, shall not reduce the area of driver rear visibility below 50% as measured on a horizontal plane. When such materials are used in conjunction with the rear window, the measurement shall be made based upon the driver's view from the inside rearview mirror.

(e) Medical exceptions.

(1) Notwithstanding the foregoing provisions of this section, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders the person susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmission values of less than 25%. An untinted film or glaze may be applied to the area below the AS-1 line of the windshield of a motor vehicle provided the total visible light transmission is not reduced by 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle possesses a signed statement from a licensed physician or licensed optometrist.

(2) The signed statement from a licensed physician or licensed optometrist shall:

(A) identify with reasonable specificity the driver or occupant of the vehicle; and

(B) state that, in the physician's or optometrist's professional opinion, the equipping of the vehicle with sunscreening devices is necessary to safeguard the health of the driver or occupant of the vehicle.

(f) Manufacturer and installer requirements.

(1) Each manufacturer shall obtain certification from the Texas Department of Public Safety of sunscreening devices used on the side windows of passenger vehicles and windows immediately to the left and right of the vehicle operator on all other vehicles. To obtain certification the manufacturer will provide test results that the product or material manufactured or assembled complies with the light transmission and luminous reflectance requirements of this section.

(2) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the name or registration number of the manufacturer and a statement that complies with Texas Transportation Code, §547.609.

(3) Each manufacturer shall include instructions with the sunscreening device, product, or material for proper installation, including the affixing of the label required by this section.

(4) No installer or business shall apply or affix to the windows of any motor vehicle in this state a sunscreening device that is not in compliance with requirements of this section.

(5) At a minimum, installers shall affix the label described in paragraph (2) of this subsection between the sunscreening device and the lower rearward corner of the driver's left side window which is legible from the outside of the vehicle.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805364
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §23.5

The Texas Department of Public Safety (the department) adopts amendments to §23.5, concerning Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses. This rule is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7453) and will not be republished.

Currently, the rule provides that a felony conviction for an offense that does not relate to the occupation of vehicle inspector is disqualifying for five years from the date of conviction. However, pursuant to Texas Occupations Code, §53.021(a)(2), the disqualification period should run from the date the offense was committed. The proposal changes "conviction" to "commission," to accurately reflect the language of Occupations Code, §53.021(a)(2).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer Chapter 548, and Texas Occupations Code, §53.021.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805365
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41

The Texas Department of Public Safety (the department) adopts amendments to §23.41, concerning Passenger (Non-Commercial) Vehicle Inspection Items. This rule is adopted without changes to the proposed text as published in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7455) and will not be republished.

The inspection items are listed in the DPS Training and Operations Manual, which is included by reference in this rule. Section 4.20.35 in the Manual is amended to simplify the process by which a vehicle owner may obtain a safety inspection of a vehicle in the event the vehicle is equipped with window tint in violation of Transportation Code, §547.613. Current language describes a process by which the department issues letters of authorization following the review of documentation submitted by the vehicle owner establishing a medical reason to be shielded from the direct rays of the sun. The proposed amendment eliminates this process, instead requiring the driver present the documentation directly to the vehicle inspector. In addition, Section 4.15.6 in the Manual is amended to clarify the manner in which safety inspections are to be conducted on "glider trucks" (a new truck cab and chassis built by the original equipment manufacturer assembled with an earlier model engine), providing the exhaust and emissions systems are to be inspected based on the requirements in place at the time of the engine's manufacture.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt rules to administer Chapter 547.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805366
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §23.74

The Texas Department of Public Safety (the department) adopts the repeal of §23.74, concerning Manner of Reporting. This repeal is adopted without changes to the proposed text as published in the November 9, 2018 issue of the *Texas Register* (43 TexReg 7456) and will not be republished.

The repeal of this rule will simplify and generally clarify the responsibilities of the committee. The rule imposed requirements on the committee determined to be unnecessary.

No comments were received regarding the adoption of this repeal.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §706.012, which authorizes the department to adopt rules necessary to administer Chapter 706 of the Texas Transportation Code.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805367
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 3, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 424-5848

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.9

The Texas Board of Criminal Justice adopts amendments to §159.9, concerning Firearms Proficiency Training for Supervision Officers, without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7332).

The adopted amendment is non-substantive and simply changes the title of the rule.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013; Texas Occupations Code §1701.257.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805382
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 3, 2019
Proposal publication date: November 2, 2018
For further information, please call: (936) 437-6700

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37 TAC §159.19

The Texas Board of Criminal Justice adopts amendments to §159.19, concerning Continuity of Care and Services Program for Offenders who are Elderly, Terminally Ill, Significantly Ill or with a Physical Disability or Having a Mental Illness, without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7332).

The proposed amendments made some non-substantive stylistic adjustments consistent with the memorandum of understanding and reflect structural changes to the Texas Health and Human Services Commission.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.001, 492.013; Texas Health & Safety Code §§614.003, 614.007 - 614.008, 614.013 - 614.015.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805386
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 3, 2019
Proposal publication date: November 2, 2018
For further information, please call: (936) 437-6700

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37 TAC §159.21

The Texas Board of Criminal Justice adopts amendments to §159.21, concerning Continuity of Care and Service Program for Offenders who are Persons with Mental Impairments, Physical Disabilities, Terminal or Significant Illnesses, or who are Elderly, without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7333).

The adopted amendments are non-substantive stylistic changes consistent with the memorandum of understanding and provide an updated address of record.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.001, §492.013 and Texas Health & Safety Code §§614.013 - 614.016.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on December 14, 2018.

TRD-201805388

Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 3, 2019
Proposal publication date: December 14, 2018
For further information, please call: (936) 437-6700

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.27

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.27, Vehicle Registration Insignia, without changes to the proposed text as published in the October 19, 2018, issue of the *Texas Register* (43 TexReg 6945). The rule will not be republished.

EXPLANATION OF AMENDMENTS

With the amendments to add §217.27(d)(4), the department is clarifying when it may approve and issue a license plate pattern that references certain publicly and privately funded entities. Namely, the department may approve a plate pattern which does not violate §217.27(d) and references publicly and privately funded institutions of higher learning, including military academies.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, §504.0011, which provides that the board may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 504.

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805304

Sarah Swanson
Interim General Counsel
Texas Department of Motor Vehicles
Effective date: January 1, 2019
Proposal publication date: October 19, 2018
For further information, please call: (512) 465-5665

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43 TAC §217.56

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.56, Registration Reciprocity Agreements, without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5663). The rule will not be republished.

EXPLANATION OF AMENDMENTS

An amendment incorporates by reference the January 1, 2018, and the January 1, 2019, editions of the International Registration Plan (IRP). The IRP was updated on January 1, 2018, to add a decision of the IRP Dispute Resolution Committee to Appendix E of the IRP. The IRP will be updated on January 1, 2019, to incorporate the amendments from IRP Ballot Number 412 - Electronic Image of Cab Card (Ballot 412), which allows the registrant to display an electronic image of the cab card, which is a vehicle registration credential.

Texas is bound by the IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 should incorporate the latest edition of the IRP because it contains language regarding the nature and requirements of apportioned vehicle registration.

Amendments to §217.56 clarify the scope and applicability of the IRP language regarding the display of an electronic image of a cab card. The IRP is a registration reciprocity agreement that does not have the authority to: 1) force a registrant to voluntarily consent to a peace officer's request or any other person's request to search the contents of the registrant's wireless communication device or other electronic device (device); 2) override a peace officer's authority, if any, to search the contents of the registrant's device; 3) override any other authority to search the contents of the registrant's device, such as a valid court order; or 4) override the rules and procedures that apply in courts of law or administrative tribunals.

When the member jurisdictions voted on Ballot 412, the votes didn't authorize the IRP member jurisdictions to: 1) amend the Fourth Amendment to the United States Constitution or Article I, §9 of the Texas Constitution regarding searches and seizures; 2) overrule case law interpreting the Fourth Amendment to the United States Constitution or Article I, §9 of the Texas Constitution; or 3) amend or enact laws or rules for the member jurisdictions, such as laws or rules regarding court procedures or court orders. The United States Constitution, and the constitution and laws of each member jurisdiction do not give these powers to the IRP member jurisdictions when voting on IRP ballots. Even if the member jurisdictions had these powers when voting on Ballot 412, it was not their intent to amend or change constitutions, laws, or case law regarding the issues listed above.

Ballot 412 gives the registrant the choice of presenting a paper original, a legible paper copy, or a legible electronic image of its cab card to a peace officer upon request. The ballot was

intended to give the registrant the choice to use modern technology to present its cab card to a peace officer. Ballot 412 was not intended to constitute the registrant's voluntary consent to authorize a peace officer or any other person to search the contents of the registrant's device. When a peace officer is relying on voluntary consent as the authority for the search, Ballot 412 does not impact the registrant's authority to either consent to the officer's request or to decline the officer's request to search all or parts of the registrant's device.

The IRP website includes a webpage regarding the implementation of Ballot 412. The webpage includes draft language for member jurisdictions to use to make it clear that the ballot language does not constitute voluntary consent for a peace officer to view the contents of the registrant's device. *See https://www.irponline.org/page/ECBallotImplement*

When a peace officer is relying on authority other than voluntary consent for the search, Ballot 412 does not impact such authority, if any, to search the contents of the registrant's device. This authority, if any, may exist regardless of whether the registrant chooses to display an electronic image of the registrant's cab card or chooses to display a paper copy of the cab card. At the annual IRP meeting in May of 2018, the member jurisdictions discussed the implementation of Ballot 412 during the presentation of an agenda item titled Implementation of Electronic Cab Card Ballot. Part of the discussion focused on the fact that the ballot language does not impact any authority that a peace officer might have to search the contents of the registrant's device.

Also, Ballot 412 was not intended to override any rules regarding the form of evidence that is required or used in connection with a hearing, trial, or discovery proceeding in a court or administrative tribunal. An amendment to §217.56 clarifies that the language does not impact any requirements to provide a paper copy of the cab card in a proceeding before the Texas State Office of Administrative Hearings or a court of competent jurisdiction.

If the language in an IRP ballot expressly conflicts with a member jurisdiction's statute, the member jurisdiction's legislature may need to amend the statute to be consistent with the IRP. For example, if a Texas statute required the registrant to provide a peace officer with the original paper cab card or a paper copy of the cab card, such a statute would expressly conflict with the language in Ballot 412, which authorizes the registrant to provide an electronic image of the cab card.

The language in Ballot 412 does not expressly conflict with any Texas statutes. Also, the amendments to §217.56 are consistent with the department's rules regarding the electronic display of an oversize or overweight permit and an insurance cab card for a motor carrier. The amendments are also consistent with Transportation Code, §601.053(d) and (e) regarding the electronic display of insurance information on a wireless communication device.

Amendments also make the language consistent with the following: 1) other rules in Chapter 217; 2) Transportation Code, Chapter 502; and 3) a resolution of the board of the Texas Department of Motor Vehicles (board) dated December 3, 2009, in which the board delegated the following to the department's executive director or her designee: the final order authority in contested cases involving the assessment of additional registration fees, the cancellation of registration, or the revocation of registration after an audit of the registrant's operational records.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004(1), which requires state agencies to adopt rules of practice that state the nature and requirements of all available formal and informal procedures; and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; and Transportation Code, §502.091(b), which authorizes the department to adopt rules to carry out the IRP.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.091.

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805306
Sarah Swanson
Interim General Counsel
Texas Department of Motor Vehicles
Effective date: January 1, 2019
Proposal publication date: August 31, 2018
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER K. ELECTRONIC SIGNATURES

43 TAC §§217.301 - 217.303

The Texas Department of Motor Vehicles (department) adopts new Chapter 217, Vehicle Titles and Registration, Subchapter K, Electronic Signatures, §217.301, Purpose and Scope; §217.302, Definitions; and §217.303, Process for Accepting Electronic Signatures, without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5667). The rules will not be republished.

EXPLANATION OF NEW SUBCHAPTER

Senate Bill 1062, 85th Legislature, Regular Session, 2017, amended Transportation Code, §501.174, directing the department by rule to establish a process to accept electronic signatures on secure documents that have been electronically signed through a system not controlled by the department. The new subchapter establishes that process for electronic signatures on secure documents and non-secure documents.

New §217.301, Purpose and Scope, establishes that the new rules prescribe the policies and procedures for the acceptance of electronic signatures on secure documents and the use and acceptance of electronic signatures on non-secure documents.

New §217.302, Definitions, defines key terms used in the adopted new subchapter, including department, electronic signature, secure document, and webDEALER. Electronic signature is defined by reference to Transportation Code,

§501.172; secure document is defined as a document that incorporates features that can be used to identify and authenticate a document as original, printed by a secure printing process, and provided by the department or an equivalent department in another jurisdiction; and webDEALER is defined by reference to §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems).

New §217.303, Process for Accepting Electronic Signatures, authorizes persons to use electronic signatures for records submitted to the department if the requirements of the subchapter are met. New §217.303(b) clarifies that electronic signatures may not be used for any purpose other than the purpose indicated by the signer on the document and that the electronic signatures must be linked to their respective electronic records and match the signer's printed name.

New §217.303(c) provides that the department does not certify or approve an electronic signature process or vendor. An entity offering an electronic signature process assumes responsibility for the accuracy of the signature.

New §217.303(d) provides that a secure document with an electronic signature may only be submitted through webDEALER and requires a county tax assessor-collector to accept a secure document with an electronic signature submitted in compliance with the subchapter.

New §217.303(e) provides that a non-secure document with an electronic signature may be submitted electronically through webDEALER or physically, and requires a county tax assessor-collector to accept a secure document with an electronic signature submitted in compliance with the subchapter.

New §217.303(f) requires a system used to electronically sign documents to capture and retain the signer's name, the date, and the electronic signature. New §217.303(g) requires an electronic signature physically printed or affixed on a document to indicate it is an electronic signature. New §217.303(h) requires that the electronic signature system verify the identity of the user and that the access be secure and utilize unique credentials for each user. This new subsection also establishes a retention period for information captured by an electronic signature system and requires that the information retained be provided to the department on request.

New §217.303(i) exempts an electronic signature captured by physical means, such as a stylus, pen pad, or mouse, from the requirements of §217.303(h) if the signer presents a current photo identification described by §217.5(d) of this title (relating to Evidence of Motor Vehicle Ownership); the identity of the signer is verified in person by the holder of a general distinguishing number issued under Transportation Code, Chapter 503, or Occupations Code, Chapter 2301; and the photo identification is retained in accordance with §217.5(d).

COMMENTS

The department received comments from Insurance Auto Auctions (IAA) and Texas Automobile Dealers Association (TADA).

COMMENT

IAA requested that when an electronic submission is rejected due to a correctable error or system glitch, they be given the opportunity for the error or glitch to be corrected and the transaction resubmitted electronically.

RESPONSE

The department has reviewed the comment and finds no changes to the rule are necessary, as transactions that are rejected due to correctable errors may be resubmitted, regardless of whether the transaction is submitted physically or electronically. The proposed new rules do not prohibit corrections and resubmissions when necessary.

COMMENT

IAA requested the ability to print and physically submit an electronically signed document that is rejected because webSALVAGE does not recognize or support the transaction.

RESPONSE

Transportation Code, §501.174(d) requires the department to adopt rules that establish a process for the acceptance of electronic signatures on secure documents that have been electronically signed through a system not controlled by the department. Section 501.174(e) requires that system to verify the identity of the person electronically signing and for the documents to be submitted through the electronic titling system. As such, the department is not authorized to accept secure documents with electronic signatures outside of webDEALER. Allowing electronic signatures to be affixed on secure documents and submitted physically is beyond the scope of the statute and raises concerns regarding the potential for fraud to occur. webDEALER provides user verification of the person submitting the title application to the county or department. The department is making no changes to the proposed rules based on this comment.

COMMENT

IAA requested that webDEALER be expanded to accommodate its clear title applications on behalf of insurers and commented it would like the ability to sign all title applications using e-signatures.

RESPONSE

The department has reviewed this comment and determined that while the recommendation is outside the scope of this rulemaking, the department had previously received a request to accommodate this type of transaction. It is not known at this time when this change could be implemented.

COMMENT

TADA expressed concern about the proposed definition of "secure document" and seeks clarification. TADA questioned how a licensee could determine whether a document is an "original" when issued by an equivalent department in another jurisdiction and if that document meets the agency's definition. TADA also asks if the department will presume a document is "original" if it is printed on secure paper and provided by the equivalent department in another jurisdiction and requests additional information as to the meaning of "secure printing process" in the "secure document" definition.

RESPONSE

The department has reviewed the comment and finds no changes are necessary to the definition of "secure document" as proposed. This definition is a commonly-used definition for an inventory-controlled document issued by the department and equivalent departments in other jurisdictions. This definition provides a greater level of specificity than the Federal Regulations governing odometer disclosures (49 U.S.C.A. §32705), which refer only to a "secure printing process" or "other secure

process." Security watermarks or other features are designed to appear hidden or invisible on originals, but clearly visible on photocopies. Notably, the secure documents referenced in the proposed rules are the same secure documents used today; the proposed rules prescribe that a secure document with an electronic signature must be submitted through webDEALER.

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.174, and Business and Commerce Code, §322.017.

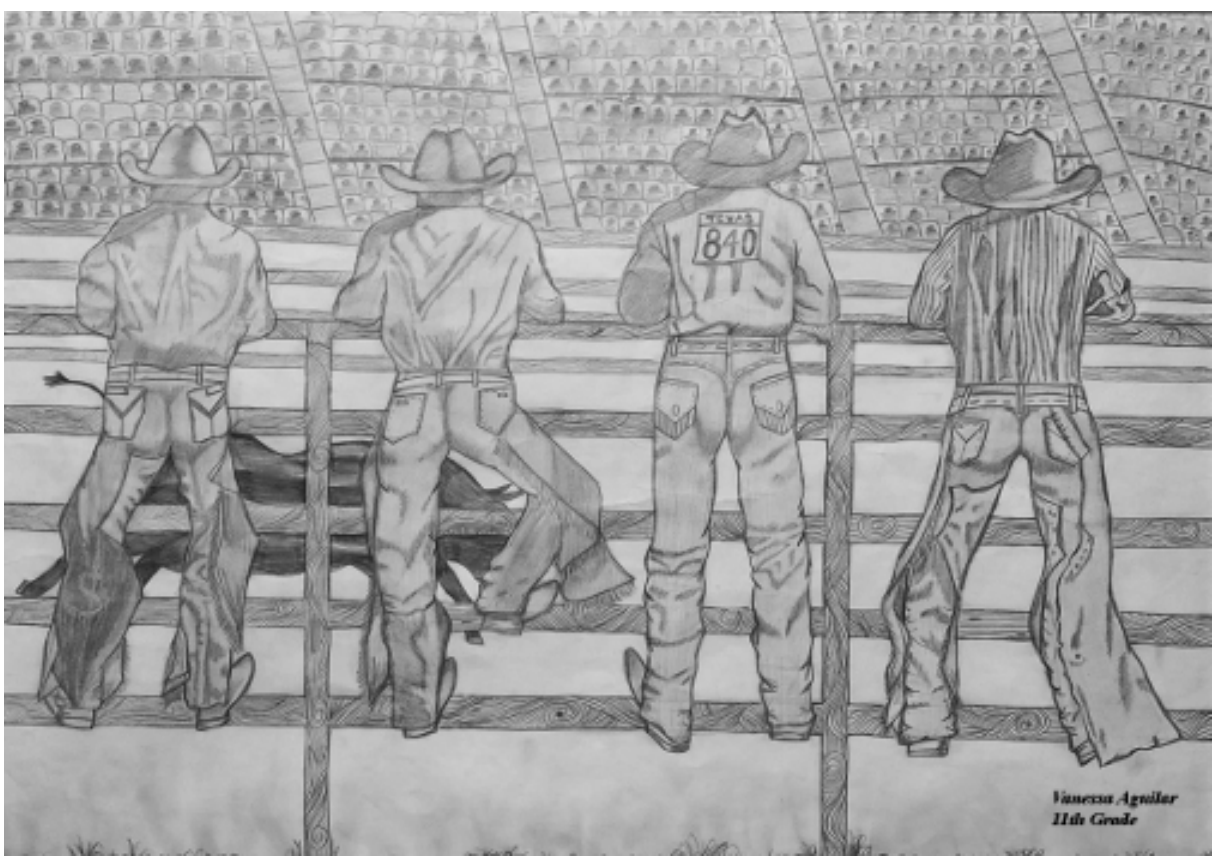
CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

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

Filed with the Office of the Secretary of State on December 11, 2018.

TRD-201805307
Sarah Swanson
Interim General Counsel
Texas Department of Motor Vehicles
Effective date: January 1, 2019
Proposal publication date: August 31, 2018
For further information, please call: (512) 465-5665


TEXAS
840
Vanessa Aguilar
11th Grade

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §152.71, concerning Acceptance of Gifts Related to Buildings for Religious and Programmatic Proposes. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §152.71.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201805372
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 14, 2018

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review §163.36, concerning Mentally Impaired Offender Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.36.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201805375
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 14, 2018

♦ ♦ ♦

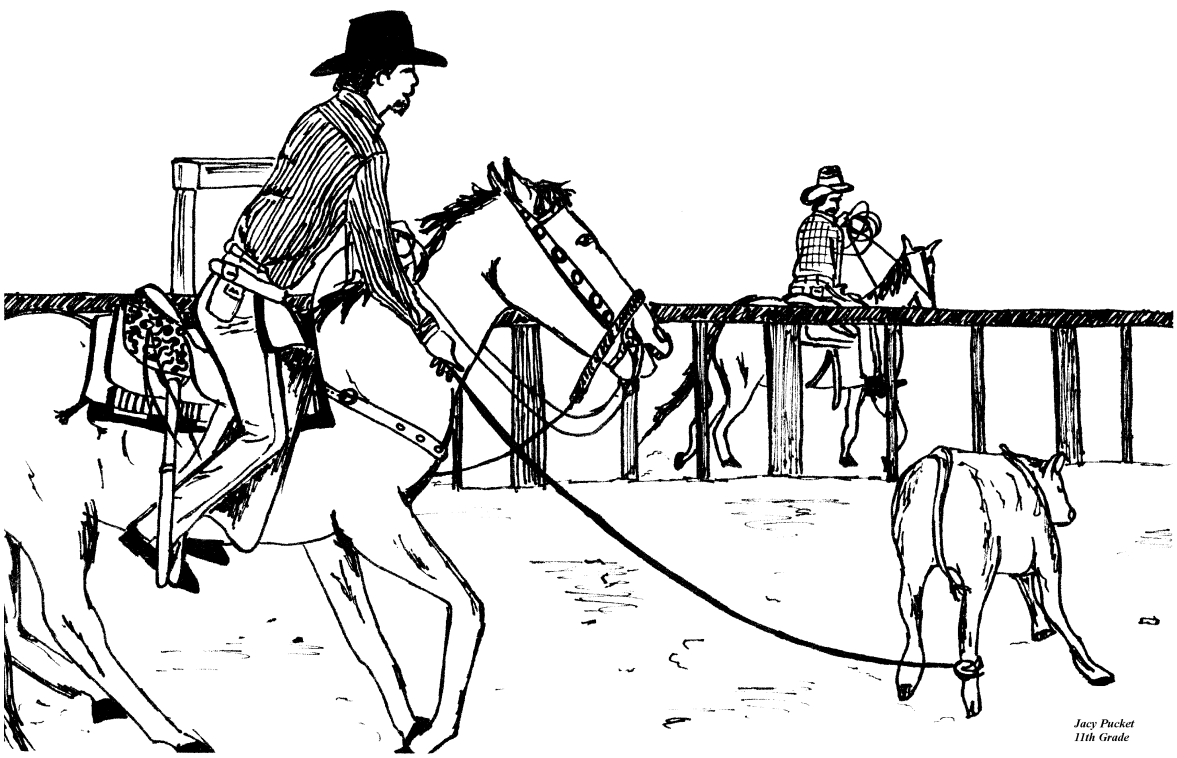
The Texas Board of Criminal Justice files this notice of intent to review §195.51, concerning Sex Offender Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes a repeal of §195.51.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201805377
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 14, 2018

♦ ♦ ♦



Jacy Pucket
11th Grade

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.317(k)(4)(D)

When the 10X multiplier is available:		
Power Play	**Probability of Prize Increase**	**Chance of Occurrence**
10X (Prize Won Times 10)	1 in 43	2.3255%
5X (Prize Won Times 5)	2 in 43	4.6512%
4X (Prize Won Times 4)	3 in 43	6.9767%
3X (Prize Won Times 3)	13 in 43	30.2326%
2X (Prize Won Times 2)	24 in 43	55.8140%
When the 10X multiplier is not available:		
Power Play	**Probability of Prize Increase**	**Chance of Occurrence**
10X (Prize Won Times 10)	0 in 42	0.0000%
5X (Prize Won Times 5)	2 in 42	4.7619%
4X (Prize Won Times 4)	3 in 42	7.1429%
3X (Prize Won Times 3)	13 in 42	30.9523%
2X (Prize Won Times 2)	24 in 42	57.1429%
Power Play does not apply to the Grand Prize. [~~or the WTA Prize.~~] Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 prize is set at two million dollars ($2 million), regardless of the multiplier selected.		

Figure: 37 TAC §37.3(a)

Minimum Required Registration under Federal Law for Texas Reportable Convictions and Adjudications

Tier 1 - The following Texas Penal Code reportable convictions and adjudications require at a minimum a 15-year registration under federal law:

- §20A.02(a)(3,4) Trafficking of persons, if the victim is 18 or older.
- §20A.03 Continuous trafficking of persons, if the victims are 18 or older.
- §20.02 Unlawful restraint with an affirmative finding that the victim is under 17, non-parental.
- §21.09 Bestiality.
- §21.11(a)(2) Indecency with a child, by exposure.
- §43.05(a)(1) Compelling prostitution, adult victim and by force threat or fraud.
- §43.26(a) Possession of child pornography.
- Attempts, conspiracies or solicitations to commit the above offenses.

Tier 2 - The following Texas Penal Code reportable convictions and adjudications require at a minimum a 25-year registration under federal law:

- §20A.02(a)(7,8) Trafficking of persons, if the victim is under 18.
- §20A.03 Continuous trafficking of persons, if the victims are under 18.
- §21.02 Continuous sexual abuse of young child or children, if the victim is age 13-17.
- §21.11(a)(1) Indecency with a child, by contact, if the victim is age 13-17.
- §43.05(a)(2) Compelling prostitution, if the victim is under 18.
- §43.25 Sexual performance by a child.
- §43.26(e) Promotion of child pornography.
- Attempts, conspiracies or solicitations to commit the above offenses.
- §33.021 Online solicitation of a minor.
- §43.02(c-1)(3) Prostitution of a minor, if the victim is under 18.
- §43.23(h) Obscenity, if the offender is an adult, the victim is under 18, and the victim is visually depicted in representations described by §43.21(a)(1)(B).
- Any reportable conviction or adjudication that occurs after the offender becomes a Tier 1 sex offender.

Tier 3 - The following Texas Penal Code reportable convictions and adjudications require at a minimum a lifetime registration under federal law:

- §20.03 Kidnapping with an affirmative finding that the victim is under 17, non-parental.
- §20.04 Aggravated kidnapping with an affirmative finding that the victim is under 17, non-parental.
- §20.04(a)(4) Aggravated kidnapping with the intent to violate or abuse the victim sexually.
- §21.02 Continuous sexual abuse of young child or children, if the victim is under 13.
- §21.11(a)(1) Indecency with a child by contact, if the victim is under 13.
- §22.011 Sexual assault, unless the exception in 34 USC §20911(5)(c) applies.
- §22.021 Aggravated sexual assault.
- §25.02 Prohibited sexual conduct.

- §30.02(d) Burglary of a habitation with intent to commit a prohibited sex act.
- Attempts, conspiracies or solicitations to commit the above offenses.
- Any reportable conviction or adjudication that occurs after the offender becomes a Tier 2 sex offender.

The following Texas Penal Code reportable convictions and adjudications do not require registration under federal law:

- §20.02 Unlawful restraint, if committed by a parent.
- §20.03 Kidnapping, if committed by a parent.
- §20.04 Aggravated kidnapping, if committed by a parent and with no intent to violate or abuse victim sexually.
- The second violation of §21.08 Indecent Exposure, if not a deferred adjudication.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft 2019 Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its 2019 Draft Annual Action Plan, which is a component of the 2019 State Low Income Housing Plan. A copy of the 2019 Draft Annual Action Plan may be found on the Corporation's website at:

https://www.tsahc.org/news/article/draft-2019-annual-action-plan-available-for-public-comment

The public comment period for the Corporation's 2019 Draft Annual Action Plan is **December 13, 2018** through **January 14, 2019.**

Written comment may be sent to Michael Wilt, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702, or by email to mwilt@tsahc.org.

TRD-201805416
David Long
President
Texas State Affordable Housing Corporation
Filed: December 14, 2018

♦ ♦ ♦

Office of the Attorney General

2019 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

LIMITATIONS ON USE

These charts are intended to assist courts in common situations, and do not account for all deductions and adjustments allowable under the Internal Revenue Code. For instance, these charts do not take into account the qualified business income deduction which might be taken by some owners of sole proprietorships, S corporations, partnerships, or stand-alone rental properties (pass-thru entities). In some situations, section 199A of the Internal Revenue Code allows owners of pass-thru entities to take a deduction against their income resulting in a reduction of the effective tax rate. These charts should not be used to estimate the net income of owners of pass-thru entities. The computation of net income for parties with complex tax situations may require consultation with an income tax professional.

EMPLOYED PERSONS 2019 TAX CHART				
	Federal Insurance Contributions Act Taxes			
Monthly Gross Wages	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (6.2%)*	Medicare's Hospital Insurance Program (Medicare) Tax (1.45%)*	Federal Income Tax***	Net Monthly Income
$900.00	$55.80	$13.05	$0.00	$831.15
$1,000.00	$62.00	$14.50	$0.00	$923.50
$1,100.00	$68.20	$15.95	$8.33	$1,007.52
$1,200.00	$74.40	$17.40	$18.33	$1,089.87
$1,256.67****	$77.91	$18.22	$24.00	$1,136.54
$1,300.00	$80.60	$18.85	$28.33	$1,172.22
$1,400.00	$86.80	$20.30	$38.33	$1,254.57
$1,500.00	$93.00	$21.75	$48.33	$1,336.92
$1,600.00	$99.20	$23.20	$58.33	$1,419.27
$1,700.00	$105.40	$24.65	$68.33	$1,501.62
$1,800.00	$111.60	$26.10	$78.33	$1,583.97
$1,900.00	$117.80	$27.55	$89.83	$1,664.82
$2,000.00	$124.00	$29.00	$101.83	$1,745.17
$2,100.00	$130.20	$30.45	$113.83	$1,825.52
$2,200.00	$136.40	$31.90	$125.83	$1,905.87
$2,300.00	$142.60	$33.35	$137.83	$1,986.22
$2,400.00	$148.80	$34.80	$149.83	$2,066.57
$2,500.00	$155.00	$36.25	$161.83	$2,146.92
$2,600.00	$161.20	$37.70	$173.83	$2,227.27
$2,700.00	$167.40	$39.15	$185.83	$2,307.62
$2,800.00	$173.60	$40.60	$197.83	$2,387.97
$2,900.00	$179.80	$42.05	$209.83	$2,468.32
$3,000.00	$186.00	$43.50	$221.83	$2,548.67
$3,100.00	$192.20	$44.95	$233.83	$2,629.02
$3,200.00	$198.40	$46.40	$245.83	$2,709.37
$3,300.00	$204.60	$47.85	$257.83	$2,789.72
$3,400.00	$210.80	$49.30	$269.83	$2,870.07
$3,500.00	$217.00	$50.75	$281.83	$2,950.42
$3,600.00	$223.20	$52.20	$293.83	$3,030.77
$3,700.00	$229.40	$53.65	$305.83	$3,111.12
$3,800.00	$235.60	$55.10	$317.83	$3,191.47
$3,900.00	$241.80	$56.55	$329.83	$3,271.82
$4,000.00	$248.00	$58.00	$341.83	$3,352.17
$4,100.00	$254.20	$59.45	$353.83	$3,432.52
$4,200.00	$260.40	$60.90	$365.83	$3,512.87
$4,300.00	$266.60	$62.35	$377.83	$3,593.22
$4,400.00	$272.80	$63.80	$399.21	$3,664.19
$4,500.00	$279.00	$65.25	$421.21	$3,734.54
$4,600.00	$285.20	$66.70	$443.21	$3,804.89
$4,700.00	$291.40	$68.15	$465.21	$3,875.24
$4,800.00	$297.60	$69.60	$487.21	$3,945.59
$4,900.00	$303.80	$71.05	$509.21	$4,015.94
$5,000.00	$310.00	$72.50	$531.21	$4,086.29
$5,100.00	$316.20	$73.95	$553.21	$4,156.64
$5,200.00	$322.40	$75.40	$575.21	$4,226.99
$5,300.00	$328.60	$76.85	$597.21	$4,297.34
$5,400.00	$334.80	$78.30	$619.21	$4,367.69
$5,500.00	$341.00	$79.75	$641.21	$4,438.04
$5,600.00	$347.20	$81.20	$663.21	$4,508.39
$5,700.00	$353.40	$82.65	$685.21	$4,578.74
$5,800.00	$359.60	$84.10	$707.21	$4,649.09
$5,900.00	$365.80	$85.55	$729.21	$4,719.44
$6,000.00	$372.00	$87.00	$751.21	$4,789.79
$6,250.00	$387.50	$90.63	$806.21	$4,965.66
$6,500.00	$403.00	$94.25	$861.21	$5,141.54
$6,750.00	$418.50	$97.88	$916.21	$5,317.41
$7,000.00	$434.00	$101.50	$971.21	$5,493.29
$7,500.00	$465.00	$108.75	$1,081.21	$5,845.04
$8,000.00	$496.00	$116.00	$1,191.21	$6,196.79
$8,500.00	$527.00	$123.25	$1,310.54	$6,539.21
$9,000.00	$558.00	$130.50	$1,430.54	$6,880.96
$9,500.00	$589.00	$137.75	$1,550.54	$7,222.71
$10,000.00	$620.00	$145.00	$1,670.54	$7,564.46
$10,500.00	$651.00	$152.25	$1,790.54	$7,906.21
$11,000.00	$682.00	$159.50	$1,910.54	$8,247.96
$11,075.00	$686.65**	$160.59	$1,928.54	$8,299.22
$11,411.40*****	$686.65	$165.47	$2,009.28	$8,550.00

Footnotes to Employed Persons 2019 Tax Chart:

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* An employed person not subject to the Social Security Tax and the Medicare Tax will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** This amount represents the maximum monthly average of the Social Security tax based on the maximum OASDI Contribution and Benefit Base amount of $132,900 for 2019. In 2019 the maximum level of Monthly Gross Wages for an employed person subject to the 6.2% Social Security tax is $132,900 per year.

Monthly Gross Wages	$132,900 for the year, or $11,075 monthly average
Social Security tax rate = 6.2%	$132,900 is equal to the 2019 OASDI contribution and benefit base, so $132,900 is taxed at this rate. $132,900 x .062 = $8,239.80 for the year, or $686.65 monthly average

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction ($12,000).

Examples:

Monthly Gross Wages	$72,000 for the year, or $6,000 monthly average	$132,000 for the year, or $11,000 monthly average
Personal Exemption Section 151(d) of the Code	$0 for tax years 2018 through 2025	$0 for tax years 2018 through 2025
Standard Deduction Section 63(c) of the Code	$12,200	$12,200
Income amount to be used in the income tax computation	$72,000 - $0 - $12,200 = $59,800	$132,000 - $0 - $12,200 = $119,800
Income tax computation for 2019	*If taxable income is over $39,475 but not over $84,200, the tax is $4,543 plus 22% of the excess over $39,475* *(Section 1(j) of the Code)* $4,543.00 + (($59,800 - $39,475) x .22) = $9,014.50 for the year, or $751.21 monthly average	*If taxable income is over $84,200 but not over $160,725, the tax is $14,382.50 plus 24% of the excess over $84,200* *(Section 1(j) of the Code)* $14,382.50 + (($119,800 - $84,200) x .24) = $22,926.50 for the year, or $1,910.54 monthly average

**** This amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year.

Federal Minimum Wage = $7.25 per hour	$7.25 x 40 hours per week x 52 weeks per year = $15,080 per year
Monthly average	$15,080 / 12 = $1,256.67 monthly average

***** This amount represents the point where the monthly gross wages of an employed individual would result in $8,550.00 of net resources. Texas Family Code section 154.125 provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2013 the adjusted amount determined under Subsection (a-1) is $8,550.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* *

Citations Relating to Employed Persons 2019 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 83 Fed. Reg. 53702 (October 24, 2018)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

   (a) Tax Rate Schedule for 2019 for Single Taxpayers

(1) Revenue Procedure 2018-57, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2018-49, dated December 3, 2018,

(2) Section 1(j) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Revenue Procedure 2018-57, Section 3.16, which appears in Internal Revenue Bulletin 2018-49, dated December 3, 2018

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 38 TexReg 4647 (July 19, 2013)

SELF-EMPLOYED PERSONS 2019 TAX CHART				
Monthly Self-Employment Income TFC 154.065*	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (12.4%)**	Medicare's Hospital Insurance Program (Medicare) Tax (2.9%)**	Federal Income Tax****	Net Monthly Income
$900.00	$103.06	$24.10	$0.00	$772.84
$1,000.00	$114.51	$26.78	$0.00	$858.71
$1,100.00	$125.97	$29.46	$0.56	$944.01
$1,200.00	$137.42	$32.14	$9.86	$1,020.58
$1,300.00	$148.87	$34.82	$19.15	$1,097.16
$1,400.00	$160.32	$37.49	$28.44	$1,173.75
$1,500.00	$171.77	$40.17	$37.74	$1,250.32
$1,600.00	$183.22	$42.85	$47.03	$1,326.90
$1,700.00	$194.67	$45.53	$56.32	$1,403.48
$1,800.00	$206.13	$48.21	$65.62	$1,480.04
$1,900.00	$217.58	$50.88	$74.91	$1,556.63
$2,000.00	$229.03	$53.56	$84.88	$1,632.53
$2,100.00	$240.48	$56.24	$96.03	$1,707.25
$2,200.00	$251.93	$58.92	$107.18	$1,781.97
$2,300.00	$263.38	$61.60	$118.33	$1,856.69
$2,400.00	$274.83	$64.28	$129.49	$1,931.40
$2,500.00	$286.29	$66.95	$140.64	$2,006.12
$2,600.00	$297.74	$69.63	$151.79	$2,080.84
$2,700.00	$309.19	$72.31	$162.94	$2,155.56
$2,800.00	$320.64	$74.99	$174.10	$2,230.27
$2,900.00	$332.09	$77.67	$185.25	$2,304.99
$3,000.00	$343.54	$80.34	$196.40	$2,379.72
$3,100.00	$354.99	$83.02	$207.55	$2,454.44
$3,200.00	$366.44	$85.70	$218.70	$2,529.16
$3,300.00	$377.90	$88.38	$229.86	$2,603.86
$3,400.00	$389.35	$91.06	$241.01	$2,678.58
$3,500.00	$400.80	$93.74	$252.16	$2,753.30
$3,600.00	$412.25	$96.41	$263.31	$2,828.03
$3,700.00	$423.70	$99.09	$274.47	$2,902.74
$3,800.00	$435.15	$101.77	$285.62	$2,977.46
$3,900.00	$446.60	$104.45	$296.77	$3,052.18
$4,000.00	$458.06	$107.13	$307.92	$3,126.89
$4,100.00	$469.51	$109.80	$319.07	$3,201.62
$4,200.00	$480.96	$112.48	$330.23	$3,276.33
$4,300.00	$492.41	$115.16	$341.38	$3,351.05
$4,400.00	$503.86	$117.84	$352.53	$3,425.77
$4,500.00	$515.31	$120.52	$363.68	$3,500.49
$4,600.00	$526.76	$123.19	$374.84	$3,575.21
$4,700.00	$538.22	$125.87	$392.16	$3,643.75
$4,800.00	$549.67	$128.55	$412.60	$3,709.18
$4,900.00	$561.12	$131.23	$433.05	$3,774.60
$5,000.00	$572.57	$133.91	$453.50	$3,840.02
$5,100.00	$584.02	$136.59	$473.94	$3,905.45
$5,200.00	$595.47	$139.26	$494.39	$3,970.88
$5,300.00	$606.92	$141.94	$514.83	$4,036.31
$5,400.00	$618.38	$144.62	$535.28	$4,101.72
$5,500.00	$629.83	$147.30	$555.72	$4,167.15
$5,600.00	$641.28	$149.98	$576.17	$4,232.57
$5,700.00	$652.73	$152.65	$596.62	$4,298.00
$5,800.00	$664.18	$155.33	$617.06	$4,363.43
$5,900.00	$675.63	$158.01	$637.51	$4,428.85
$6,000.00	$687.08	$160.69	$657.95	$4,494.28
$6,250.00	$715.71	$167.38	$709.07	$4,657.84
$6,500.00	$744.34	$174.08	$760.18	$4,821.40
$6,750.00	$772.97	$180.78	$811.30	$4,984.95
$7,000.00	$801.60	$187.47	$862.41	$5,148.52
$7,500.00	$858.86	$200.86	$964.64	$5,475.64
$8,000.00	$916.11	$214.25	$1,066.87	$5,802.77
$8,500.00	$973.37	$227.64	$1,169.10	$6,129.89
$9,000.00	$1,030.63	$241.03	$1,277.94	$6,450.40
$9,500.00	$1,087.88	$254.42	$1,389.47	$6,768.23
$10,000.00	$1,145.14	$267.82	$1,500.99	$7,086.05
$10,500.00	$1,202.40	$281.21	$1,612.51	$7,403.88
$11,000.00	$1,259.65	$294.60	$1,724.03	$7,721.72
$11,500.00	$1,316.91	$307.99	$1,835.55	$8,039.55
$12,000.00	$1,373.30***	$321.38	$1,947.18	$8,358.14
$12,260.53*****	$1,373.30	$328.36	$2,008.87	$8,550.00

Footnotes to Self-Employed Persons 2019 Tax Chart:

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* Texas Family Code Section 154.065 defines what is included in, and what may be excluded from, self-employment income for Texas child support guideline computation purposes. The values displayed in the first column of this chart are the full amount of net earnings from self-employment income (determined before the deduction required by Section 1402(a)(12) of the Code explained in the next footnote, **).

** The tax rates for self-employment taxes are 12.4% for the Social Security tax and 2.9% for the Medicare tax, however, only a portion of the net earnings from self-employment are subject to these taxes. Section 1402(a)(12) of the Code permits a self-employed person a deduction in net earnings from self-employment (as defined in sections 1401 and 1402 of the Code) equal to one-half of the combined rates. The purpose is to adjust net income downward by the amount that would have been paid by an employer, had the individual been classified as an employee. The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). Self-employed taxpayers compute this deduction by multiplying net earnings from self-employment by .9235 (100% - 7.65% = 92.35%) to determine the portion of self-employment income subject to self-employment taxes.

Social Security tax is owed on the portion of self-employment income subject to self-employment taxes that do not exceed the maximum OASDI Contribution and Benefit Base amount of $132,900 (for tax year 2019). Medicare's Hospital Insurance Program (Medicare) tax is owed on the full amount of self-employment income subject to self-employment taxes. Section 1401 of the Code.

Examples:

Monthly Self-Employment Income, TFC 154.065	$72,000 for the year, or $6,000 monthly average	$144,000 for the year, or $12,000 monthly average
92.35% of self-employment income is subject to self-employment taxes	$72,000 x .9235 = $66,492 for the year	$144,000 x .9235 = $132,984 for the year
Social Security tax rate = 12.4%	$66,492 does not exceed the OASDI contribution and benefit base, so $66,492 is taxed at this rate. $66,492 x .124 = $8,245 for the year, or $687.08 monthly average	$132,984 exceeds the OASDI contribution and benefit base, so only the first $132,900 is taxed at this rate. $132,900 x .124 = $16,479.60 for the year, or $1,373.30 monthly average
Medicare tax rate = 2.9%	$66,492 x .029 = $1,928.27 for the year, or $160.69 monthly average	$132,984 x .029 = $3,856.54 for the year, or $321.38 monthly average

*** This amount represents the maximum monthly average of the Social Security tax based on the maximum OASDI Contribution and Benefit Base amount of $132,900 for 2019. In 2019 the maximum level of Monthly Self-Employment Income subject to the 12.4% Social Security tax is $143,909.04 per year (the amount before the deduction required by Section 1402(a)(12) of the Code).

Monthly Self-Employment Income, TFC 154.065	$143,909.04 for the year, or $11,992.42 monthly average
92.35% of self-employment income is subject to self-employment taxes	$143,909.04 x .9235 = $132,900 for the year

Social Security tax rate = 12.4%	$132,900 is equal to the 2019 OASDI contribution and benefit base, so $132,900 is taxed at this rate. $132,900 x .124 = $16,479.60 for the year, or $1,373.30 monthly average

**** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction ($12,200).

The calculation of federal income taxes on self-employment income requires the determination of the total self-employment taxes imposed, as described above. The calculation of federal income taxes permits the taxpayer to reduce net income from self-employment by one half of the actual taxes imposed thereby approximating the employment taxes (Social Security and Medicare) that are paid by an employed person. Section 164(f) of the Code.

Examples:

Monthly Self-Employment Income, TFC 154.065	$72,000 for the year, or $6,000 monthly average	$144,000 for the year, or $12,000 monthly average
Social security tax	$8,245 for the year, or $687.08 monthly average	$16,479.60 for the year, or $1,373.30 monthly average
Medicare tax	$1,928.27 for the year, or $160.69 monthly average	$3,856.54 for the year, or $321.38 monthly average
Total self-employment taxes imposed	$8,245 + $1,928.27 = $10,173.27 for the year	$16,479.60 + $3,856.54 = $20,336.14 for the year
Tax deductible portion of self-employment taxes. Section 164(f) of the Code	$10,173.27 x 1/2 = $5,086.64 for the year	$20,336.14 x 1/2 = $10,168.07 for the year
Personal Exemption Section 151(d) of the Code	$0 for tax years 2018 through 2025	$0 for tax years 2018 through 2025
Standard Deduction Section 63(c) of the Code	$12,200	$12,200
Income amount to be used in the income tax computation	$72,000 - $5,086.64 - $0 - $12,200 = $54,713.36	$144,000 - $10,168.07 - $0 - $12,200 = $121,631.93
Income tax computation for 2019	*If taxable income is over $39,475 but not over $84,200, the tax is $4,543 plus 22% of the excess over $39,475 (Section 1(j) of the Code)* $4,543.00 + (($54,713.36 - $39,475) x .22) = $7,895.44 for the year, or $657.95 monthly average	*If taxable income is over $84,200 but not over $160,725, the tax is $14,382.50 plus 24% of the excess over $84,200 (Section 1(j) of the Code)* $14,382.50 + (($121,631.93 - $84,200) x .24) = $23,366.16 for the year, or $1,947.18 monthly average

Note: For tax years 2018 through 2025, the personal exemption amount is zero. Section 63(c) of the Code. For 2019, the computations do not include the subtraction of any personal exemptions.

***** This amount represents the point where the monthly gross wages of an employed individual would result in $8,550.00 of net resources. Texas Family Code section 154.125 provides, “The guidelines for the

support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2013 the adjusted amount determined under Subsection (a-1) is $8,550.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* *

Citations Relating to Self-Employed Persons 2019 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 83 Fed. Reg. 53702 (October 24, 2018)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

   (c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2019 for Single Taxpayers

(1) Revenue Procedure 2018-57, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2018-49, dated December 3, 2018,

(2) Section 1(j), of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Revenue Procedure 2018-57, Section 3.16, which appears in Internal Revenue Bulletin 2018-49, dated December 3, 2018

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 38 TexReg 4647 (July 19, 2013)

TRD-201805442
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 14, 2018

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - November 2018

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting pe-

riod November 2018 is $49.28 per barrel for the three-month period beginning on August 1, 2018, and ending October 31, 2018. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of November 2018, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period November 2018 is $2.24 per mcf for the three-month period beginning on August 1, 2018, and ending October 31, 2018. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2018, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of November 2018 is $56.60 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of November 2018, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of November 2018 is $4.11 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of November 2018, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201805357
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 13, 2018

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Local Sales Tax Rate Changes Effective January 1, 2019

The 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished December 31, 2018 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Childress (Childress Co)	2038015	.020000	.082500
Sweetwater (Nolan Co)	2177016	.020000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be increased to 1/2 percent and the additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent effective January 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Knox City (Knox Co)	2138014	.020000	.082500

A 1/2 percent special purpose district sales and use tax will become effective January 1, 2019 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Childress Municipal Development District	5038505	.005000	SEE NOTE 1
Sweetwater Municipal Development District	5177506	.005000	SEE NOTE 2

A 2 percent special purpose district sales and use tax will become effective January 1, 2019 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Fort Bend County Assistance District No. 11	5079630	.020000	SEE NOTE 3

NOTE 1: The boundaries of the Childress Municipal Development District are the same as the boundaries for the city of Childress.

NOTE 2: The Sweetwater Municipal Development District has the same boundaries as the Sweetwater extra-territorial jurisdiction, which includes the city of Sweetwater. Contact the district representative at 325-236-6313 for additional boundary information.

NOTE 3: The Fort Bend County Assistance District No. 11 is located in the northern portion of Fort Bend County. The district's boundaries exclude any areas of the district which are also responsible for collecting and remitting sales and use tax to the city of Houston (due to a strategic partnership agreement between a utility district and the city of Houston) and any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP Codes 77083, 77406, 77407 and 77498 are partially located within the Fort Bend County Assistance District No. 11. Contact the district representative at 281-341-8608 for additional boundary information.

TRD-201805356
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 13, 2018

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity

to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 31, 2019.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Brookside Homes, LLC; DOCKET NUMBER: 2018-1672-WQ-E; IDENTIFIER: RN110526084; LOCATION: Buffalo Gap, Taylor County; TYPE OF FACILITY: home builder site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: City of Kingsville; DOCKET NUMBER: 2018-1065-MWD-E; IDENTIFIER: RN101612877; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010696004, Operational Requirements Number 1, and Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge, sludge, use, disposal, or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010696004, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010696004, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintainted; PENALTY: $48,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $48,125; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Plano; DOCKET NUMBER: 2018-1351-WQ-E; IDENTIFIER: RN101391670; LOCATION: Plano, Collin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of other waste into or adjacent to any water in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Eleazar Plata; DOCKET NUMBER: 2018-1088-MLM-E; IDENTIFIER: RN109229559; LOCATION: Kerens, Navarro County; TYPE OF FACILITY: property with an unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $7,409; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: GEORGE CLAYTON BUCKLEY, JR.; DOCKET NUMBER: 2018-1646-OSI-E; IDENTIFIER: RN103748240; LOCATION: Valley View, Cooke County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an OSSF; PENALTY: $175; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: HFOTCO LLC; DOCKET NUMBER: 2018-0894-AIR-E; IDENTIFIER: RN100223445; LOCATION: Houston, Harris County; TYPE OF FACILITY: bulk petroleum liquid storage and distribution terminal; RULES VIOLATED: 30 TAC §101.201(b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number O1093, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify the estimated total quantities for those compounds or mixtures to have been released during the emissions event on the final record for a reportable emissions event; 30 TAC §101.201(c) and §122.143(4), FOP Number O1093, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 5783 and N57M1, Special Conditions Number 1, FOP Number O1093, GTC and STC Number 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,140; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: NEW SAMA, INCORPORATED dba Dry Clean Super Center; DOCKET NUMBER: 2018-0909-DCL-E; IDENTIFIER: RN103967196; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each storage area for dry cleaning waste, dry cleaning solvent, and dry cleaning wastewater; 30 TAC §337.20(e)(6), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged; and 30 TAC §337.72(1), by failing to retain invoices of dry cleaning solvent purchases showing the name, type, and quantity of dry cleaning solvent purchased, the name and address of the seller, and date of purchase; PENALTY: $7,086; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: PALO ALTO SILICA SAND INC; DOCKET NUMBER: 2018-1661-WQ-E; IDENTIFIER: RN107269615; LOCATION: Von Ormy, Atascosa County; TYPE OF FACILITY: mineral and mining processing facility; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Saratoga Homes of Texas Austin LLC; DOCKET NUMBER: 2018-1633-WQ-E; IDENTIFIER: RN110498599; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2018-1624-PWS-E; IDENTIFIER: RN101266682; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(q)(1), by failing to issue a boil water notice (BWN) to the customers of the facility by using one or more of the Tier 1 delivery methods as described in 30 TAC §290.122(a)(2), and using the applicable BWN language and format specified in 30 TAC §290.47(c)(1); PENALTY: $446; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2018-0904-PWS-E; IDENTIFIER: RN102688041; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to select and install disinfection equipment so that continuous and effective disinfection are provided; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii)(III), (iv), and (vii), (B)(iii), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility until it is decommissioned; 30 TAC §290.46(q)(1), by failing to issue a boil water notice (BWN) to customers of the facility within 24 hours of failing to maintain a disinfectant residual using the prescribed notification format specified in 30 TAC §290.47(c)(1); 30 TAC §290.46(q)(1), by failing to issue a BWN to the customers of the facility by using one or more of the Tier 1 delivery methods as described in 30 TAC §290.122(a)(2) and using the applicable BWN language and format specified in 30 TAC §290.47(c)(1); 30 TAC §290.46(q)(1), by failing to notify customers throughout the distribution system or in the affected area(s) of the distribution system that the BWN has been rescinded using the language and format specified in 30 TAC §290.47(c)(3); and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $2,704; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201805422
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 14, 2018

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Correction of Error

The Texas Commission on Environmental Quality proposed an amendment to 30 TAC §55.27 in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4648). Due to an error by the Texas Register, the word "the" was omitted from subsection (a)(3) prior to the words "State Office of Administrative Hearings". The text for paragraph (3) should have read as follows:

"(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) [~~SOAH~~] for a hearing; or"

The adoption of the proposed amendment is included in the Adopted Rules section of this issue of the *Texas Register*.

TRD-201805462

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 31, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Heath Townsend Homes, LP; DOCKET NUMBER: 2017-1621-WQ-E; TCEQ ID NUMBER: RN109239020; LOCATION: the intersection of Greens Prairie Road West and W.S. Phillips Parkway, College Station, Brazos County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121 and 30 TAC §281.25(a)(4), by failing to obtain authorization under Texas Pollutant Discharge Elimination System General Permit Number TXR150000 to discharge stormwater associated with construction activities; PENALTY: $1,212; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: HM Steel Fab., LLC; DOCKET NUMBER: 2018-0236-AIR-E; TCEQ ID NUMBER: RN109830331; LOCATION: 3107 Honeysickle Street, Rosharon, Brazoria County; TYPE OF FACILITY: steel fabrication plant; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to operating a source of air emissions; PENALTY: $1,312; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: LAGUNA VISTA, LIMITED; DOCKET NUMBER: 2017-1645-PWS-E; TCEQ ID NUMBER: RN101276806; LOCATION: 402 Aqua Vista Drive, Granbury, Hood County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); THSC, §341.0351, 30 TAC §290.39(j), and TCEQ AO Docket Number 2016-0400-PWS-E, Ordering Provision Number 2.c.i., by failing to receive an approval from the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and THSC, §341.0315(c), 30 TAC §290.45(b)(1)(C)(i) and TCEQ AO Docket Number 2016-0400-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: $35,215; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201805423
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 14, 2018

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 342

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 342, Regulation of Certain Aggregate Production Operations, §342.1 and §342.25, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 2582, 85th Texas Legislature, 2017, relating to an exemption for certain quarries from regulation as aggregate production operations.

The commission will hold a public hearing on this proposal in Austin on January 22, 2019, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-026-342-OW. The comment period closes on January 30, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Laurie Fleet, TCEQ Wastewater Permitting Section, (512) 239-5445.

TRD-201805370
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 14, 2018

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Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency concerning SIPs.

The proposed SIP revision would include a request that the DFW area be redesignated to attainment for the revoked one-hour and 1997 eight-hour ozone standards. The proposed SIP revision would also include a maintenance plan that would ensure the area remains in attainment of the standards through 2032. The maintenance plan would use a 2014 base year inventory and include interim milestone year inventories for 2020 and 2026, establish motor vehicle emissions budgets for 2032, and include a contingency plan.

The commission will hold a public hearing on this proposal in Arlington on January 14, 2019, at 2:00 p.m. in the Arlington City Council Chambers located at 101 W. Abram Street. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposals 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer-Nelson, Air Quality Division at (512) 239-5017 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Kathy Singleton, MC 206, Air Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-6188. Electronic comments may be submitted at: *http://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. The comment period closes January 15, 2019.

All comments should reference **Project No. 2018-028-SIP-NR.** Copies of the proposed SIP revision can be obtained from the commission's website at *https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone.* For further information, please contact Kathy Singleton, Air Quality Division, (512) 239-0708.

TRD-201805417
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 14, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due July 16, 2018, for Candidates and Officeholders

Mark J. Beausoleil, P.O. Box 663, Liberty, Texas 77575

Wilvin J. Carter, 15 Cinque Terre Drive, Missouri City, Texas 77459-1178

Chris R. Evans, 615 County Road 358, Dublin, Texas 76446-3770

Cody J. Harris, P.O. Box 282, Palestine, Texas 75802

Barbara Hawkins, P.O. Box 39602, San Antonio, Texas 78218-6602

Maria Relgaldo, 506 S. Woodland Dr., Pharr, Texas 78577-5214

Deadline: 30-Day Pre-Election Report due October 9, 2018, for Candidates and Officeholders

Spencer R. Bounds, 2408 Wydewood Drive, Midland, Texas 79707

Meghan L. Brown-Scoggins, 17410 Woodfalls Ln., Richmond, Texas 77407

Joshua G. Burns, 905 S. Jennings Ave. #2117, Fort Worth, Texas 76104

Kyle A. Frels-Henry, 10926 Jollyville Rd. #715, Austin, Texas 78759

Teresa J. Hawthorne, P.O. Box 670844, Dallas, Texas 75367

Casey W. Littlejohn, 212 Mesa Dr., Glenn Heights, Texas 75154

Kevin P. Ludlow, 1235 Broadmoor Dr., Austin, Texas 78723

Mallory A. Olfers, 5534 Sunup Dr., San Antonio, Texas 78233-4488

Bruce Quarles, 11747 Hwy. 59 N., Livingston, Texas 77351

Gilberto Velasquez, 1512 Vermont, Houston, Texas 77006-1042

Stephen A. West, 209 West 2nd Street, Ste. 213, Fort Worth, Texas 76102

Staci Williams, P.O. Box 225321, Dallas, Texas 75260

Erin A. Zwiener, P.O. Box 184, Driftwood, Texas 78619

Deadline: 30-Day Pre-Election Report due October 9, 2018, for Committees

Lenwood Nelson, Burnet County Republican Club PAC, P.O. Box 837, Marble Falls, Texas 78654

Steven L. Scheinthal, Landry's Seafood Restaurants, Inc. PAC, 1510 West Loop South, Houston, Texas 77027

TRD-201805353
Seana Willing
Executive Director
Texas Ethics Commission
Filed: December 13, 2018

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective January 1, 2019.

The purpose of the amendments is to modify the reimbursement methodology in the current state plan for the Day Activity and Health Services (DAHS), Nursing Facility (NF), and Primary Home Care (PHC) programs by requiring biennial rather than annual cost reports. NF providers will be required to submit cost reports every other year beginning with their 2018 cost reports, and DAHS and PHC providers will be required to submit cost reports every other year beginning with their 2019 cost reports. During interim years, NF providers who participate in the Direct Care Staff Compensation Program will be required to submit a Staffing and Compensation Report; DAHS and PHC providers who participate in the Attendant Compensation Rate Enhancement Program will be required to submit an Attendant Compensation Report.

HHSC is also making clarifying revisions to the inflation projection methodology for the §1915(i) Home and Community-Based Services (HCBS), PHC, DAHS, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID), and NF programs. A revision will also be made to the nursing wage inflation methodology, which will affect only the HCBS, ICF/IID, and NF programs.

The proposed amendments are estimated to have no fiscal impact.

To obtain copies of the proposed amendments, interested parties may contact Beren Dutra, State Plan Program Specialist, by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Health and Human Services Commission.

TRD-201805339
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 12, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2116 "Golden Nugget®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2116 is "GOLDEN NUGGET®". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2116 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2116.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, MELON SYMBOL, STAR SYMBOL, BELL SYMBOL, BANANA SYMBOL, HORSESHOE SYMBOL, 4 LEAF CLOVER SYMBOL, GOLD BAR SYMBOL, SEVEN SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2116 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
MELON SYMBOL	MEL
STAR SYMBOL	STA
BELL SYMBOL	BEL
BANANA SYMBOL	BAN
HORSESHOE SYMBOL	SHO
4 LEAF CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
WISHBONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY

2 SYMBOL	TWO
3 SYMBOL	THR
4 SYMBOL	FOR
5 SYMBOL	FIV
6 SYMBOL	SIX
7 SYMBOL	SVN
8 SYMBOL	EGT
9 SYMBOL	NIN
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2116), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2116-0000001-001.

H. Pack - A Pack of "GOLDEN NUGGET®" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "GOLDEN NUGGET®" Scratch Ticket Game No. 2116.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "GOLDEN NUGGET®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 48 (forty-eight) Play Symbols. ROULETTE Play Instructions: If any of the YOUR NUMBERS Play Symbols match the LUCKY NUMBER Play Symbol, the player wins the prize for that number. 2 OF A KIND Play Instructions: If the player reveals 2 matching Play Symbols, the player wins the PRIZE. SLOTS Play Instructions: If the player reveals 3 matching Play Symbols, in the same PULL, the player wins the PRIZE for that PULL. 7-11 Play Instructions: The player adds the 2 numbers for each ROLL. If the total is 7 or 11, in a single ROLL, the player wins the PRIZE for that ROLL. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. GENERAL: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

D. ROULETTE: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

E. ROULETTE: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. ROULETTE: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. 2 OF A KIND: The two (2) 2 OF A KIND Play Symbols will only match on intended winning tickets.

H. SLOTS: There will never be three (3) matching SLOTS Play Symbols in adjacent positions in a column or diagonal.

I. SLOTS: No duplicate PULLS in any order on a Ticket.

J. SLOTS: No more than three (3) matching SLOTS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

K. 7-11: No duplicate non-winning ROLLS in any order on a Ticket, unless otherwise restricted by play style, prize structure or other programming parameters.

L. 7-11: All non-winning ROLL totals will fall within the range of five (5) to seventeen (17).

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN NUGGET®" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the

Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLDEN NUGGET®" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLDEN NUGGET®" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GOLDEN NUGGET®" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GOLDEN NUGGET®" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "GOLDEN NUGGET®" Scratch Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in the Scratch Ticket Game No. 2116. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2116 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	802,400	8.82
$10	330,400	21.43
$15	188,800	37.50
$20	188,800	37.50
$25	94,400	75.00
$50	70,800	100.00
$100	18,880	375.00
$500	1,770	4,000.00
$5,000	15	472,000.00
$100,000	4	1,770,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.17. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2116 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2116, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201805355
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 13, 2018

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking to procure items for workforce training provided to students in the area of medical/nursing.

Copies of the solicitations can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Contracts Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 4:00 p.m. on Tuesday, January 15, 2019.

PRPC, as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter network, is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201805351
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: December 13, 2018

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Public Utility Commission of Texas

Notice of Application to Amend a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 10, 2018, in accordance with Public Utility Regulatory Act §§54.151-54.156.

Docket Title and Number: Application of Meriplex Telecom, LLC to Amend a Certificate of Operating Authority, Docket No. 48970.

The Application: Meriplex Telecom, LLC seeks approval to amend certificate of operating authority 60853 to reflect a change in ownership and control. Meriplex Telecom requests an amendment to reflect Meriplex Telecom becoming a direct, wholly-owned subsidiary of Meriplex Communications, Ltd.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than January 11, 2019. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48970.

TRD-201805350
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2018

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Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 7, 2018, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Peoples Telephone Cooperative, Inc. for Approval of a Minor Rate Change under 16 Texas Administrative Code §26.171, Tariff Control Number 48953.

The Application: Peoples filed an application to increase the monthly local exchange access service rates for residential customers from $19.75 to $22.29. Concurrent with the increase in the monthly local exchange access service rates, Peoples will discontinue billing the $2.54 Access Recovery Charge to residential customers. Accordingly, residential customers will experience an estimated net decrease on their bill of $.40, inclusive of current taxes and regulatory fees. If approved, the proposed rate changes will take effect on January 1, 2019. The estimated net increase to Peoples' total regulated intrastate gross annual revenues due to the proposed increase is $247,498.

If the commission receives a complaint(s) relating to this proposal signed by 5% or more of the local service customers to which this proposal applies by December 31, 2018, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the commission's receipt of the complaint(s). As of October 31, 2018, the 5% threshold equals approximately 466 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 31, 2018. Requests to intervene should be filed with the commission's filing clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 48953.

TRD-201805348
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2018

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Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 7, 2018, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of South Plains Telephone Cooperative, Inc. for Approval of a Minor Rate Change under 16 Texas Administrative Code §26.171, Tariff Control Number 48956.

The Application: South Plains filed an application to increase the monthly residential access line rates for residential customers from $19.42 to $22.25 in the Acuff, Merrell, and Ransom Canyon exchanges. Customers in all other exchanges whose rate is currently $15.92 will see a rate increase to $18.75. Concurrent with the increase in the monthly residential access line rates, South Plains will discontinue billing the $2.88 Access Recovery Charge to residential customers. Accordingly, residential customers will experience an estimated net decrease on their bill of $.54, inclusive of current taxes and regulatory fees. Additionally, South Plains seeks to increase the monthly business access line rates for customers in the Ransom Canyon exchange from $23.92 to $27.42 and in the Acuff and Merrell exchanges from $25.67 to $29.17. If approved, the proposed rate changes will take effect on January 1, 2019. The estimated net increase to South Plains' total regulated intrastate gross annual revenues due to the proposed increase is $106,467.

If the commission receives a complaint(s) relating to this proposal signed by 5% or more of the local service customers to which this proposal applies by December 31, 2018, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the commission's receipt of the complaint(s). As of September 31, 2018, the 5% threshold equals approximately 175 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 31, 2018. Requests to intervene should be filed with the commission's filing clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 48956.

TRD-201805349
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2018

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Texas Department of Transportation

Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications (RFQ) and requires the department to publish a notice of such issuance in the

Texas Register. The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the rules). The enabling legislation, as well as the rules, govern the submission and processing of qualifications statements (QSs), and provide for the issuance of an RFQ that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of an RFQ to design, develop, construct, and potentially maintain Segment 3 of the North Houston Highway Improvement Project (Project) in Harris County, Texas. The Project will consist of non-tolled improvements including: (1) realigning I-45 away from the Pierce Elevated to be parallel with I-10 and I-69 from the existing I-45 interchange with I-10 to the existing I-45 interchange with I-69; (2) the construction of connectors providing access between local downtown streets and I-10, I-45, and I-45 non-tolled managed lanes; (3) depressing and widening I-69 from the SH 288 interchange to I-10; (4) reconstructing the I-69 interchanges with I-45 and I-10; (5) reconstructing I-10 general purpose lanes and adding new non-tolled managed lanes from west of I-45 to east of I-69 through downtown Houston; (6) reconstructing the I-10 interchange with I-45; (7) reconstructing SH 288 from south of I-69 to the I-45 interchange; and (8) reconstructing the SH 288 interchange with I-69.

The Project has an estimated design-build cost of approximately $3.6 billion.

Through this notice, the department is seeking QSs from teams interested in entering into a design-build contract and, potentially, a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract, and potentially, a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and potentially, a capital maintenance contract, for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on December 28, 2018. Copies of the RFQ will be available at the Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007, or at the following website:

http://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/nhhip-seg3/rfq.html

QSs will be due by 12:00 p.m. (noon) CST on March 19, 2019, at the address specified in the RFQ.

TRD-201805354
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 13, 2018

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Workforce Solutions for the Heart of Texas

Heart of Texas Workforce Development Board, Inc. Draft Two-Year Strategic Plan Modification PY 2017 - 2020

The Heart of Texas Workforce Development Board, Inc. (Board) hereby provides notice of the availability of the draft Two-Year Strategic Plan Modification addressing program years 2017 - 2020. The Board is responsible for the planning, oversight and implementation of federally funded workforce development programs throughout the area which includes the counties of: Bosque, Falls, Freestone, Hill, Limestone, and McLennan. The final plan will be submitted to the Texas Workforce Commission by March 15, 2019. A copy of the draft Strategic Plan will be made available on the Board's website at www.hotworkforce.com beginning Friday, December 14, 2018. Interested parties may obtain a copy of the draft Two-Year Strategic Plan Modification by contacting Judy Hedge at (254) 296-5393 between 8:00 a.m. and 5:00 p.m. Monday through Friday or via e-mail at judy.hedge@hotworkforce.com.

Comments regarding the plan may be submitted in writing to the address below, faxed to (254) 753-3173 or sent via e-mail to eunice.williams@hotworkforce.com no later than 4:00 p.m. on January 13, 2019. All comments will be addressed in the final plan submitted to the Texas Workforce Commission.

Heart of Texas Workforce Development Board, Inc.

dba Workforce Solutions for the Heart of Texas

Administrative Office 801 Washington Avenue, Suite 700

Waco, Texas 76701

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas services at 711 or (TDD) (800) 735-2989/(800) 735-2988 (Voice).

TRD-201805371
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: December 14, 2018

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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